



▶ **Module 1**

**Pre-contractual information requirements**

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Readers should also remember that EU and national legislation is being continuously updated: any paper version of the modules should be checked against possible updates on the website [www.consumerlawready.eu](http://www.consumerlawready.eu).

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## Table of Contents

Introduction .....	6
Can I exclude or limit the application of consumer law? .....	8
Is everyone who buys from me a consumer? .....	8
What happens in case of transactions with dual purposes? .....	9
What is a consumer contract? .....	9
What are pre-contractual information requirements? .....	10
Are any consumer contracts exempted from the pre-contractual information requirements laid down by Directive 2011/83/EU on consumer rights? .....	11
Which pre-contractual information requirements apply to consumer contracts concluded in my shop ("on-premises contract")? .....	12
Additional pre-contractual information requirements for on-premises contracts under national law. ....	14
Which information requirements apply to consumer contracts concluded at distance or outside your business premises? .....	14
How do you have to present pre-contractual and contractual information? .....	17
What does it mean in practical terms? .....	18
In what language does this pre-contractual and contractual information need to be presented? .....	19
In case of contracts negotiated outside of business premises, is it sufficient that I tell the consumer orally all these pieces of information? .....	19
Do I need to present this pre-contractual and contractual information in different manners, depending on who are my target consumers? .....	19
What happens with cross-border sales? .....	20
Specific treatment of sales that you direct to consumers residing in other Member States .....	20
Under which conditions can you be regarded as targeting consumers in another Member States? .....	20
What does this mean for you in practice? .....	20
When you have a dispute in such a cross border contract, what court is competent? .....	21

What are the consequences if I do not provide the pre-contractual information requirements? .....21

Annex 1 - Application of the CRD regulatory choices by Member States.....35

“Making sure all traders comply with their duty to inform their consumers clearly and comprehensively before they buy secures a fairer level-playing field in the market”

**Trader**

“If traders inform me clearly and comprehensively, this improves my trust both in them and in the market”

**Consumer**

“Clear and comprehensive information before I buy helps me make sound decisions on whether or not I really want certain products”

**Consumer**

## Introduction

Dear entrepreneur,

This Handbook is part of the Consumer Law Ready project addressed specifically to micro, small and medium-sized companies that interact with consumers.

The Consumer Law Ready project is a European-wide project managed by Eurochambres (the Association of European Chambers of Commerce and Industry, in a consortium with BEUC (the European Consumer Organisation) and SMEunited (the Association of Crafts & SMEs in Europe). It is funded by the European Union with the support of the European Commission.

The objective of the project is to assist you in complying with the requirements of EU consumer law.

EU consumer law consists of different pieces of legislation adopted by the European Union over the last 25 years and transposed by each EU Member State in their respective national law. In 2017, the European Commission has concluded an evaluation to check whether the rules are still fit for purpose. The result was overall positive<sup>1</sup>. The main finding was that the existing rules need to be better enforced by authorities and better known by businesses and consumers. The Consumer Law Ready project aims to enhance the knowledge of traders, in particular of SMEs, regarding consumer rights and their corresponding legal duties.

The Handbook consists of five modules. Each one deals with one particular topic of EU consumer law:

- Module 1 deals with the rules on pre-contractual information requirements
- Module 2 presents the rules on the consumer's right to withdraw from distance and off-premises contracts
- Module 3 concentrates on the remedies which traders must provide when do not conform with the contract
- Module 4 focuses on unfair commercial practices and unfair contract terms
- Module 5 introduces alternative dispute resolution and the Online Dispute Resolution (ODR) platform, an official website managed by the European Commission dedicated to helping consumers and traders resolve their disputes out-of-court.

This Handbook is just one of the learning materials created within the Consumer Law Ready project. The website [consumerlawready.eu](http://consumerlawready.eu) contains other learning tools, such as videos, quizzes and an 'e-test' through which you can obtain a certificate. You can also connect with experts and other SMEs through a forum.

The Module 1 of the Handbook aims to make you familiar with the pre-contractual information that you as a trader need to disclose before concluding a contract with a consumer. It describes what information, how and when you need to provide, and gives you tips to make it easier for you to comply with the law.

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<sup>1</sup> You can find more information about the evaluation, its findings and follow-up actions on the website of the European Commission: [http://ec.europa.eu/newsroom/just/item-detail.cfm?item\\_id=59332](http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=59332)

The Module presents the pre-contractual information requirements laid down in Directive 2011/83/EU on consumer rights (the Consumer Rights Directive - CRD) which has been transposed in the national laws of the EU Member States. For more in-depth information about the provisions of the Consumer Rights Directive, please consult the [Guidance document of the European Commission](#)<sup>2</sup> that is available in all official languages of the EU.

The Consumer Rights Directive has been amended by the [Directive \(EU\) 2019/2161](#) of 27 November 2019 on better enforcement and modernisation of Union consumer protection rules. EU Member States have transposed these changes into their national legal system by 28 November 2021 and apply the new rules as of 28 May 2022. The changes concerning pre-contractual information are presented in this module in separate boxes with the title “New rules as of 28 May 2022”. These also came into force during 2022. Furthermore, the [Directive \(EU\) 2019/770](#) on certain aspects concerning contracts for the supply of digital content and digital services (Digital Content Directive) will introduce a legal guarantee for digital content and digital services<sup>3</sup>. Consequently, traders will need to inform their consumers about the legal guarantee for a digital content or a digital service before the conclusion of a contract. These changes will also be brought to your attention in this module.

Besides those horizontal requirements, other, mainly sector-specific, information requirements might apply – independently or combined with the CRD information requirements - depending on the contract type (e.g. consumer credit, package travel, etc.). Those other requirements are outside the scope of this Handbook, but we encourage you to get familiar with them as well having regard to your specific business area. Indeed, in case of conflict between sector-specific rules and the general rules, the sector-specific rules should apply. The [Consumer Law Database](#)<sup>4</sup> and the [Your Europe Business Portal](#)<sup>5</sup> can help you gather the relevant information or you can contact your local business organisation.

We hope that you find the information provided in the Handbook useful.

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<sup>2</sup> See [https://ec.europa.eu/info/law/law-topic/consumers/consumer-contract-law/consumer-rights-directive\\_en](https://ec.europa.eu/info/law/law-topic/consumers/consumer-contract-law/consumer-rights-directive_en)

<sup>3</sup> See module 3 – Consumer Rights and Guarantees

<sup>4</sup> See [https://e-justice.europa.eu/591/EN/consumer\\_law\\_database](https://e-justice.europa.eu/591/EN/consumer_law_database)

<sup>5</sup> See <http://europa.eu/youreurope/business/>

## What is EU consumer law?

EU consumer law consists of different sets of rules.

They deal with the fairness of commercial practices, fairness of contract terms, pre-contractual information requirements, consumer's right of withdrawal and other consumer protection rules specific for particular types of consumer contracts (e.g. contracts negotiated outside of business premises, contracts concluded at a distance, e.g. online) and/or sector-specific ones (e.g. consumer credit contracts, package travel contracts, timeshare contracts, good guarantee rules etc.).

If a rule of the EU specific-sector legislation conflicts with a rule of the Consumer Rights Directive (CRD), the specific-sector rule shall prevail and apply to that specific sector.

Respecting all consumer laws might sound difficult at first. Now that you have this Handbook in your hands, you have what you need to better comply with the law! Depending on your business area, make sure you also get familiar with other relevant general and/or sector specific information requirements. 🇪🇺 As stated above, the [Consumer Law Database](#)<sup>6</sup> and the [Your Europe Business Portal](#)<sup>7</sup> can also help you find the relevant information as well as your local business organisation.

## Can I exclude or limit the application of consumer law?

If you are selling goods or services to a consumer neither you nor anyone else can exclude or limit the application of consumer law.

For example, it is illegal to write contract terms stating your intention to exclude or limit the application of consumer law, such as: "To this contract, consumer contract rules will not apply, but the rules of general

contract law". Stating so would not only remain without legal effects and not be binding for the consumer; it may also, under certain circumstances, represent an unfair contract term<sup>8</sup>.

## Is everyone who buys from me a consumer?

EU consumer law requirements apply to you whenever you offer your products (goods, services, digital content) to a "consumer" in any EU country. Therefore, the definition of "consumer" is important.

The consumer is any natural person who buys a product from you that he/she will not use for professional but only for personal purposes.

**Example:** A consumer may be an individual who buys a printer in a brick-and-mortar shop for his/her personal needs or who purchases a book from a trader online.



A consumer can only be a physical person. Legal entities, i.e. companies or associations, cannot qualify as consumers. However, in some Member States, such entities enjoy a similar level of protection as some of the rules protecting consumers have been extended to afford protection also to businesses or certain

<sup>6</sup> See Consumer Law Database [https://e-justice.europa.eu/591/EN/consumer\\_law\\_database](https://e-justice.europa.eu/591/EN/consumer_law_database)

<sup>7</sup> See <http://europa.eu/youreurope/business/>

<sup>8</sup> See Module 4 on unfair commercial practices and unfair contract terms



associations. Member States may not introduce a different legal definition of "consumer", which is fully harmonised at European level. 🇪🇺

When someone buys products for professional purposes, for example, to resell them further in the supply chain, consumer law does in principle not apply.

**Example:** a person who buys plates and cutlery for the restaurant they run is not a consumer; thus, consumer law will not apply, except for the provisions of the General Product Safety Directive 2001/95/EC. Equally, if your company provides window-cleaning services to another company, consumer law will not apply. However, in such cases, other sets of EU and/or national rules will apply. 🇪🇺

In some countries, the use of a VAT number is a good indication of whether or not a buyer acts as a consumer.

## What happens in case of transactions with dual purposes?

You might wonder: what happens when someone buys a product for both their personal and professional usage?

**Example 1:** a lawyer buys a computer she will use to write emails to her family but also to draft briefs for her clients.



**Example 2:** a person has the roof repaired; he/she lives in a part of the house with his/her family and uses the other part as a shop for selling clothes.



Does consumer law apply in such situations where there is both a personal and a professional dimension to the sale or service contract?

This is called a "dual purpose contract": a good or a service has a double purpose. In such cases, in order to determine whether consumer law applies, one needs to check the prevailing purpose of that contract. In other words, the task is to verify whether the lawyer will use her computer more for writing personal emails or for preparing documents for her clients. Similarly, the question is whether the house mentioned represents more a place to sell clothes or a family home.

**Example:** if the computer is used 20% of the time to write emails to clients and 80% of the time to write personal emails, the contract will be protected by consumer law.

## What is a consumer contract?

A consumer contract is any contract a trader concludes with a consumer, no matter through which channel (e.g. on the Internet, via telephone or in a shop) and irrespectively of whether it has as its object the supply of goods, services and/or digital content.

For instance, a contract concluded online with the consumer for the sale of a book.

The CRD distinguishes between "on-premises contracts" (e.g. consumer contracts concluded in a shop), "distance contracts" (e.g. consumer contracts concluded on the Internet or via telephone) and "off-

premises contracts" (e.g. consumer contracts concluded at consumer's home).

Contrary to the **"on-premises contracts"**, **"distance contracts"** are those where there is no simultaneous physical presence of the trader and the consumer at the moment of conclusion of the contract. Typical examples of contracts concluded at a distance include those concluded by mail order, online, or telephone. Distance contracts also include situations where the consumer visits the business premises merely to gather information about the goods or services but subsequently negotiates and concludes the contract at a distance. On the contrary, a contract initiated by means of distance communication (e.g. an email or a phone call to fix an appointment or make a reservation), but concluded at the business premises of the trader should not be considered as a distance contract.



**"Off-premises contracts"** are those concluded in the simultaneous physical presence of the trader and the consumer, but at a place which is not the trader's business premises. Business premises include the premises in whatever form (e.g. shops, stalls, etc.) which serve as a permanent or usual place of business for the trader. The business premises also include the premises which the trader uses on a seasonal basis (e.g. ice cream shop at the beach during the summer). Typically, contracts negotiated outside of business premises are

those concluded at the consumer's home or workplace or during an excursion organised by the trader.



While for on-premises contracts Member States may add pre-contractual requirements to those laid down in the CRD<sup>9</sup>, for distance and off-premises contracts the pre-contractual information requirements are all laid down in that Directive and Member States may not add other ones. Thus, if you wish to offer your goods or services to consumers in different EU countries, you can do so from your website by simply making sure that you correctly translate in all relevant languages exactly the same, comprehensive pre-contractual information. As of 28 May 2022, consumers are benefiting from their rights also when they do not pay in money for a digital service/content but they provide personal data (unless this data is strictly necessary to provide the digital content e.g. e-mail address to which the digital content needs to be supplied).

## What are pre-contractual information requirements?

Pre-contractual information requirements are pieces of information which have been identified by the legislator as important to ensure that the consumer makes an informed choice before concluding a contract. The CRD lays down a general list of pieces of information which a trader needs to disclose to the consumer before the

<sup>9</sup> See Annex 1

consumer concludes a contract on-premises, off-premises or at a distance.

Please note that, also at stages prior to the pre-contractual one, such as during advertising, traders across the EU must act according to professional diligence and disclose all the elements which average consumers would need to take informed transactional decisions. Failure to do so may amount to a misleading action or omission.<sup>10</sup>

## **Are any consumer contracts exempted from the pre-contractual information requirements laid down by Directive 2011/83/EU on consumer rights?**

Yes, the pre-contractual information requirements laid down in the Consumer Rights Directive do not apply to the following contracts:

- a) contracts for social services, such as social care;
- b) contracts for healthcare services;
- c) contracts for gambling, including within lotteries, casino games and betting transactions;
- d) contracts for financial services, such as different consumer credit agreements;
- e) contracts for the creation, acquisition or transfer of immovable property or of rights in immovable property;
- f) contracts for the construction of new buildings, the substantial conversion of existing buildings and for rental of accommodation for residential purposes;
- g) contracts on package travel<sup>11</sup>;
- h) contracts on timeshare, long-term holiday products, resale and exchange contracts;
- i) contracts which, in accordance with the national laws of Member States, are established by a public office-holder who has a statutory obligation to be independent and impartial and who must ensure, by providing comprehensive legal information, that the consumer only concludes the contract on the basis of careful legal consideration and with knowledge of its legal scope;
- j) contracts for the supply of foodstuffs, beverages or other goods intended for current consumption in the household, and which are physically supplied by a trader on frequent and regular rounds to the consumer's home, residence or workplace;
- k) contracts for passenger transport services with the exception of Articles 8(2) on formal requirements for online sales, 19 on fees for the use of means of payment and 22 CRD on additional payments (prohibition of surprise fees)<sup>12</sup>;
- l) contracts concluded by means of automatic vending machines or automated commercial premises;
- m) contracts concluded with telecommunications operators through public payphones for their use or concluded for the use of one single connection by telephone, Internet or fax established by a consumer;
- n) Since 28 May 2022, contracts for any goods sold by way of execution or otherwise by authority of law.

However, pre-contractual information duties still exist for many of these contracts under other pieces of EU or

<sup>10</sup> See Module 4 on unfair commercial practices and unfair contract terms.

<sup>11</sup> With the exception of Article 6(7), Article 8(2) and (6) and Articles 19, 21 and 22 of the CRD that also apply to package travel contracts.

<sup>12</sup> As of 28 May 2022, Article 21 (basic telephone rate for post-sale services) of the CRD will also be applicable to transport contracts.

national law. This is the case, for example, for contracts in relation to credit agreements for consumers<sup>13</sup>.

Moreover, according to the provisions of the Consumer Rights Directive, some Member States have also adopted national rules which exempt traders from pre-contractual information requirements for 'low value contracts': this is the case in Austria, Belgium, Cyprus, Denmark, Estonia, Finland, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, The Netherlands, Poland, Portugal, Romania, Slovenia, Sweden and the United Kingdom. Please have a look at ANNEX 1 to discover more about these specificities. 🇪🇺

## Which pre-contractual information requirements apply to consumer contracts concluded in my shop ("on-premises contract")?

Following the Consumer Rights Directive, there are by now across the EU 8 key information items you have to clearly present to consumers before they conclude any sale or service contract with you in your shop, if that information is not already apparent from the context where you operate. Those are:

1. The **main characteristics** of the goods or services you offer: all details presenting the principal features of the product that is for sale. For example, the size and similar qualities (e.g. 64KB memory of a USB stick) and the material /composition (e.g. leather jacket) of a product.

It is important that the medium used to provide this information is easily readable and comprehensible to an average consumer; this medium can be, for example, a piece of paper.

2. **Your identity**, such as your trading name, the geographical address where you are established and your company's telephone number. The address of a shop or a restaurant (geographical address) constitutes an obvious example of information being apparent from the context, in case of on-premises contracts.
3. The **total price** of the goods or services you offer. This means that the price needs to be fully complete, i.e. it must include all of the applicable taxes, additional freight, delivery and postal charges (if any). If the price cannot be calculated in advance, you need to disclose to the consumer how the price will be calculated or, where those charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable.

*Example:* when the total price depends on the actual consumption, you need to indicate the price per kilo/liter, for example.

4. All of the arrangements, if any, for **payment, delivery, performance**, time by which you undertake to deliver the goods or to perform the service, and your **complaint handling policy**.

*Example:* inform the consumer that the product is delivered through a particular carrier and that the delivery will be executed within 15 working days. Also, inform him about what he needs to do in case he wants to complain and how to submit his complaint.

5. The existence of a **legal guarantee** of conformity for goods, the existence and the conditions of after-sales services and commercial guarantees. Under EU law, a difference is to be made between the legal (or statutory) guarantee and the

<sup>13</sup> Pre-contractual information requirements are set out by the Consumer Credit Directive (2008/48/EC).

commercial guarantee. The legal guarantee is mandatory by law, i.e. the Directive 1999/44/EC on sales of consumer goods as implemented in the national laws of the EU Member States. In the EU, the legal guarantee for consumer products lasts for a period of at least two years and offers remedies, free of charge, for any fault in a good which already existed at the time of its delivery. The commercial guarantee adds to the legal guarantee and is granted voluntarily by either the seller or the producer.

**Example:** a commercial guarantee that offers remedies in relation to the functioning of an iron for 5 years, rather than just for the 2 years covered by the legal guarantee and covering more than just the defects existing at the time of delivery. The trader has the obligation to make the existence and the conditions of the legal guarantee visible.

In case you offer an after-sales service, you must inform the consumer about its existence and modalities for benefitting from it<sup>14</sup>. In this context, please be aware that, under the Consumer Rights Directive, the costs of a customer call centre can never be higher than the costs of a local phone call, if the call is related to a question on an existing contract.

### New rules under the *Digital Content Directive*



The new Digital Content Directive<sup>15</sup> introduces a legal guarantee for digital content and digital services (see Module 3 – Consumer Rights and Guarantees).

Consequently, traders need to inform their consumers about the legal guarantee of conformity for a digital content or a digital service before the conclusion of a contract.

<sup>14</sup> See Module 3 on consumer sales which describes the remedies the trader must provide for defective goods.

6. The **duration** of the contract. If your contract foresees that the consumer must be bound for a minimum duration of time, you must inform the consumer in advance about the length of such time-period.

**Example:** you need to inform the consumers about the minimum number of months they must stay affiliated with your gym club to be able to benefit from the offered price for yearly subscriptions.

**Or**

You need to clarify whether the subscription contract has a determinate duration or not, and whether it is automatically extended or not. For example, if you require that the consumer give a prior 15-day notice to cancel the contract, he needs to be informed about this notice period before concluding the contract.

7. The **functionality**, including applicable technical protection measures, **of digital content**, if any. This means that you need to explain to the consumer how the digital content works in practice. In particular, this refers to the presence or absence of any technical restrictions.

**Example:** indicate whether a particular PC software you are selling in your shop can be used offline and/or online; indicate whether the usage of the software is restricted only to one country.

8. The **interoperability of digital content** with hardware and software.

**Example:** inform the consumer that the digital content you offer can only be used for Macintosh operating systems on Apple computers only.

<sup>15</sup> [Directive \(EU\) 2019/770](#) on certain aspects concerning contracts for the supply of digital content and digital services.

## New rules from 28 May 2022

Besides, if you are selling goods with digital elements, digital content or services, you are required to inform the consumer about their **functionality, compatibility and interoperability** with hardware and software.

Beware that, since most of these "on-premises" transactions are of a domestic nature, the Consumer Rights Directive allows all EU Member States to introduce, under national law, additional pre-contractual requirements to the above list. Hence, if you wish to open a shop in another Member State, you should get familiar with possible additional information requirements applicable there.

While some elements are explained below, ANNEX 1 will provide you with an overview of the regulatory choices made by each Member State<sup>16</sup>

## Additional pre-contractual information requirements for on-premises contracts under national law.

Please note that some Member States have added additional items to the above list<sup>17</sup>. Furthermore, some Member States have exempted day-to-day transactions from the obligation to provide the above list of information<sup>18</sup>. This is however not the case for Malta.

## Which information requirements apply to consumer contracts concluded at distance or outside your business premises?

The Consumer Rights Directive has **fully harmonised** the list of pre-contractual information you have to give to

your consumers if you operate at distance (e.g. online or via telephone) and/or if you conclude contracts "off-premises", such as at the consumer's doorstep. This means that, for these commercial channels, Member States may no longer add pre-contractual requirements to the list laid down in the Directive.

This list includes all the information points you need to provide if you operate through shops, **plus** a few more items. Many of them apply only if and where applicable, depending on the nature of the transaction at stake and the fact that for (most of) distance and off-premises contracts consumers enjoy, across the EU, a 14 days' right to withdraw<sup>19</sup>. Here is the list of the **additional items, on top of the requirements listed above for on-premises contracts**<sup>20</sup>:

1. On top of disclosing your identity and your geographical place of establishment, whenever you operate at a distance or outside business premises you must make sure you provide a phone number and an e-mail to allow your consumer to communicate with you quickly and efficiently. If you are acting on behalf of another trader, you must provide also his geographical address and identity.
2. If different from the place of establishment, you must also indicate the address, including that of the trader on whose behalf you are acting, where the consumer can send any complaints.
3. If different from the costs of a local phone call ('basic rate'), you must also inform the consumer about the cost of using the means of distance communication for concluding the contract. Once the contract is concluded, beware that, under the Consumer Rights Directive, the cost for a hotline answering consumer queries in relation to their contracts can never

<sup>16</sup> Alternatively, you can also refer to the actual notifications submitted by Member States on the use of regulatory choices under Article 29 of Directive 2011/83/EC on Consumer Rights. See [https://ec.europa.eu/info/law/law-topic/consumers/consumer-contract-law/consumer-rights-directive/regulatory-choices-under-article-29-crd\\_en](https://ec.europa.eu/info/law/law-topic/consumers/consumer-contract-law/consumer-rights-directive/regulatory-choices-under-article-29-crd_en)

<sup>17</sup> In line with Article 5(4) CRD.

<sup>18</sup> In line with Article 5(3) CRD.

<sup>19</sup> See Module 2 on the consumer right to withdraw from distance and off-premises contracts.

exceed the basic rate.

4. If you adhere to a code of conduct, you must also inform the consumer about its existence and how copies thereof can be obtained.

**Example:** disclose that you are part of the ICC Code on Advertising and Marketing Communication Practice and add a link thereto.

5. If your contract requires the consumer to pay or provide a deposit or another financial guarantee, you must inform the consumer in advance about its conditions and modalities.

**Example:** you need to inform your clients in advance if they have to provide an advance deposit for the hotel, they have booked from you online, and inform them under which conditions they can possibly get it back.

6. Whenever applicable, you must also inform the consumers about the possibility of using out-of-court complaint and redress mechanisms to solve any dispute the consumer may have with you. This can be done, for example, thanks to the online dispute resolution (ODR) Platform, which is a tool that helps consumers to submit their complaint to a specific alternative dispute resolution (ADR) entity<sup>21</sup>.

7. Finally, if no or a limited right of withdrawal applies to the specific kind of contract at stake<sup>22</sup>, you must inform your client about this fact and/or about the circumstances under which he/she loses this right of withdrawal. If, on the contrary, the contract is covered by a right of withdrawal, you must inform your client about:

- a) the conditions, time limit and procedures for exercising that right in accordance with the model form set out by the law<sup>23</sup>;

- b) the fact that he/she will have to bear the cost of returning the goods in case of withdrawal and, in case the goods cannot, by their nature, normally be returned by post, the cost of returning the goods.

**Example:** if the consumer has bought from you a fridge or a washing machine (items which are typically delivered door-to-door rather than handed in for dispatch at a post office), you must specify to the consumer one carrier (for instance the one assigned to deliver the good) and one price for returning the goods, or at least a reasonable estimation of the maximum cost, possibly based on the cost of delivery<sup>24</sup>; **and**

- c) the fact that, if the consumer exercises the right of withdrawal after having made an explicit request, during the withdrawal period, to start the performance of service, he/she shall be liable to pay you the proportionate cost for the services you have in the meantime provided.

**Example:** if the consumer concludes with you a contract for mobile telephone services, you must inform him/her that, if he/she expressly requires the services to immediately start but then decides, e.g. 10 days after signature of the contract, to withdraw from it, he/she would have to pay you one-third of the monthly subscription plus the price of any additional services received till then.

## New rules as of 28 May 2022

Under the new rules, Member States now also have a regulatory choice to extend the duration of the right of

**Directive** ([http://ec.europa.eu/consumers/consumer\\_rights/rights-contracts/directive/index\\_en.htm](http://ec.europa.eu/consumers/consumer_rights/rights-contracts/directive/index_en.htm)) for more details.

<sup>23</sup> For more details, see Module 2.

<sup>24</sup> See [DG JUST Guidance on the Consumer Rights Directive](#), chapter 6.2.

<sup>21</sup> For more details, see Module 5.

<sup>22</sup> Article 16 of the Consumer Rights Directive lists the type of contracts for which no right to withdraw exists. Please see Module 2 on the right of withdrawal and the [DG JUST Guidance on the Consumer Rights](#)

withdrawal period from 14 to 30 days for two types of off-premises contracts:

- Unsolicited visits by a trader to the consumer's home.
- Excursions organised by a trader with the aim of effect of promoting or selling products to potential consumers.

This option has not been utilised in Malta and the right of withdrawal stands at 14 days.

As a trader, you are required to inform consumers before the conclusion of the contract about the duration of the withdrawal period. Therefore, if you are concerned by these types of sales, do not forget to check if the Member State(s) in which you operate has/have adopted this regulatory choice, to correctly inform your consumers about the duration of their withdrawal period.

**Importantly, in certain cases, the information duty has been simplified.**

**Distance communication** sometimes provides only a limited space or time to display the information. In such cases, you have to provide the most important information, prior to the conclusion of the contract, i.e.:

1. your identity
2. the main characteristics of the product you offer
3. its total price
4. information about how to use the right of withdrawal
5. the duration of the contract or, if it is of indeterminate duration, the conditions for terminating it.

However, all of the remaining information requirements have to be provided in an appropriate manner (e.g. on a PDF document subsequent to the actual purchase order).

Moreover, in case of an online contract, the trader must, before the consumer places an order and accepts to pay, make the consumer fully aware in a prominent manner, directly before the consumer places his/her order, of the following issues:

1. what are the main characteristics of the product;

2. which is its total price;
3. what is the duration of the contract or, if the contract is of indeterminate duration, which are the conditions for terminating it;
4. if the contract foresees that the consumer must be bound for a minimum duration of time, what is the length of such time-period.

The trader has to ensure that the consumer, when placing his order online, explicitly acknowledges that the order implies an obligation to pay. If placing an order entails activating a button or a similar function, the button or similar function has to be labelled in an easily legible manner only with the words 'pay now', 'buy now', 'confirm purchase', 'order with obligation to pay' or a corresponding unambiguous formulation indicating that placing the order entails an obligation to pay the trader.

**Special rules for off-premises contracts:**

Please, note that, for off-premises contracts, you shall provide consumers with a copy of the signed contract. You need to provide the pre-contractual information and the copy of the contract on paper or, if the consumer agrees, on another durable medium.

There are also some simplifications regarding a certain type of **off-premises contracts**, where:

- the consumer explicitly requests repair or maintenance services and,
- the trader and the consumer immediately perform their contractual obligations (usually repair service and payment) and,
- the payment to be made does not exceed EUR 200.

In such cases, you have to inform about the following, on paper or, if the consumer agrees, on other durable medium:

- your identity, your address (place of establishment), a phone number and an e-mail;
- the price or the manner in which the price is to be calculated together with an estimate of the total



price. If the consumer agrees, you do not need a paper or other durable medium for the following information;

- the main characteristic of service, if the right of withdrawal exists or not.

Note that the following Member States do not apply these simplifications regarding immediately performed off-premises contracts for repairs and maintenance services: Ireland, Lithuania, the Netherlands, Portugal, Slovenia, Slovakia and Spain.

### New rules as of 28 May 2022

#### **a) Specific pre-contractual information requirements for contracts concluded on online marketplaces<sup>25</sup>.**

Before a consumer is bound by a distance contract, the provider of the online marketplace has to provide the consumer with the following information in **a clear, appropriate, and comprehensible manner**:

(1) general information in a specific section of the online interface that is directly and easily accessible from the page where the offers are presented:

- on the main parameters determining the ranking of offers presented to the consumer as a result of the search query and,

- the relative importance of those parameters as opposed to other parameters.

(2) whether the third party offering the goods, services or digital content is a trader or not, on the basis of the declaration of that third party to the provider of the online marketplace.

<sup>25</sup> The updated Consumer Rights Directive will have a definition for an online marketplace: "a service using software, including a website, part of a website or an application, operated by or on behalf of a trader which allows consumers to conclude distance contracts with other traders or consumers".

(3) where the third party is not a trader, that the EU consumer rights do not apply to the contract.

(4) where applicable, how the obligations related to the contract are shared between the third party offering the goods, services or digital content and the provider of the online marketplace.

#### **b) Additional pre-contractual information requirements for distance and off-premises contracts**

- Please bear in mind that you are obliged to inform consumers about your telephone number and your e-mail. You may provide other online means of written communication, which allow keeping the content and date/time of the correspondences with you. Besides, you may also use other communication channels to reach out to your clients, such as chats etc.

- Where applicable, as a trader, you will have to inform consumers of price personalisation based on automated decision making. In practice, this means that, wherever relevant, you need to inform your consumers in advance that the price you presented to them has been set, by an automated decision-making system, collecting data of consumers <sup>26</sup>.

## How do you have to present pre-contractual and contractual information?

The text providing the required information should always be easy to read and understand for an average consumer. The information provided needs to be given in a clear, legible and comprehensible manner.

<sup>26</sup> This information obligation is without prejudice to Regulation (EU) 2016/679 "GDPR", which provides, notably, for the right of the individual not to be subject to automated individual decision-making, including profiling.

## What does it mean in practical terms?

The assessment as to whether information has been provided in the correct manner is always to be carried out on a case-by-case basis. Here are some practical tips to increase your chances of complying:

- use a font type that is easy to read and of a sufficiently large size (e.g. font size comparable to a 12 Times New Roman font)
- make sure that letters appear clearly on the background colour (e.g. black on white; e.g. not bright yellow on white)

- put sufficient space between the sentences and the paragraphs
- draft in a clear language.

### Simple Solution

If you have any doubt on the clarity of your information, ask some person in your vicinity (family, friends, colleagues, etc.) to give you their honest opinion on whether they find it clear, legible and comprehensible.

Not Allowed	Allowed
“You have two years guarantee period <sup>27</sup> ”	“Our address is Athens Road 21, 1000 Limassol, Cyprus”
“In case of any dispute, French law will apply” <sup>28</sup>	“You have 14 (fourteen) days from the date you receive the good to exercise your right of withdrawal”
<u><a href="mailto:youmayaddresssthecomplainttocomplaints@mail.es">youmayaddresssthecomplainttocomplaints@mail.es</a></u>	“For any product you buy from us, you have a two-year statutory guarantee during which you may use a number of remedies in case your product turns out not to be in conformity with the contract”
本書分兩大部份，第一部份詳述作者於一九三八年考取政府獎學金入讀香港大學，並因此在中國內地先後為英國海軍情報局及中國國民黨軍隊工作。戰後憑勝利獎學金	

<sup>27</sup> It should be made clear that it's about legal guarantee

<sup>28</sup> Drafted as such, this statement is not always correct, especially in cross-border sales. In principle, if you are targeting consumers in another EU member state than yours, it is the law of the consumers

place of residence that applies. However, by contract, the parties could choose to apply a different law. In this case, this choice of law cannot deprive your foreign consumer of the protection afforded by the mandatory provisions of his/her country of residence.

## **In what language does this pre-contractual and contractual information need to be presented?**

Each Member State may choose to define the language in which the information has to be disclosed to the consumer. As described in Annex 1, more than half of all Member States have made use of this regulatory choice (Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, France, Italy, Lithuania, Malta, Poland, Portugal, Romania, Slovenia, Spain) In most cases, it is the official language(s) of the Member State.



This is very important. Indeed, if you provide the information in another language than the required one, it is considered that the information was not provided at all. In order to check what language each Member State has chosen, please have a look at ANNEX 1.

## **In case of contracts negotiated outside of business premises, is it sufficient that I tell the consumer orally all these pieces of information?**

In case of contracts negotiated outside of business premises, providing the information orally to the consumer is not sufficient. The information needs to be provided on paper.

The information may also be provided on another durable medium if the consumer has agreed to that. In order to be on the safe side, always keep a proof in writing that the consumer has agreed that the information is provided on a durable medium other than

a piece of paper. Other durable mediums include for instance an email, a USB stick or a photo, i.e. mediums whose content cannot be unilaterally altered by the trader and which the consumer can store. It is important to provide this information on a durable medium so that the consumer can access the information in the future.



If you do not provide the information in the way required by the law, this will have the same effects as if you had not provided the information at all<sup>29</sup>.

## **Do I need to present this pre-contractual and contractual information in different manners, depending on who are my target consumers?**

EU law requires you to always act with professional diligence and to exert a special degree of care if you present your products and services to groups of consumers who may be particularly vulnerable because of their age or disability.

If you specifically target vulnerable consumer groups, you should always adapt the methods in which you provide the information to their particularities. For example, the font size of the information provided to the

<sup>29</sup> See chapter on "What are the consequences if I do not provide the pre-contractual information requirements".

consumer needs to be adjusted to the needs of an elderly person. The information has to be very clear, comprehensible and accessible.

Likewise, in the case of a visually impaired consumer, the information should be provided by the usage of appropriate media and symbols.

Failure to exert the appropriate degree of professional diligence when dealing with such special consumers may amount to an unfair commercial practice<sup>30</sup>

## What happens with cross-border sales?

### Specific treatment of sales that you direct to consumers residing in other Member States

Under EU law<sup>31</sup>, if you direct your business activities to consumers in EU countries different from your own, it is usually the law of the country in which the consumer lives that applies to your contract with the foreign consumer. If you have both chosen a different law, that choice cannot deprive your foreign consumer of the protection granted by the mandatory provisions of his country of residence.

Therefore, if, for example, your website is directed at the consumers in a Member State that has imposed language requirements by making use of the regulatory option under Article 6(7) of the Consumer Rights Directive, you must provide the consumer with contractual information in the language required by that Member State (see Annex I). More generally, whenever you advertise or offer your goods or services in other Member States, you must respect the standard of consumer law protection of the countries you target.

<sup>30</sup> For more details, see Module 4 on unfair commercial practices and unfair contract terms.

<sup>31</sup> Notably the so called "Rome I" Regulation 593/2008.

### Under which conditions can you be regarded as targeting consumers in another Member States?

The Court of Justice of the European Union has laid down a number of non-exhaustive criteria for establishing whether your commercial or professional activities are 'directed' at a specific Member State. Such criteria entail, for example, the use of languages or currencies other than those generally used in the Member State of your company's place of establishment, the mention of telephone numbers with an international code, the use of a top-level domain name other than that of the Member State in which your company is established<sup>32</sup>.

If you are not directing your activities to other EU countries, however, and a consumer from another EU Member State approaches you on his/her own initiative, then your national law applies.

### What does this mean for you in practice?

#### What law will be applicable to your cross-border contracts?

At first sight, it might appear complex for a small trader to comply with the law of the country of its different consumers, in different countries. It might prevent some traders to offer their goods or services across the border. However, in practice:


1. EU legislation provides, as we describe under the Consumer Law Ready modules, an important amount of harmonized provisions of consumer protection. These rules apply all over the EU.

<sup>32</sup> For more information, see joined cases C 585/08 and C 144/09 Peter Pammer and Hotel Alpenhof GesmbH the Court

2. Even if, on some elements, there are differences left between Member States, this does not mean that you are not allowed to have your contracts with consumers designed under your own legislation: as explained above, you can agree with the consumer that another law should be applicable, in which case you only have to respect the mandatory consumer law of the State where the consumer lives.
3. In practice, the mandatory consumer legislation of another Member State will only be relevant if its rules are more protective than those of your legal system or the law you have agreed upon with the consumer. This might be the case where, for example, the legal guarantee period of the consumer's law is longer than the one under your own law.
4. Also thanks to the Consumer Law Ready training modules, you will be able to know in advance which additional requirements may apply in which other Member State to which you're considering directing your business activities.
5. The question of the applicable law will often be relevant only if there is a disagreement with the consumer. Many misunderstandings can be solved amicably or by using your in-house complaint service.

In this module, we have underlined several points on which Member States have adopted rules that differ from those laid down in the Consumer Rights Directive concerning pre-contractual information. You can find the information in annex or on the website of the European Commission<sup>33</sup>. If you want to check how the individual EU countries have transposed the Consumer Rights

<sup>33</sup> Notifications of Member States: [https://ec.europa.eu/info/law/law-topic/consumers/consumer-contract-law/consumer-rights-directive/regulatory-choices-under-article-29-crd\\_en](https://ec.europa.eu/info/law/law-topic/consumers/consumer-contract-law/consumer-rights-directive/regulatory-choices-under-article-29-crd_en);  
Summary: [http://ec.europa.eu/justice/consumer-marketing/files/overview\\_regulatory\\_choices.pdf](http://ec.europa.eu/justice/consumer-marketing/files/overview_regulatory_choices.pdf)

Directive, you can also use the European Commission's new [Consumer Law Database](#)<sup>34</sup>. 

## When you have a dispute in such a cross border contract, what court is competent?

If with your offers, you direct your activities to consumers in other EU countries and happen to have a dispute with one of your consumers from another EU country, be aware that the competent court to decide over such a dispute will always be, under EU law, that of the country in which the consumer lives. You cannot sue the consumer before a court of another country and if you stipulate such an option in your terms and conditions, you would risk a severe fine. The consumer, by contrast, has the option to sue you before your home court as well. For cross border cases, in order to make it easier to solve disputes, the EU has set up an ODR platform that makes it possible to liaise between ADR systems in different Member States<sup>35</sup>.

**Example:** if you are a French trader based in Lille selling your products to Belgian consumers, you cannot establish in your terms and conditions that, in case of a dispute, the only competent courts to solve the dispute are the courts in Lille.

## What are the consequences if I do not provide the pre-contractual information requirements?

There are different consequences if you do not provide the pre-contractual information requirements.

<sup>34</sup> See Consumer Law Database: [https://e-justice.europa.eu/591/EN/consumer\\_law\\_database](https://e-justice.europa.eu/591/EN/consumer_law_database)

<sup>35</sup> See Module 5 of this handbook.

First of all, you run the risk of disappointing your consumers and damaging your reputation.

Secondly, the law itself provides a number of important immediate consequences if certain pre-contractual information requirements were not respected. For instance, if you fail to inform consumers about their 14-day right of withdrawal, this right is automatically extended to one calendar year.

Finally, you would run the risk of having to pay a monetary fine under national law for your breach of the Consumer Rights Directive.

There are also various contractual and non-contractual remedies that the consumer has the right to ask for. For instance, the consumer may ask for contract termination and/or compensation for the damages that have occurred to him as a result of the missing information.


It might be useful to learn what remedies national courts apply, especially when you operate on market(s) outside your own country.

### **New rules from 28 May 2022**

#### ***More effective penalties for cross-border infringements***

The updated CRD better equips national consumer protection authorities to deal with infringements affecting many consumers across the EU. The new rules provide national authorities with the power to impose effective, proportionate and dissuasive sanctions in a coordinated way when working together on cross-border infringements that affect consumers in several EU Member States.

In such cases, national authorities have the power to impose a fine of up to 4% of the trader's turnover, or up to €2 million where turnover information is not available.

Member States are free to maintain or introduce higher maximum fines. 

Please also note that as of 25 June 2023, consumers are able to enforce the rights defined by the CRD also in collective proceedings in line with the new rules laid down by the Directive (EU) 2020/1828<sup>36</sup> on Representative actions for the protection of the collective interests of consumers ('RAD')<sup>37</sup>.

<sup>36</sup> Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the

protection of the collective interests of consumers and repealing Directive 2009/22/EC

<sup>37</sup> See Module 5.

# Annexes

## Annex 1 - Application of the CRD regulatory choices by Member States

Despite the Directive being a full harmonisation Directive, there are a number of regulatory options available to the Member States on its implementation following the principles of subsidiarity and allowing some flexibility. The following articles of the CRD offer a regulatory choice:

- Article 3 (4) – not to apply the provisions to off-premises contracts if the payment to be made by the consumer does not exceed 50 euros;
- Article 6 (7) – to impose language requirements regarding the contractual information for distance and off-premises contracts;
- Article 6 (8) – to impose additional information requirements in accordance with Directive 2006/123/EC and Directive 2000/31/EC regarding distance and off-premises contracts;
- Article 7 (4) – not to apply a simplified information regime for off-premises contracts to carry out repairs or maintenance;
- Article 8 (6) – to introduce specific formal requirements for contracts concluded by telephone; and
- Article 9 (3) – to maintain, in the case of off-premises contracts, existing national legislation prohibiting the trader from collecting payment from the consumer during a given period after the conclusion of the contract.

The following tables set out the regulatory options that have been adopted by Member States<sup>38</sup>

### As of 28 May 2022, the updated Consumer Rights Directive introduced the following new regulatory options for Member States.

- Article 6(a) – To impose additional information requirements for providers of online marketplaces.
- Article 9(1a) – To extend the duration of the withdrawal period of the right of withdrawal period from 14 to 30 days for doorstep selling and commercial excursions.
- Article 16(2) – To derogate from several exceptions of the right of withdrawal in the context of doorstep selling and commercial excursions.
- Article 16(3) – To provide that in the case of service contracts which place the consumer under an obligation to pay where the consumer has specifically requested a visit from the trader for the purpose of carrying out repairs, that the consumer loses the right of withdrawal after the service has been fully performed provided that the performance has begun with the consumer's prior express consent.

Country	Article 3(4)	Article 6(7)	Article 6(8)	Article 7(4)	Art 8(6)	Article 9(3)
Austria (AT)	Yes, limit 50 EUR	Not used	Not used	Not used	Yes, only for services contracts	Not used

<sup>38</sup> Study on the application of the CRD - 2011/83/EU - Final Report, [http://ec.europa.eu/newsroom/document.cfm?doc\\_id=44637](http://ec.europa.eu/newsroom/document.cfm?doc_id=44637)



Country	Article 3(4)	Article 6(7)	Article 6(8)	Article 7(4)	Art 8(6)	Article 9(3)
Belgium (BE)	Yes, 50 EUR but only for contracts with humanitarian purpose	Not used	Not used	Possibility retained but not yet used <sup>25</sup>	Possibility retained but not yet used <sup>39</sup>	Yes, 7 days, but does not apply to off-premises contracts concluded in shows, fairs and exhibitions
Bulgaria (BG)	Not used	Yes	Not used	Not used	Yes	Not used
Croatia (HR)	Not used	Yes	Not used	Not used	Not used	Not used
Cyprus (CY)	Yes, limit of €20	Yes	Yes	Not used	Yes	Not used
Czech Rep (CZ)	Not used	Yes	Not used	Not used	Not used	Not used
Denmark (DK)	Yes, limit 350 DKK (46 EUR)	Yes, Danish, if marketing done in Danish.	Not used	Not used	Not used	Not used
Estonia (EE)	Yes, limit is €20	Yes	Not used	Not used	Yes. Article applies only when the professional calls the consumer	Not used
Finland (FI)	Yes <sup>40</sup>	Not used	Not used	Not used	Not used Yes. Article applies only when a sales professional calls the consumer <sup>41</sup>	Not used
France (FR)	Not used	Yes	Not used	Not used	Yes. Article applies only when a sales professional calls the consumer <sup>41</sup>	Yes -7 days

<sup>39</sup> The unofficial translation notes that Belgium has made use of this option, but it is the King who has the possibility of introducing a lighter arrangement for providing information. Similarly, under Art 8, it is the King who has the possibility of designating sectors to which the requirement will apply. It is uncertain whether it has been used.

<sup>40</sup> According to a consultation this is €30.

<sup>41</sup> Section 5, Article L221-16 of the French consumer code stipulates that it is illegal to conclude contract through an unknown telephone number (blocked number) - Article L221-17.

Country	Article 3(4)	Article 6(7)	Article 6(8)	Article 7(4)	Art 8(6)	Article 9(3)
Germany (DE)	Yes, limit is €40	Not used	Not used	Not used	Not used but there was a prior legislative requirement of This kind for certain sectors	Not used
Greece (EL)	Yes, limit is €30	Not used	Not used <sup>42</sup>	Not used	Yes	Yes - during the withdrawal period
Hungary (HU)	Not used	Not used	Yes <sup>43</sup>	Not used	Not used	Not used
Ireland (IE)	Yes, limit is €50	Not used	Not used	Yes	Not used	Not used
Italy (IT)	Yes, limit is €50	Yes, if the consumer requests it	Not used	Not used	Yes	No. No promissory note with a due date less than 15 days after delivery of goods
Latvia (LV)	Yes, limit is €35	Not used	Not used	Not used	Not used	Not used
Lithuania (LT)	Yes, less than 100 LTL (approx. €29)	Yes	Not used	Yes	Yes	Not used
Luxembourg (LU)	Yes, limit is €50	Not used	Not used	Not used	Yes	Not used
Malta (MT)	Yes. Limit is 30 €	Yes, either official language is required	Not used	Not used	Yes	Yes, deposit can only be collected 14 days after the conclusion of the contract
the Netherlands (NL)	Yes, limit is €50	Not used	Not used	Yes	Yes (limited application)	Not used

<sup>42</sup> Greece have transposed the text of Art 6(8) of the Directive (almost word-by-word) in the form of Article 3(7) of their Law 2251/1994 (as amended), but they have not introduced any concrete additional information requirements. Interviews have confirmed that no real action has been taken in this area.

<sup>43</sup> It has laid down additional requirements on the provision of information on warranties and guarantees, right to conciliation and information on electronic correspondence. The unofficial translation is available at: [http://ec.europa.eu/justice/consumer-marketing/files/hu\\_reg\\_choices\\_art\\_29\\_en\\_version.pdf](http://ec.europa.eu/justice/consumer-marketing/files/hu_reg_choices_art_29_en_version.pdf)

Country	Article 3(4)	Article 6(7)	Article 6(8)	Article 7(4)	Art 8(6)	Article 9(3)
Poland (PL)	Yes, limit is 50 PLN. [approx. €12]	Yes	Not used	Not used	Yes. Article applies only when the sales professional calls the consumer	Not used
Portugal (PT)	Yes, but only to subscription of periodical items for a limit of €40	Yes	Not used	Yes	Yes. Article applies only when the sales professional calls	Not used
Romania (RO)	Yes, limit is €10	Yes	Not used	Not used	Yes	Not used
Slovakia (SK)	Not used	Not used	Not used	Yes	Yes	Yes - until the end of the withdrawal period
Slovenia (SI)	Yes, limit is €20	Yes	Not used	Yes	Yes	Not used
Spain (ES)	Not used	Yes	Not used	Yes	Yes. Article applies only when the sales professional calls	Not used
Sweden (SE)	Yes, limit is €43 <sup>44</sup>	Not used	Not used	Not used	Not used	Not used

<sup>44</sup> The amount is 400SEK.

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