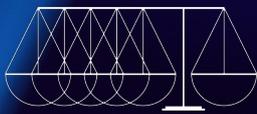


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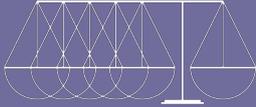
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Guide on e-commerce



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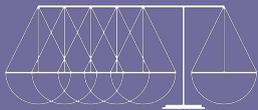
Editor

Dr. Matthias Terbach of Büsing Müffelmann & Theye

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Dr. Karlheinz Klema of RA Dr. Karlheinz Klema, Grigoris Sarlidis of Pamboridis LLC, Pavel Pinos of HSP & Partners, Jérôme Cayol and Marie-Clémentine Anouchian of Cayol Cahen & Associés, Peggy Giannakopoulou of Felios & Associates, Eve Mongin of Studio Legale Scassellati Sforzolini, Maryna Fomenko of Eterna Law, Berber Brouwer of Bergh Stoop & Sanders, Anna Masiota of Masiota, Pedro Ghidoni de Pina of GDP Advogados Associados, Andrej Vasilescu of Mocanu Associates, Maryna Fomenko of Eterna Law, Andrea Policastro of Arino y Villar, Arne Källén of Källén & Ingvar, Cédric Berger of Köstenbaum & Associates SA KBHB, Esther Gunaratnam of Laytons LLP, Matthew E. Moloshok, Esq. of Hellring Lindeman Goldstein & Siegal LLP, Arnaud A. Franticelli of Mercier Leduc, Simon Spence, Claire Pickering, Angela Borgmeyer and Bastian Geiken.

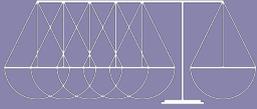
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Contributors

- 1. European Union p.5**
Dr. Matthias Terbach
Büsing, Müffelmann & Theye
- 2. Austria p.9**
Dr. Karlheinz Klema
RA Dr. Karlheinz Klema
- 3. Cyprus p.14**
Grigoris Sarlidis
Pamboridis LLC
- 4. Czech Republic p.20**
Pavel Pinos
HSP & Partners
- 5. France p.25**
Jérôme Cayol
Marie-Clémentine Anouchian
Cayol Cahen & Associés
- 6. Germany p.31**
Dr. Matthias Terbach
Büsing, Müffelmann & Theye
- 7. Greece p.36**
Peggy Giannakopoulou
Felios & Associates
- 8. Italy p.41**
Eve Mongin
Studio Legale Scassellati
Sforzolini
- 9. Latvia p.46**
Maryna Fomenko
Eterna Law
- 10. Netherlands p.51**
Berber Brouwer
Bergh Stoop & Sanders
- 11. Poland p.55**
Anna Masiota
Masiota
- 12. Portugal p.59**
Pedro Ghidoni de Pina
GDP Advogados Associados
- 13. Romania p.64**
Andrej Vasilescu
Mocanu Associates
- 14. Russia p.70**
Maryna Fomenko
Eterna Law
- 15. Spain p.74**
Andrea Policastro
Arino y Villar
- 16. Sweden p.78**
Arne Källén
Källén & Ingvar
- 17. Switzerland p.81**
Cédric Berger
Köstenbaum & Associates SA
KBHB
- 18. Ukraine p.85**
Maryna Fomenko
Eterna Law
- 19. United Kingdom p.90**
Esther Gunaratnam
Laytons LLP
- 20. USA p.96**
Matthew E. Moloshok, Esq.
Hellring Lindeman Goldstein &
Siegal LLP
- 21. Canada p.102**
Arnaud A. Franticelli
Mercier Leduc



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1.

European Union

Dr. Matthias Terbach

Büsing, Müffelmann & Theye

What are the laws covering e-commerce?

The enhancement of e-commerce is one of the important policy issues within the European Union. There are two types of EU legislation that regulate e-commerce: directives and regulations. Directives require member states to implement certain regulations into national law but leave the choice of form and methods to the national authorities. Regulations are laws of the EU that are binding and valid immediately after adoption across all member states.

1. E-Commerce Directive

The Directive on Electronic Commerce, adopted in 2000, has created a legal framework for e-commerce conducted in the single market, which offers legal certainty to both businesses and consumers. It establishes harmonised rules on issues such as the transparency and information requirements for online service providers, commercial communications, electronic contracts and limitations of liability on intermediary service providers.

2. General Data Protection Regulation

The protection of natural persons in the processing of personal data is a fundamental right. A huge amount of personal data is collected, managed and transferred every day throughout the EU by businesses, public authorities and individuals – therefore, common EU rules have been established to ensure that personal data is given a high standard of protection.

The current EU rules derive from the **Data Protection Directive**, adopted in 1995. In May 2016, after nearly 4 years of consultations, the EU adopted the **General Data Protection Regulation (GDPR)**. The GDPR will come into effect across all member states from 25 May 2018, replacing the Data Protection Directive.

The GDPR strengthens and harmonises data protection legislation across the EU member states. As a regulation rather than a directive, it replaces the patchwork of national data protection laws across the EU, hopefully making it simpler for European businesses to trade online.

Penalties

The GDPR significantly increases fines for violations of data protection rules. Data protection authorities can issue fines of up to €20 million or 4 per cent of annual turnover (whichever is higher).

Territorial Scope

The GDPR widens the territorial scope of EU data protection law. As with the current regime, the data protection rules will apply to all organisations that are “established” in the EU. However, under the GDPR, the rules will also extend to organisations based outside of the EU that offer goods and services to, or monitor, individuals in the EU. Internet use profiling is expressly referred to in the GDPR as an example of “monitoring”.

Data Protection Officer

When processing is carried out by a business whose core activities consist of processing operations that require regular and systematic monitoring of the data subjects on a large scale, the GDPR requires the business to appoint a Data Protection Officer (DPO). The DPO must be a person with expert knowledge of data protection law and practices, and should assist the business in monitoring its compliance with the GDPR. Businesses will be required to ensure that the DPO is involved “properly and in a timely manner in all issues which relate to the protection of personal data”. Therefore, where businesses are required to appoint one, the DPO plays a significant part.

“One-Stop Shop”

The GDPR unifies data protection legislation and provides that controllers or processors operating in more than one member state shall, as a starting point, be governed by a single “lead supervisory authority”. This shall be the authority of the member state where the controller’s or processor’s main establishment is located. However, there are some exceptions; for example, where the subject matter of a complaint relates solely (or mainly) to data subjects of a different member state

than the one in which the lead supervisory authority is based. The lead supervisory authority is also required to cooperate with other “concerned” authorities in certain circumstances.

Responsibilities of Processors

Under current data protection law, generally only controllers of personal data are subject to the rules. Under the GDPR: processors (for example, suppliers that process a controller’s personal data on its behalf) will also have statutory data protection obligations and accordingly potentially be subject to enforcement and fines.

Basic Principles

Prohibition unless permission:

processing of personal data is prohibited unless the individuals who are the subject of the data concerned expressly agree to the specific types of processing, or where one or more other legitimising conditions are satisfied.

Economic use of data only for specific purposes:

the processing of personal data has to serve a stipulated, unequivocal and legal purpose. It must also be of factual relevance. Furthermore, data processing should be limited to the extent necessary and, where practical, personal data should be pseudonymised or anonymised.

Are there any national particularities on ADR/ODR?

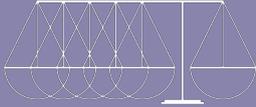
The **Directive on Alternative Dispute Resolution** (“ADR Directive”, 2013/11/EU of 21 May 2013) and the **Regulation on Online Dispute Resolution** (“ODR Regulation”, 524/2013 of 21 May 2013) shall set out the new foundation of a simple, swift, time- and cost-efficient alternative dispute resolution between online sellers and consumers. In connection with the ODR Regulation, the EU launched the ODR platform, which is a web-based platform that allows consumers to submit disputes online in any of the 23 official languages of the EU. The ODR platform transmits the disputes to the relevant national ADR entity. However, online sellers are not obliged to accept a resolution via ADR, as long as a respective obligation is not stipulated by the respective implementation act.

The ADR Directive and the ODR Regulation set out various information requirements. Since 9 January 2016, every online trader and every provider of an online consumer marketplace has to provide an easily accessible link to the ODR platform (<http://ec.europa.eu/consumer/odr>) on its website (Article 14(1) of the ODR Regulation). Businesses operating in sectors where the use of ADR is voluntary will have to advise the consumer whether or not they are willing to refer the complaint to an appropriate ADR body. Traders who are obliged to use ADR entities in order to resolve disputes with consumers (by legislation, membership to a trade association or other commitment) have to provide further information about the relevant ADR entity (Article 14(2) of the ODR Regulation; Article 13(1), (2) of the ADR Directive) both on their website and in their general terms and conditions.

Dr Matthias Terbach

BÜSING, MÜFFELMANN & THEYE
Rechtsanwälte in Partnerschaft mbH und Notare
Kurfürstendamm
190-19210707 Berlin, Germany

terbach@bmt.eu | Tel: +49 30 88 03 04 35



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2.

Austria

Dr. Karlheinz Klema

RA Dr. Karlheinz Klema

What are the laws covering e-commerce?

- ABGB: *Allgemeines Bürgerliches Gesetzbuch*
- ECG: *E- Commerce-Gesetz*
- FAGG: *Fern- und Auswärtsgeschäfte-Gesetz*
- FernFinG: *Fern-Finanzdienstleistungs-Gesetz*
- KSchG: *Konsumentenschutzgesetz*
- SigG: *Signaturgesetz*
- TKG 2003: *Telekommunikationsgesetz*
- DSG 2000: *Datenschutzgesetz* (will be replaced by *Datenschutz-Anpassungsgesetz 2018*)
- UWG: *Bundesgesetz gegen unlauteren Wettbewerb*
- MedienG: *Mediengesetz*

What information does an online seller have to provide before concluding a contract online?

§ 4 Abs. 1 FAGG and § 5a Abs. 1 KSchG

Before a contract enters into force, the online seller has to inform consumers in a reasonable way about:

- the substantial nature of the product or service
- the name and geographical address of the trader or the selling company
- if applicable:
 - a. phone number, fax and e-mail address for quick and direct contact with the entrepreneur
 - b. geographical address of an existing branch office
 - c. name (of the company) or address of the principal
- the total price of the product or service (including taxes and duties); if the total price is not calculable in advance, the method of price calculation, and also carriage, shipping and delivery charges that cannot be predicted
- the costs for using means of distance communication if they are not included in the basic tariff
- the terms of payment and delivery, general terms and conditions of service, delivery period and complaints procedure
- in the case of a right of withdrawal: terms, deadline and conditions for exercising this right by delivering a copy of the withdrawal form as a specimen form in Annex 1, part B (**FAGG**)
- in the case of withdrawal: the potential obligation to bear costs for returning delivered goods or where return mail is not possible owing to the nature of goods, the exact costs
- in the case of withdrawal: a potential obligation to defray prorated costs for services already consumed

according to **Art. 16 FAGG the non-existence of a right to withdraw according to Art. 18 FAGG or the conditions of losing the right to withdraw**

- rules for warranties and possible guarantees as well as aftersales services
- codes of conduct according to **Art. 1 para. 4 Z 4 UWG**
- contract duration and conditions for cancellation
- minimum duration of contractual commitments (for the consumer)
- the trader's right to demand a security deposit or guarantee
- the mode of operation of digital content (for example, apps) and technical safety measures for such content
- alternative dispute resolution and the trader's use of the ODR platform

Similar information has to be provided in case of distance marketing of consumer financial services according to

FernFinG.

§ 9 Abs. 1 and 2 ECG:

Service providers have to inform a user in advance concerning:

- technical proceedings/steps that lead to a user's contractual declaration and to the conclusion of a contract
- whether or not the concluded contract will be filed by the service provider and if/how it will be accessible
- technical means for identifying and correcting input errors prior to placement of the order
- the languages offered for the conclusion of the contract
- codes of conduct the provider has submitted to and how those codes are accessible electronically

Which rules apply when contracts are concluded in Web shops?

§ 8 Abs. 2 FAGG:

- Traders have to provide essential information about the content of an electronically concluded contract before entering into a binding contract with a customer. It has to be made clear to the customer that his placing an order would result in a payment obligation.
- if placing an order entails clicking on a button, there must be a clause pointing out that this implies payment obligations from this moment on ("*zahlungspflichtig bestellen*")
- otherwise, the consumer shall not be bound by the contract

What is important to know with regard to after sales issues?

Art. 11 para.1 FAGG

Consumers have the right to withdraw from a buying contract without stating any reasons within a time period of 14 days – with the main exception being service contracts – after the service has been fully performed. This is subject to the condition that if performance has begun with the consumer's prior express consent and with their acknowledgement they will lose their right of withdrawal once the contract has been fully performed by the trader (**Art. 18 para. 1 Z. 1 FAGG**).

Art. 18 para. 1 FAGG

The right of withdrawal does not exist for all types of contracts. Exceptions are, for example: goods made according to the consumer's specifications, contracts for the supply of food that may quickly pass its expiration date, computer software and audio/video recordings that were unsealed after delivery, other sealed products that have been unsealed already and are not suitable for return owing to sanitary reasons, newspapers, urgent repair works, contracts concluded at a public auction, et al.

Art. 9 para. 1 KSchG

Warranty rights cannot be restricted to the disadvantage of a consumer in any form before a defect/fault of service will be detected. Agreements on a shorter deadline than the general legal one (24 months) are not permitted for reasons of consumer protection.

Warranties, guarantees and compensation for damage:

Legal warranties – for which the minimum duration is 2 years after delivery for unused mobile goods – should be distinguished from contractual guarantees. If a guarantee is granted, additional information has to be provided on how to exercise the rights provided and that those rights do not restrict warranty rights in any way. Within the frame of warranty rights, customers may exercise their right to price reduction, replacement or cancellation of the contract, or compensation (for example, **Art. 922–933 ABGB**). Warranty does not depend on fault of the seller/provider of service.

In addition to a warranty, the receiver of goods/services can seek compensation for the defect/fault in service itself within 3 years after detection (not delivery!) of the (for example, not apparent) defect in case of negligence (**Art. 933a ABGB**). Not until 10 years after delivery does the burden of proof of negligence shift to the buyer's side. Before that date, the seller/provider would have to prove that the defect did not result from negligence; this could result in a much longer duration of responsibility for the defect itself to be distinguished from the liability for consequential damages within a period of 3 years after detection in general.

Which rules apply with regard to the online seller's website design?

§ 5 Abs. 1 ECG

Service providers always have to inform users immediately of their:

- name or legal company
- mailing address
- contact information and email address
- company registration number and register court
- regulating or licensing authorities
- VAT-ID

§§ 24, 25 MedienG

Online sellers are subject to the **MedienG** if they run online/ Web shops. There has to be a link to the company information ("*Impressum*"), where all information should be gathered in one place. The information has to contain the name of the trader and the company, as well as information enabling quick direct contact: email address as well as a potential second contact; for example, telephone number, legal form, names of authorised and legal representatives, commercial register number and, if existing, VAT ID number.

What are the legal risks of online advertising?

Art. 3 Z 6 ECG

Online advertising is a form of commercial communication. There is a difference between "push advertisement" and "pull advertisement". Such website content that must actively be selected by the consumer is considered a "pull advertisement"; for example, banner ads. Push advertisements are a more aggressive way of commercial communication such as emails. These are subject to the rules of the **Telekommunikationsgesetz (TKG)**.

Art. 107 para. 1 TKG

Sending commercial letters or faxes or making commercial calls without prior consent of the customer is not permissible. Consent that has been obtained for commercial communication can be revoked at any time; this revocation has no effect on an existing contract.

Art. 107 para. 5, Art. 109 para. 1 Z 20 TKG

Email including SMS that is direct advertising or that is directed towards more than 50 people that reaches the customer (or any recipient) without their prior consent is treated as an administrative offense and is sanctioned by high fines. Exceptions are made under condition of providing an easy way of blocking such ads free of charge if the contact information was obtained by prior sale or service to that customer.

Art. 1 UWG

Commercial communication/online advertising is also subject to the rules of **Austrian Unfair Competition Law (UWG)**.

Are there any national particularities on ADR/ODR?

Art. 12 ff AStG

The Austrian law that implemented the **ADR guideline (= *Alternative-Streitbeilegung-Gesetz*)** came into force in 2015. If they are willing to participate in ADR, online sellers are obliged to announce on their website which arbitration board they chose. Principally, there is no obligation to participate in ADR (exceptions are enumerated in **Art.19 AStG**). A general ADR institution for all consumer-related business is installed, besides specific ADR institutions, for some branches like telecommunication, public transport, energy and other businesses. For Web shops and online businesses, a specific "Internet Ombudsmann" has been installed. Therefore, there are at least two ADR institutions competent for handling conflicts related to business conducted online or via Web shops with consumers.

Relevant for online dispute resolution is **Article 14 ODR-VO (EU regulation 524/2013)**; online traders shall provide an electronic link to the ODR platform as well as their email addresses on their websites. The electronic link must be easily visible for the consumer. Apart from that, online sellers are obliged to inform consumers about the existence of the ODR platform, and the potential to resolve disputes between traders and consumers with the assistance of the EU-ODR platform.

The **Chamber of Labour ("Arbeiterkammer")** supports consumers in pursuing their claims both as individuals and by means of collective redress; in the latter case, this should be mainly by collecting claims via assignment or by legal authorisation (**Art. 28 KSchG**) to sue. This should be acknowledged by the consumer institution itself in order to obtain a court decision or a declaration of discontinuance with a penalty clause that requires the trader to refrain from using unfair clauses in general conditions or from any other violation of laws ruling e-commerce or ADR/ODR with consumers (**Art. 28a KSchG**).

Do the aforementioned rules also apply to e-commerce in B2B?

ECG rules are also relevant in B2B commerce even though Austrian courts consider traders as less meriting of protection. With the exception of this, consumer protection laws do not apply in B2B commerce.

What do online traders need to know about law enforcement in e-commerce?

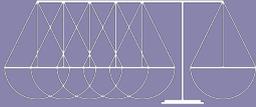
In most cases, violations of consumer protection laws are subject to **Unfair Competition Law (UWG)** – especially Art. 1 UWG – including a general clause sanctioning unfair practices, which is significant. In particular, violations of TKG (such as unauthorised contacting by email, telephone or fax) and *MedienG* may be classified as acts of unfair competition, too; plaintiff would be a competitor.

The aforementioned consumer protection laws include provisions for imposing administrative fines apart from compensation by ordinary civil law. With the exception of that, consumer associations such as "**Verein für Konsumenteninformation VKI**" and the **Chamber of Labour** support consumers to pursue their claims as individuals as well as by means of collective redress, in the latter case mainly by collecting claims via assignment or by legal authorisation (Art. 28 KSchG) to sue as acknowledged consumer institution itself in order to obtain a court decision or a declaration of discontinuance with a penalty clause which requires the trader to refrain from using unfair clauses in general conditions or from any other violation of laws ruling e-commerce or ADR/ODR with consumers (Art. 28a KSchG).

Dr Karlheinz Klema RA

DR KARLHEINZ KLEMA
Rosenbursenstr. 8/2
1010 Vienna
Austria

ra-klema@utanet.at | Tel: +43 15138768



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3.

Cyprus

Grigoris Sarlidis

Pamboridis LLC

What are the laws covering e-commerce?

Here is a non-exhaustive list of laws covering and/or applying to E-commerce:

- Consumer Rights Law 133(I)/2013 ("**Consumer Rights Law**")
- Certain Aspects of the Information Society Services, especially E-commerce and the Related Issues Law 156(I)/2004, as amended ("**E-commerce Law**")
- Certain Aspects of the Information Society Services, especially E-commerce and the Related Issues Regulations of 2016
- Unfair Commercial Practices Law 103(I)/2007, as amended ("**Unfair Consumer Practices Law**")
- The Control of Misleading and Comparative Advertising Law 92 (I)/2000, as amended ("**Misleading and Comparative Advertising Law**")
- The Processing of Personal Data (Protection of Individuals) Law 138 (I)/2001, as amended ("**Personal Data Law**")
- Distance Marketing of Consumer Financial Services Law 242(I)/2004, as amended
- Alternative Dispute Resolution for Consumer Disputes Law 85(I)/2017
- Telecommunication and Postal Services Law 112/2004, as amended ("**Telecom Law**")

What information does an online seller have to provide before concluding a contract online?

When selling online and prior to the conclusion of the relevant contract, certain information must be supplied by the online seller to customers in a clear and comprehensive manner. In particular:

1. According to the Consumer Rights Law, the online seller should provide customers who are consumers with certain information:
 - a. main characteristics of the goods or services
 - b. identity of the seller, such as their trading name
 - c. geographical address at which the seller is established and the seller's telephone number, fax number and email address
 - d. geographical address and identity of the seller on whose behalf they are acting
 - e. total price of the goods or services inclusive of taxes
 - f. where the nature of the goods or services is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated, as well as, where applicable, all additional freight, delivery or postal charges and any other costs
 - g. cost of using the means of distance communication for the conclusion of the contract where that cost is calculated other than at the basic rate
 - h. arrangements for payment, delivery, performance and the seller's complaint-handling policy
 - i. where a right of withdrawal exists, the conditions, time limit and procedures for exercising that right, as well as the model withdrawal form set out in Annex I of the Consumer Rights Law
 - j. where applicable, advance notification that the consumer will have to bear the cost of returning the goods in case of withdrawal
 - k. details whereby, if the consumer exercises the right of withdrawal after having made a request in accordance with Sections 6(3) or 7(8) of the Consumer Rights Law, the consumer shall be liable to pay the seller reasonable costs in accordance with Section 13(3) of the foregoing law
 - l. where a right of withdrawal is not provided for in accordance with Section 15 of the Consumer Rights Law, notification that the consumer will not benefit from a right of withdrawal or, where applicable, the circumstances under which the consumer loses their right of withdrawal
 - m. a reminder of the existence of a legal guarantee of conformity for goods

The aforementioned information should be in a legible, plain and intelligible language.

2. In addition to the aforementioned, according to the E-Commerce Law, an online seller should, unless otherwise agreed between such seller and a customer who is not a consumer, provide customers with the following information in a clear, comprehensible and unambiguous manner:
 - a. different technical steps to follow to conclude the contract
 - b. whether or not the concluded contract will be filed by the service provider and whether or not it will be accessible
 - c. technical means for identifying and correcting input errors prior to placement of the order
 - d. languages offered for the conclusion of the contract
 - e. relevant codes of conduct to which it is subject, as well as data enabling direct access to such codes by electronic means, and
 - f. applicable law governing the transaction

Contract terms and general conditions provided to the recipient must be made available in a way that allows them to store and reproduce them.

Finally, it should be noted that the aforementioned contents in the second bullet point do not apply to contracts concluded exclusively by the exchange of email or by equivalent individual communications.

Which rules apply when contracts are concluded in Web shops?

In addition to what is stated herein thus far, kindly note the following:

1. When a consumer is placed under an obligation to pay, the seller should make the consumer aware, in a clear and prominent manner, and directly before the consumer places their order, of the information provided for in points (a) and (e) under the first dash of the foregoing question ("What information does an online seller...?").
2. The seller should ensure that the consumer, when placing their order, 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 shall be labelled in an easily legible manner only with the words "order with obligation to pay" or a corresponding unambiguous formulation indicating that placement of the order entails an obligation to pay the seller. If the seller does not comply with the foregoing, the consumer shall not be bound by the contract or order.
3. The trading website should indicate clearly and legibly at the latest at the beginning of the ordering process whether or not any delivery restrictions apply and which means of payment are accepted.

4. If the contract is concluded through means of distance communication that allows limited space or time to display the information, the seller should provide the information referred to in points (a), (b), (e) and (h) under the first dash of the foregoing question ("What information does an online seller...?").
5. The information should be provided by the seller to the consumer in an appropriate way in plain and intelligible language. Insofar as that information is provided on a durable medium, it should be legible.

What is important to know with regard to after sales issues?

In addition to what is stated herein earlier, kindly note the following:

- The seller should provide the consumer with confirmation that the contract has been concluded. This should be done using a durable medium within a reasonable time after the conclusion of the contract and at the latest at the time of delivery of the goods or before the performance of the service begins. The foregoing confirmation should include:
 - a. all of the information referred to under the first dash of the foregoing question ("What information does an online seller...?"), unless the seller has already provided that information to the consumer on a durable medium prior to the conclusion of the distance contract, and
 - b. where applicable, confirmation of the consumer's prior express consent and acknowledgment in accordance with Section 15 (jc) of the **Consumer Rights Law**
- Unless an exemption applies (as set out below), a customer who is a consumer shall have a period of 14

days to withdraw from the contract without giving any reason and without incurring any costs other than what is referred to in **Sections 12(2) and 13** of the Consumer Rights Law; for example, supplementary costs of delivery and return.

Which rules apply with regard to the online seller's website design?

According to **Section 8 of the E-Commerce Law**, the online seller should enable easy, direct and continuous access to, inter alia, the following information:

- name of the online seller
- geographic address at which the seller is established
- details of the seller, including their email address, to enable them to be contacted rapidly and to ensure they can be communicated with in a direct and effective manner
- where the seller is registered in a trade or similar public register, details of the trade register in which the seller is entered and their registration number, or equivalent means of identification within that register
- where the activity is subject to an authorisation scheme, details of the particulars of the relevant supervisory authority
- where reference is made to prices, these are to be indicated clearly and unambiguously; in particular, they must indicate whether or not they are inclusive of tax and delivery costs

In addition to the aforementioned and the information that the seller should provide a customer with ahead of concluding the contract (referred to in our responses earlier) – for example, terms and conditions – the seller should, for the purposes of compliance with the Personal Data Law, ensure that a privacy policy is uploaded onto their website and that such a policy is easily accessible to visitors of the website/customers.

The information that should be included in a privacy policy is, inter alia, as follows:

- identity of the person that will be acting as “controller” of personal data
- types of personal data that will be processed
- purposes of processing personal data
- person(s) having access to such personal data and to whom the data will be disclosed to, if applicable, and whether or not personal data will be transferred outside the EEA (European Economic Area)

Further, the aforementioned privacy policy should inform customers of their rights to request access to their personal data and to correct their data maintained by the controller.

What are the legal risks of online advertising?

1. Online advertising is subject to the Unfair Commercial Practices Law and the Misleading and Comparative Advertising Law. Based on the foregoing laws, advertisements, including online advertisements, should, in general, not be misleading, aggressive, and/or comparative in violation of the Misleading and Comparative Advertising Law.
2. The **Unfair Commercial Practices Law** and the **Misleading Comparative Advertising Law** contain specific provisions as to what constitutes misleading, aggressive and comparative advertising.
3. Any marketing communications made by the online seller, including, without limitation, advertising via email and/or SMS, should at all times comply with the provisions of applicable privacy laws and regulations; in other words, the online seller should have obtained the prior express consent of the customer ahead of such marketing occurring.

4. It should be noted that customers are entitled to opt out – in other words, withdraw their consent – from email or SMS marketing at any time. Online sellers should provide the facility for the customer to opt out in an easy, accessible manner and at no cost. Commonly, marketing communications contain a link or advise on how to opt out/unsubscribe.
5. Any unsolicited communications made by the online seller to a customer via email must be clearly identifiable and unambiguous from the moment the customer receives them.
6. Storing of cookies on the terminal equipment of customers is subject to the Telecom Law. Customers should be informed of cookies, the reasons the online seller purports to use cookies, as well as the duration of storage.

Are there any national particularities on ADR/ODR?

There are no such particularities.

Do the aforementioned rules also apply to e-commerce in B2B?

The abovementioned rules are applicable to consumers except where otherwise indicated.

What do online traders need to know about law enforcement in e-commerce?

Violations of the plethora of laws that cover and/or apply to e-commerce may result in the imposition of, inter alia, administrative fines, the issuance of court orders or, in certain cases, imprisonment. Indicatively, violation of the provisions of:

- the **E-Commerce Law** may lead to the imposition of an administrative fine of approximately €8,500.00 and issuance by the court of a prohibition order, including an interim injunction. It should be noted that the foregoing law is expected to be amended during the course of 2018 to include the imposition of an administrative fine of up to €500,000.00.
- the **Consumer Rights Law** may lead to the imposition of an administrative fine of up to 5 per cent of the turnover of the offender in the year preceding the offence or a fine of up to €200,000.00. In case of continuation of the offence, an administrative fine of up to €1,000.00 may be imposed for each day the offence continues.
- the **Personal Data Law** may, depending on the nature of the violation, lead to, inter alia:
 - a. imposition of an administrative fine of up to €30,000.00
 - b. where the offender acquired a gain from the said violation, an imprisonment term of up to 5 years and/or a fine of approximately €8,500.00
 - c. imprisonment of up to 3 years and/or a fine of approximately €5,100.00

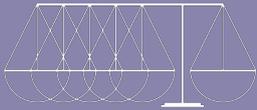
It should be noted that with the entry into force of the GDPR, violations thereof may lead to the imposition of fines of up to €20 million.

- the **Misleading and Comparative Advertising Law** may, depending on the nature, gravity and duration of the offence, result in:
 - a. the imposition of an administrative fine of up to €100,000.00
 - b. an administrative fine of up to €1,000.00 per day in the event the offence continues
- issuance of a court order.

Grigoris Sarlidis

PAMBORIDIS LLC, Advocates and Legal Advisors
45 Digeni Akrita Ave., Pamboridis House
CY - 1070 Nicosia – Cyprus

sarlidis@pamboridis.com | Tel.: +357 22 75 25 25



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4.

Czech Republic

Pavel Pinos | HSP & Partners

What are the laws covering e-commerce?

- **Act no. 89/2012 Coll., the Civil Code** (*občanský zákoník*);
- **Act no. 634/1992 Coll., on Consumer Protection** (*zákon o ochraně spotřebitele*);
- **Act no. 101/2000 Coll., on Personal Data Protection** (*zákon o ochraně osobních údajů*) (this act will be mainly replaced by GDPR);
- **Act no. 90/2012 Coll., on Business Corporations** (*zákon o obchodních korporacích*);
- **Act no. 143/2001 Coll., on Protection of Competition** (*zákon o ochraně hospodářské soutěže*);
- **Act no. 526/1990 Coll., on Price Quotations** (*zákon o cenách*);
- **Act no. 480/2004 Coll., on Some Services of Information Company** (*zákon o některých službách informační společnosti*);
- **Act no. 297/2016 Coll., on Services Creating Trust in Electronic Transactions** (*zákon o službách vytvářející důvěru pro elektronické transakce*);
- **Act no. 127/2005 Coll., on Electronic Communication** (*zákon o elektornických komunikacích*);
- **Act no. 99/1963 Coll., on Civil Proceeding** (*občanský soudní řád*).

Further regulations of e-commerce can be found also in other Czech acts.

What information does an online seller have to provide before concluding a contract online?

According to **Section 1811 (2) of the Civil Code**, the trader shall, sufficiently in advance before the conclusion of the contract or before the consumer makes a binding offer, provide the consumer with:

- a. the trader's identity or, where applicable, their telephone number, email address or other contact information
- b. the designation of the goods or service and a description of their main properties
- c. the price of the goods or service, or, where applicable, the method of its calculation, including all taxes and fees
- d. the method of payment and the method of supply or performance
- e. the costs of supply and, if these costs cannot be calculated in advance, an indication that they may be subsequently charged
- f. information on the rights arising from a defective performance, as well as the rights arising from a warranty and other conditions for those rights to be asserted

Furthermore, according to Section 1820 of the Civil Code, the trader also has to provide the customer with the following:

- a. costs of the means of distance communication if they differ from the basic rate
- b. information on the duty to pay an advance or similar payment, if required
- c. in case of a contract stipulating a recurrent performance, the shortest period for which the contract will bind the parties
- d. in case of a contract concluded for an indefinite period or one that stipulates a recurrent performance, information on the price or the manner of its determination for one billing period, which shall always be one month if the price remains constant

- e. in case of contracts concluded for an indefinite period or for those that stipulate a recurrent performance, information on all taxes, fees and the costs of supplying the goods or service determined in the manner under point (b)
- f. if the right of withdrawal may be exercised, the conditions, time limit and procedures necessary to assert such a right, as well as the withdrawal form, whose elements are provided by an implementing legal regulation
- g. information specifying that in the case of a withdrawal, the consumer will bear the cost of returning the goods
- h. information specifying that and in the case of a distance contract, the cost of returning the goods if, given their nature, the goods cannot be returned by ordinary mail

If the means of distance communication does not allow the consumer to be provided with all the information, they shall receive at least the information under Section 1811 (2) a, b and g, and the information under Section 1820 (1) b, c and h. The seller shall provide the consumer with the other information in writing no later than by the time of the performance (**Section 1824 (2) of the Civil Code**).

According to **Section 1826 of the Civil Code**, when using electronic means, the trader shall also provide the following information:

- a. whether or not the concluded contract will be kept by them and whether or not they will make it accessible to the consumer
- b. languages in which the contract can be concluded
- c. individual technical steps leading to the conclusion of the contract
- d. possibility of finding and correcting errors incurred during data entry before placing an order, and
- e. codes of conduct that are binding on the trader or that they voluntarily comply with, and on their accessibility by electronic means

All communications between the trader and the consumer must be made clearly and comprehensibly in the language in which the contract is concluded (**Section 1811 (1) of the Civil Code**).

According to **Section 13 (2) of the Act on Price Quotations**, the seller is obliged to provide information to the consumer on price while offering and selling goods to the consumer in order to give them the opportunity to find out the exact price before the sale takes place.

In accordance with **Section 11a of the Act on Protection of a Consumer**, the seller is obliged to inform the consumer prior to when the sale takes place and in a clear manner about any restriction on the delivery of the goods or provision of services and what types of payments are accepted.

Which rules apply when contracts are concluded in Web shops?

The seller must provide the consumer with information stated under "What information does an online seller have to provide before concluding a contract online?"

Section 1826 (3) of the Civil Code:

Before placing an order via electronic means, a consumer must be allowed to check and change all the input information that they entered in the order.

Section 1827 of the Civil Code:

Where a consumer places an order through a means of distance communication, the seller is obliged to use a means of distance communication so that they can immediately acknowledge its receipt. If a contract is concluded through electronic means, the seller shall, in addition to the text of the contract, provide the consumer with the text of the standard commercial terms.

Section 14 of the Act on Consumer Protection:

On their websites, online traders must inform consumers of the dispute resolution body that is responsible for finding alternative dispute solutions in a clear, comprehensible and easily accessible manner. They are required to provide the website of such a body and also a link from their website to the ODR platform.

Section 1751 of the Civil Code:

A part of the contents of a contract may be determined by reference to standard commercial terms that are attached to the offer by the seller or of which the parties are aware. Any stipulations in the contract that derogate from the standard commercial terms shall prevail over the text of the standard commercial terms. If the seller decides to do so, they should provide the consumer with the standard commercial terms before a contract is stipulated.

What is important to know with regard to aftersales issues?

A consumer has the right to withdraw from a contract within 14 days (**Section 1829 of the Civil Code**). However, according to **Section 1837 of the Civil Code**, a consumer may not withdraw from a contract:

- a. for the provision of services if they were performed with their prior express consent before the end of the time limit for withdrawal and the seller informed the consumer before concluding the contract that they shall thereby lose the right of withdrawal
- b. for the supply of goods or a service whose price depends on fluctuations of the financial market that are beyond the control of the trader and that may occur during the time limit for withdrawal
- c. for the supply of alcoholic beverages that can only be supplied after 30 days and whose price depends on fluctuations of the financial market that are beyond the control of the seller

- d. for the supply of goods that were customised or personalised
- e. for the supply of goods subject to rapid decay, as well as goods that were irreversibly mixed with other goods after supply
- f. for repair or maintenance work carried out at the place designated by the consumer at their request; however, this does not apply in the case of subsequent unsolicited repairs or in the supply of unsolicited spare parts
- g. for the supply of sealed goods that were unsealed after supply by the consumer and that are unsuitable for return owing to hygiene reasons
- h. for the supply of audio or video recordings or computer software whose original seal was unsealed after supply
- i. for the supply of newspapers, periodicals or magazines
- j. for accommodation, transport, catering or leisure activities where the trader provides the performances on a specific date
- k. concluded at a public auction in accordance with the statute governing public auctions, or
- l. for the supply of digital content that is not supplied on a tangible medium if it was supplied with the prior express consent of the consumer before the time limit for withdrawal and the trader informed the consumer before concluding the contract that they shall thereby lose their right of withdrawal.

Rights from a defective performance

In accordance with **Section 1914 (2) of the Civil Code**, generally, if an obligation from a contract is fulfilled defectively, the recipient has rights arising from a defective performance. If a defect can be removed, a consumer may demand either a repair, a supplementation of whatever is missing or a reasonable price reduction. If a defect cannot be removed and prevents the proper use of the subject, the consumer may either withdraw from the contract or demand a reasonable price reduction.

Special provisions regarding the rights from a defective performance arising from a sale agreement can be found in **Section 2099 *et seq.* of the Civil Code**.

Warranty

If a transferor assumes quality guarantee, they guarantee that the subject of performance will be, for a definite period after the discharge, fit for use for the stipulated purpose and that it will retain the stipulated properties (**Section 1919 of the Civil Code**). The trader might stipulate their warranty rules and warranty procedure in a separate document.

Special provisions regarding the warranty arising from a sale agreement can be found in **Section 2113 *et seq.* of the Civil Code**.

Which rules apply with regard to the online seller's website design?

According to **Section 435 of the Civil Code in connection with Section 7 of the Business Corporations Act**, every trader must specify their name and registered office on their websites. A trader registered in the commercial register shall also specify information about this registration.

According to **Section 5 of the Data Protection Act**, the seller may process personal data only with the consent of data subject unless the data processing is essential for the fulfilment of the contract. When giving their consent, the data subject must be provided with the information about what purpose of processing, personal data, trader and period of time the consent is being given for.

As stated under "Which rules apply when contracts are concluded in Web shops?", part of the contents of a contract may be determined by reference to standard commercial terms, the person placing an order shall have a chance to read through the terms and consent to them before making the final order.

What are the legal risks of online advertising?

A person whose right has been jeopardised or violated by unfair competition (for example, misleading advertisement, comparative advertising, free-riding on the reputation) may request the violator to refrain from competing unfairly or to remove/delete unlawful acts (e.g. delete misleading advertisement) . They may also request adequate satisfaction, compensation for damage and restitution of unjust enrichment (**Section 2988 of the Civil Code**).

According to **Section Art. 7 of the Act on Some Services of Information Company**, a person must give consent to the sender allowing them to make use of details of their electronic contact for the distribution of commercial communications.

Section 89 of the Act on Electronic Communication:

Anybody wishing to use, or using, the electronic communications network for the storage of data or for gaining access to the data stored in the subscribers' or users' terminal equipment shall inform those subscribers or users beforehand in a provable manner about the extent and purpose of processing such data. They shall also offer them the option to refuse such processing.

The proprietor of the trademark shall have the exclusive right to use the trademark in relation to the goods or services covered by the trademark. Therefore, the use of third-party trademarks in advertising can be considered as a breach of trademark law (**Section 8 of the Act no. 441/2003 Coll., on Trademarks**).

Are there any national particularities on ADR/ODR?

There are no such particularities.

Do the aforementioned rules also apply to e-commerce in B2B?

The aforementioned rules mostly apply in B2C commerce only. As stated under "Which rules apply with regard to the online seller's website design?", every seller must specify their name and registered office on their websites, as well as information on their registration in the commercial or other register. This rule also applies in B2B e-commerce.

What do online traders need to know about law enforcement in e-commerce?

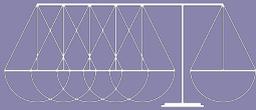
The consumer and other competitors can file a lawsuit with a competent court if they believe a law has been misused. In special cases stipulated in the Civil Proceeding Act, a preliminary injunction can be issued. Such preliminary injunctions are immediately enforceable as soon as they have been delivered to the defendant.

The action of the online trader can also be regarded as an administrative or even criminal offence.

Pavel Pinos

HSP & Partners
Vodičkova 710/31
110 00 Praha 1, Czech Republic

pinos@akhsp.cz | Tel.: +420 737 224 572



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5.

France

Jérôme Cayol / Marie-Clémentine
Cayol Cahen & Associés

What are the laws covering e-commerce?

- **Consumer Code**
- **Civil Code** (Articles 1125 to 1127-4; articles 1174 to 1177)
- **Criminal Code** (Article 226-18-1, R625-10 to R625-13)
- **Act n°2004-575** of the 21st June 2004 of the confidence in the digital economy (transposition of the EU Directive 2000/31)
- **Act n°2014-344** of the 17th March 2014 about consumer protection
- **Ordinance n°2016-301** du 14 mars 2016
- **Act n°2017-203** of the 21st February 2017 about consumption

The consumer is protected by two types of law: "hard" law constitutes by act, directive, case law, rules, regulations, codes and also "soft" law, which includes different "good behaviour" codes and confidence charters.

- Confidence Charter of sales platforms between online sellers, 8th June 2006
- Ethical Charter for price comparison websites, 11th June 2008

The two charters are only examples. There are other online charters which could apply.

What information does an online seller have to provide before concluding a contract online?

An online seller must provide lots of information to the consumer in order to protect them, and to encourage competition and transparency.

Before buying, the customer must have very clear and full information of what they are going to purchase (French Consumer Code L.111-1, L.221-5...). For example, the characteristics of the goods or services, the total price, information about the online seller's identity, all information linked to legal guarantees, arrangements for payment and delivery, time frame, duration of contract and other conditions. As a consequence, the online seller must supply:

- the applicable contractual terms and conditions, which the customer can keep and reproduce
- a list of information (provided in particular in the French Civil Code and the French Consumer Code).

The offer must outline the:

- different steps to follow to conclude an electronic contract
- technical means allowing the purchaser, before the conclusion of the contract, to recognise and correct input errors
- languages available for the conclusion of the contract necessarily including the French language
- means to consult, by electronic access, the relevant codes of conduct to which the online seller submits
- existence or non-existence of withdrawal rights and the relevant procedure

Which rules apply when contracts are concluded in Web shops?

Concluding an online contract involves a "double-click" system, which guarantees that the consumer gives their final agreement.

First, the consumer must have the opportunity to check and review their order, to check the total and final price, and, if need be, to make changes; otherwise, the contract is not validly concluded. After checking, the consumer clicks on the button making it clear that they want to enter into an agreement, at which point they have to enter all their payment obligations before clicking to finalise their order.

Secondly, as soon as possible, the online seller must confirm receipt of the order made by the consumer by electronic means.

This confirmation is given almost instantaneously.

What is important to know with regard to aftersales issues?

The most important rule applying to the online contract concluded with a consumer is their right to withdraw within 14 days from receipt of goods or from the conclusion of a contract for services or digital content (French Consumer Code from L.221-18 to L.221-28).

If the consumer wants to exercise this right, they must complete a withdrawal form and send the goods back to the online seller as soon as possible and at the latest within 14 days of the decision to withdraw.

Once the withdrawal form is received by the online seller, the consumer must be reimbursed for the full amount within 14 days. Where a consumer purchased a product but does not return it within 14 days, the seller is entitled to withhold the reimbursement despite having received the withdrawal form.

The right to withdraw is not possible for all kind of contracts (L.221-28 of the French Consumer Code). For instance, the supply of: goods that are personalised according to the consumer's request, food that may quickly pass its expiration date, sealed goods that are unsuitable for return owing to health protection or hygiene reasons.

Which rules apply with regard to the online seller's website design?

Online seller's information

In addition to all of the information given to the consumer (underlined earlier), the online seller's website must contain, in an easily visible way, all identification information about the seller:

- For an individual contractor: their full name and postal address
- For a company: its name, capital amount, registered number or trade register number, registered office and the valued added tax identification number
- For both an individual contractor and a company:
 - i. an accessible email address and telephone number
 - ii. name of the publishing manager and contact details about the website host
 - iii. general sales terms and conditions, the price in euros including all taxes, delivery date and cost, terms of payment, contact details of the customer service, withdrawal right, duration of offer.

This is not an exhaustive list and further information may be necessary depending on the individual online seller.

Personal data collection

If the online seller collects personal data on their website, they must:

- get the approval of the customer,
- inform the customer of his right to access to, change

and delete all his personal data,

- ensure the security of the information system,
- ensure the confidentiality of the data, and
- indicate the storage life of the personal data.

The creation and the treatment of personal data are submitted to protective law in order to ensure the privacy of the customer whose information are collected, and to respect the individual freedom.

What are the legal risks of online advertising?

Risks about online business practices

The French Consumer Code (L.121-1 *et seq.*) forbids misleading and aggressive business practices. The general directorate of the competition, consumption and fraud control (in French: DGCCRF) is the supervisory authority of those practices.

Misleading business practices (L121-2)

The French Consumer Code distinguishes:

- Misleading actions: These are business practices that contain false or good information, which are given in order to mislead the consumer (for example: the selling of a different kind of flower to those depicted on the outer packaging).
- Misleading omissions: with this practice, the online seller misleads the consumer into believing they are getting a certain offer while omitting or providing certain information too late in the sales process.

A list of 22 misleading business practices was established at the EU level and transposed in French Consumer Code (L121-4).

This regulation about misleading practices applies both on B2B and B2C e-commerce.

Aggressive business practices (L121-6)

A business practice is aggressive when the professional uses repetitive and insistent requests, or physical or mental constraints aimed at:

- altering the consumer's freedom of choice
- vitiating the consumer consent, and
- impeding the consumer's contractual rights exercise

A list of 7 aggressive businesses practices was established in the French Consumer Code (L121-7). This article only applies between B2C e-commerce.

The protection applies when the practices are effective in France, which applies to the French Consumer Code to practices abroad (but having a knock-on effect in France).

Risks about email advertising

Online advertising is regulated by the National Commission for Data Protection and Liberties (in French CNIL), which protects the consumer against improper use of their information.

As a principle, no commercial/advertising email can be sent to a customer without their consent. That means the customer must give their prior express consent to receive advertising and confirm their consent by clicking on a consent link.

However, there are two exceptions:

1. the prospective customer is already a customer of the company and the advertising is about similar goods or services provided before
2. the canvassing is not commercial but charitable.

Cookies/Trackers

The Internet user must be informed of the use of trackers and must give their prior express consent to their use. They must have the choice to decline such tracking while visiting a

website or using an application. If the Internet user gives their consent, it is valid for a maximum of 13 months.

As for advertising email, the consent must be given by a positive action such as ticking a checkbox.

Are there any national particularities on ADR/ODR?

Since 2015, the French Civil Procedure Code requires the parties to attempt to arrive at an amicable resolution in the first instance.

Do the aforementioned rules also apply to e-commerce in B2B?

In general, rules applying to B2C are more protective than rules applying to B2B. However, in the past few years, the French government is moving towards a new trend: to regulate B2B contractual relations.

General terms and conditions (L441-6 of the French Commercial Code)

Generally, for the "ordinary" trade, a professional must respect the contract. For the B2B online trade, professionals must establish general terms and conditions. While they are not required in an official capacity, they are highly recommended.

General terms and conditions are the single basis of commercial negotiation. They must respect certain compulsory statements, such as:

- conditions of sale
- unit price
- price reduction
- payment conditions

General terms and conditions are provided to the seller through all means, including electronic.

The professional who does not provide their general terms and conditions, when required, risks an administrative fine of up to €2 million.

The professional must also respect some invoicing rules.

Withdrawal right (L.221-3 of the French Consumer Code)

For certain professionals, the online seller must include a withdrawal right in their general terms and conditions. This withdrawal right only applies to professional organisations with 5 or less employees and only if the contract purpose is not their main activity.

Information duty (L441-6 of the French Commercial Code)

Information rules for the consumer (see "Which rules apply with regard to the online seller's website design ") apply, generally, on B2B.

Restrictive competitive practices (L442-6 of the French Commercial Code)

As for the consumer, there are rules about abusive practices. Professionals must respect their trading partner by selling in a fair and reasonable way.

Using misleading, abusive or unfair methods can be severely punished by court, in the form of an injunction, a large fine, etc.).

What do online traders need to know about law enforcement in e-commerce?

Online traders need to act with caution and should respect the applicable law, as explained earlier.

To summarise, different penalties that online traders can incur if they break the law include:

Misleading or aggressive practice penalty (L132-1 to L132-18 French Consumer Code/ 131-27 French Criminal Code)

According to specific conditions, the offender shall be punished with imprisonment for 2 years and a fine of €300,000.00 (which can be much higher depending on certain financial criteria, such as a percentage of the average annual turnover).

For aggressive practice, there is also a civil penalty in that the contract concluded after an aggressive commercial practice is null and void.

Moreover, guilty persons can incur a complementary penalty, such as the prohibition from engaging in a commercial activity for maximum duration of 5 years.

Online pre-contractual information about withdrawal right

A breach of the obligation to inform the consumer about their withdrawal right may be punishable with an administrative fine of €15,000.00 for an individual person and €75,000.00 for company.

Online mandatory information

A breach of those obligations may be punishable by one year's imprisonment and/or a fine of €75,000.00 for an individual person and €375,000.00 for a company.

Online advertising

Depending on the breach against online advertising regulations, the offender shall be punished with imprisonment from 1 to 5 years and a fine from €45,000.00 up to €300,000.00.

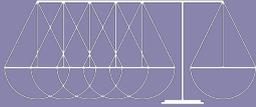
In addition to the criminal sanction, there is also a civil sanction. For example, the consumer can always go to court to take action in order to obtain the contract's nullity, file for injunctive relief or claim for damages.

Jérôme Cayol / Marie-Clémentine | Cayol

CAHOL, CAHEN & ASSOCIÉS

56 avenue Victor Hugo 75016 Paris, France

jcayol@cca-avocats.com | Tel.: +33 01 53 64 52 00



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6.

Germany

Dr. Matthias Terbach

Büsing, Müffelmann & Theye

What are the laws covering e-commerce?

- **BGB:** *Bürgerliches Gesetzbuch* (German Civil Code)
- **EGBGB:** *Einführungsgesetz zum Bürgerlichen Gesetzbuch* (Introductory Act to the German Civil Code)
- **TMG:** *Telemediengesetz* (German Telemedia Act, §§ 11 et seqq. might be replaced by GDPR)
- **BDSG:** *Bundesdatenschutzgesetz* (Data Protection Regulation, will be mainly replaced by GDPR)
- **UWG:** *Gesetz gegen den unlauteren Wettbewerb* (Unfair Competition Law)
- **SigG:** *Signaturgesetz* (Electronic Signature Law)
- **PAngV:** *Preisangabenverordnung* (Regulation on Price Quotations)
- **UKlaG:** *Unterlassungsklagengesetz* (German Act on Injunctive Relief)

Further regulations can be found in several other German Acts

What information does an online seller have to provide before concluding a contract online?

§ 312i (1) No. 1 BGB, Art. 246c EGBGB

The online seller has to inform the customer on:

- individual technical steps leading to the conclusion of a contract
- whether or not the contract text is stored by the contractor after conclusion of the contract and whether or not it is accessible to the customer
- the means to recognise and correct input errors before submitting the contract
- languages available for the conclusion of the contract, and
- all relevant codes of conduct to which the trader submits, in addition to the potential to access to these rules electronically

§ 355 BGB

Right of withdrawal: before beginning the order process, the consumer must be informed about the existence or non-existence of withdrawal rights. The seller must provide an instruction in which the conditions and deadlines, as well as the procedure, are explained. Moreover, a withdrawal template needs to be provided. The information has to be provided to the buyer on a lasting data medium (for example, by email as part of the order confirmation or in print format on delivery).

Art. 245a, 246a EGBGB, § 312j (1) BGB

Payment and shipping: before the order process starts, the consumer must obtain information on shipping costs and on whether or not deliveries are restricted – for example, to a specific territory – as well as details on VAT, price quotation and accepted payment methods. Common practice in Germany is to provide a separate link, entitled “Zahlungsbedingungen” (payment methods) either at the top or bottom of each page. Some websites also display icons, representing the different payment methods available, on each page.

Art. 246a EGBGB, §§ 1 (2), 2 (1) PAngV

Total and final price: the customer must be informed about the final price, including all price elements (sale tax, transportation costs, processing fee, packaging costs, etc.) and about the price per unit.

Which rules apply when contracts are concluded in Web shops?

Art. 312j BGB

The order must be placed by clicking on a clearly marked button, making it obvious to the customer that they are entering into an agreement with payment obligations. Before clicking the button to place the order, the customer must be given the opportunity to review their order and, if necessary, make changes. After finishing the order, the online seller must send an order confirmation immediately via email.

Art.. 312i (1), 305 (2) BGB

Before clicking on the button to place the order, the customer must agree to the standard terms (“AGB”) by clicking on a separate checkbox. The standard terms must be provided in both a printable and a storable format.

Art. 312i (1) S. 1 No. 1 BGB

Possibility of correction: the customer must have the opportunity to detect and correct input errors at any time during the ordering process. For the implementation, it is sufficient if the customer can return to any of the previous pages via a “back button” and modify the order.

Art. 1 et seq. SigG, Art. 126a BGB

Contracts generally may be concluded without complying with any formal requirement, unless the law provides for a specific formal requirement or the parties to the contract themselves agreed on specific requirements. A legal “qualified electronic signature” has the same effect as a handwritten signature under civil law if the signed document additionally bears the signatory’s name (“electronic form”) and if such electronic form is not explicitly ruled out by law.

What is important to know with regard to aftersales issues?

Art. 355 BGB

The consumer has a right to withdraw from the buying contract. Within a withdrawal period of 14 days, the buyer can withdraw from the contract without having to state any reasons. The buyer is obliged to announce their withdrawal clearly and unequivocally.

Art. 356 (5) BGB – Digital Content

When purchasing digital content, the right of withdrawal expires if the customer expressly consented to the trader entering into the performance of the contract (for example, download of the software) before expiry of the withdrawal period. They should also acknowledge that by giving their consent, they lose the right to withdraw from the contract once performance of the contract has commenced.

Art. 312g (2) BGB – Exemptions to the Right of Withdrawal

The right of withdrawal does not exist for all types of contracts. Most notable exceptions are: contracts for the supply of goods that are not prefabricated, contracts for the supply of food that may quickly pass its expiration date or contracts for the supply of sealed goods that are unsuitable for return owing to health protection or hygiene reasons, if such goods were unsealed after delivery.

Warranty Rights

Depending on the type of contract, a customer's warranty rights according to law become applicable. Should the product not be provided in the manner agreed upon in the contract, the customer, within the legal warranty deadline (24 months), may exercise their statutory rights of remedy, their right to self-help remedy or their right to price reduction, contract cancellation and also compensation. It is nearly impossible to limit those rights in general terms and conditions.

Which rules apply with regard to the online seller's website design?

Art. 5 TMG – Company Information

Link to company information ("*Impressum*") on each page: The mandatory company information has to be "easily visible and directly accessible". Ideally, the company's entire information should be gathered in one place, to be found by clicking on a clearly marked link that should be visible for the customer without them having to scroll down the page first. The information must contain the name and address of the company (their registered office; listing only an email address or a PO box is insufficient). It should also include information enabling quick direct contact – for example an email address as well as a second contact where possible. Ideally, this should be a telephone number, legal form, names of authorised and legal representatives, commercial register and company register number and, if existing, VAT identification number or business identification number.

Art. 13 TMG – Privacy Policy

Link to the privacy policy ("*Datenschutzerklärung*"): If the online trader collects or processes personal data on their website, the privacy policy must include manner, scope and purpose of the gathering and use of personal data, as well as indications on its processing in countries outside of the EU.

Art. 5 UWG, Art. 312j BGB

Presentation of the website: All required information must be provided in a "transparent" manner – in other words, it should be clear and comprehensible. The customer must be informed about all relevant product features and characteristics. The language used must be consistent, from the presentation of the products through the order process to the general terms and conditions.

Art. 312i (1), 305 (2) BGB

Link to the current version of the website's terms and conditions ("*Allgemeine Geschäftsbedingungen*" or "AGB"): The customer has to be able to find the information without

searching. They also have to be able to access it with one or two clicks.

What are the legal risks of online advertising?

Unfair Competition Law

Online advertising is subject to German Unfair Competition Law (UWG). UWG in Germany is not monitored by governmental authorities, but violations of the **UWG** (for example, misleading business actions) give competitors and consumer associations a right to file for injunctive relief or receive compensation.

Art. 7 (2) No. 3 UWG – Email Advertising

Email advertising is generally considered as unfair business (unconscionable pestering) unless the addressee has given their consent. The consent by the customer must be given through “double opt-in”. That means the customer must give their prior express consent to receiving advertisements and confirm their consent by clicking on a consent link in the first email. If a person has published or disseminated their email address in a public directory, on a letterhead or on a business card, this, in general, is not considered consent to receiving advertisements.

If an online seller has obtained an email address through business connections (for example, the sale of goods or services), they may subsequently use this address only for the promotion of similar goods or services. Yet, it is required that the addressee must be informed upon registration and upon each use of their email address that they may opt out at any time.

Art. 15 TMG – Website Tracking

Tracking of website traffic (for example, via cookies) for the purpose of personalised advertising is subject to Art. 15 TMG. User profiles may only be created pseudonymously and the user has the right to object. The online seller has to inform

the user about their right to object in their privacy policy (“*Datenschutzerklärung*”).

Art. 14 MarkenG (Trademark Act) – Keyword Advertising

The use of third-party trademarks as keywords in keyword advertising (for example, Google AdWords) can be considered as a breach of trademark law. This might be the case if an online seller uses the reputation of well-known third-party trademarks for their own advertising purposes and intends to transfer this reputation to their own website or products.

Are there any national particularities on ADR/ODR?

§ 36 VSBG

In early 2017, the German law designed to implement the ADR guideline (VSBG) came into force. Online sellers who are not obliged and who are unwilling to participate in ADR need to inform customers about this fact both on their website and in their general terms and conditions. This (negative) information could read as follows: “We are neither willing nor obliged to participate in an alternative dispute settlement procedure.”

Do the aforementioned rules also apply to e-commerce in B2B?

In general, the rules on consumer protection do not apply in B2B commerce, yet some do in a different form. The rules on incorporation of general terms and conditions, for example, are less strict in B2B. However, German courts are very strict on how to design a website exclusively for B2B purposes. Therefore, most online traders follow the rules on B2C, even though their business is focused on B2B.

What do online traders need to know about law enforcement in e-commerce?

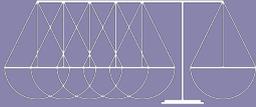
Many violations of consumer protection laws can be classified as an act of unfair competition. This includes violations of GDPR, TMG, BGB, EGBGB and PAngV. As a result, most of the violations of the aforementioned acts give competitors and consumer associations the right to file for injunctive relief.

Moreover, consumer associations and other organisations can file for injunctive relief under the laws of UKlaG, if online traders use general terms and conditions that do not comply with the laws on consumer protection law. Under certain circumstances, German courts are entitled to release preliminary injunctions in unilateral proceedings. Such preliminary injunctions are enforceable with immediate effect after they have been served on the defendant. Neither the grant nor the enforcement of the injunction depends upon the provision of security by the complainant for enforcement of any later award of damages should the injunction have been wrongly granted.

Dr Matthias Terbach

BÜSING, MÜFFELMANN & THEYE
Rechtsanwälte in Partnerschaft mbH und Notare
Kurfürstendamm 190-192
10707 Berlin
Germany

terbach@bmt.eu | Tel: +49 30 88 03 04 35



LIBRALEX

7.

Greece

Peggy Giannakopoulou

Felios & Associates

What are the laws covering e-commerce?

- **Law 2251/94 on Consumer Protection** and its amendments, specifically Article 4, which regulates distance contracts
- **Law 2472/97 on the Protection of Individuals from the Processing of Personal Data**
- **Law 2174/99 on the Protection of Personal Data in the Telecommunications Sector****Presidential Decree 150/2001** (Government Gazette A 125/25-6-2001) **on Electronic Signatures**
- **Presidential Decree 131/2003 on E-commerce**
- **Law 3471/2006** (Government Gazette 133/A' dated 28 June 2006) **on the Protection of Personal Data and Privacy in the Field of Electronic Communications**, which also amended the aforementioned Law 2472/1997
- **Joint Ministerial Decision Z1-891 / 2013** – (Government Gazette 2144 B' dated 30 August 2013), which implemented **Consumer Rights Directive 2011/83/EU**, as amended by Joint Ministerial Decision No. 27764/2014 (Government Gazette 1470 B', dated 06 June 2014)
- **Ministerial Decision No. 31619 /2017** (Government Gazette 969/B', dated 22 March 2017) **Code of Ethics for E-Commerce**

What information does an online seller have to provide before concluding a contract online?

This information is stipulated in **Article 3b of Law 2251/94 on Consumer Protection and Ministerial Decision No. 31619/2017 (Code of Ethics for E-Commerce)**, which refers to the obligation of the seller to include the following information, in a clear and comprehensible manner, before concluding a contract online:

- identity and contact details (including address, telephone number and email address) of the seller
- main characteristics of the goods or services
- total price of the goods and services, including VAT and postage or, if the total price cannot be indicated beforehand, the way in which it will be calculated
- means of payment, delivery and time frame within which the goods or services will be dispatched and obtained by the buyer
- provisions, time frame, cost and procedure for the right to cancel
- terms for withdrawal from the contract and the terms for termination or cancellation of the contract
- option for out-of-court settlement of disputes between the seller and customer
- details on recognised alternative dispute-resolution bodies that the sellers are committed or obligated to employ in order to settle a dispute

If the seller fails to comply with the information requirements laid down by law, the distance contract shall be void in favour of the consumer.

Furthermore, according to **Article 9.1 of Presidential Decree 131/2003**, in any event, the seller must provide complete, clear and comprehensible information before the order is placed by the buyer, which consists of:

- the different technical steps to follow to conclude the contract

- whether or not the concluded contract will be filed by the seller and whether or not it will be accessible to the buyer
- the technical means for identifying and correcting input errors prior to placement of the order
- the languages offered for the conclusion of the contract
- codes of conduct to which the buyer subscribes, together with information on how these codes of conduct can be consulted electronically

Which rules apply when contracts are concluded in Web shops?

According to **Article 8 of Presidential Decree 131/2003**, contracts may be concluded by electronic means except for contracts:

- that create or transfer rights in real estate
- requiring by law the involvement of courts, public authorities or professions exercising public authority
- governed by family law or by the law of succession

An e-contract is concluded when the buyer receives an electronic message containing confirmation and acceptance of the offer. The order and the acceptance of the order by the parties is deemed to be received when the parties to which they are addressed can access them.

The seller must confirm without delay receipt of the order by the buyer, except when non-consumer parties agree otherwise (**Article 10 (1) of Presidential Decree 131/2003**).

In addition, according to **Article 2 of Law 2251/1994**, in order for the terms and conditions to be binding for the consumer, the seller must bring them to the attention of the consumer at the latest at the time of the conclusion of the contract. These terms and conditions provided to the buyer must be made available in a way that allows the buyer to store and reproduce them (**Article 9 (2) of Presidential Decree 131/2003**).

What is important to know with regard to after sales issues?

Right of withdrawal

Right of withdrawal is stated by **Article 3 e) of Law 2251/94**. A consumer who is party to a distance contract may withdraw from a sale of goods contract by returning the goods purchased within 14 days from their receipt, without having to state any reason. The seller must inform the consumer of the existence of this right (see "What information does an online seller have to provide before concluding a contract online?").

The supplier must return the amount received including, if applicable, the costs of delivery without undue delay and in any event not later than 14 days from the day on which they are informed of the consumer's decision to withdraw from the contract.

Exceptions to the right of withdrawal are provided by **Article 3l of Law 2251/1994**.

Warranty

The legal warranty governed by the **Greek Civil Code** applies to online transactions and therefore the buyer is protected against the lack of conformity that exists at the time the goods were delivered. This legal warranty deadline is 2 years. In case of lack of conformity of the goods sold, the buyer may ask for the repair or replacement. If the latter are not possible, the buyer may request a reduction in the price or the cancellation of the contract of sale.

Product liability

Product liability issues arising from the sale of products are regulated by the Greek Civil Code (**articles 534–552**). The manufacturer of the defective product is held liable for damages incurred by the consumer, but if the identity of the producer is unknown to the consumer, the latter may still claim compensation. This is because the same liability is extended to the importer and the supplier as producers.

Which rules apply with regard to the online seller's website design?

Information provided to consumers

Since information mentioned in question 2 must be provided to the consumer before the conclusion of the contract, the website should contain this information (particularly the company information). **The Code of Ethics for E-Commerce** (Article 3) states that this information must be easily understood, legal, true, updated, easily accessible, verifiable and at least in Greek language.

Terms and conditions

As referred to earlier (see "Which rules apply when contracts are concluded in Web shops?", according to **Article 2 of Law 2251/1994**, in order for the terms and conditions to be binding for the consumer, the seller has to ensure that the consumer was able to acquire actual knowledge of their content; for example, by clicking the "I Accept" button of the relevant link that leads to the terms and conditions.

Obligation to pay

According to paragraph 3 of Article 3 d) of Law 2251/1994, the seller must ensure that the consumer, when placing their order, 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 must be labelled in an easily legible manner only with the words "order with obligation to pay" or a corresponding unambiguous formulation indicating that placement of the order entails an obligation to pay the seller. If the seller has not complied with this subparagraph, the consumer shall not be bound by the contract or order.

Privacy policy

Website designers must also take into account **Greek legislation on processing of personal data (Law 2472/97 and Law 3471/2006)**. If the seller collects or processes personal data on their website, the privacy policy accessible on the website must ensure that customers' rights are guaranteed. In other words, the right to information (for

example, identity of the data controller, purpose of data processing, existence of a right to access, etc.), the right to access and the right to object.

What are the legal risks of online advertising?

Specific to online advertising, **Article 11 of Law 3471/2006** (on the protection of personal data and privacy in the electronic communications sector) states that unsolicited communication by any means in the form of electronic communication, with or without human intervention, for the purposes of direct marketing of products or services and for any form of advertising purposes, is permitted only if the subscriber expressly consents in advance.

In addition, legally obtained contact information in the context of the sale of goods or services, or of any other transaction, may be used directly to promote similar products or services of the supplier, or to serve similar purposes, even where the recipient has not given consent in advance, provided that it is clearly and visibly stated that the recipient has the ability to oppose this, free of charge and with ease.

Furthermore, **Article 11 of Law 3471/2006** prohibits the sending of emails intended for the direct marketing of products and services, in addition to any kind of promotional purposes, where the identity of the sender or the person to whom the message is sent is not clearly stated, as well as omitting to state a valid address to which the recipient of the message may request to opt out.

Provisions on “cookies” installed for online advertising fall under **paragraph 5 of Article 4 of Law 3471/2006** and under **Article 5 of the Greek Code of Ethics for E-Commerce** and are only permitted if the consent of the subscriber or user has been obtained after appropriate information on the subject has been provided.

Are there any national particularities on ADR/ODR?

The **harmonisation of the Greek legislation with the European ADR rules** (both Directive 2013/11 / EU and Regulation 524/2013) was made by Joint Ministerial Decision No 70330/2015 (Government Gazette B 1421).

According to paragraph **2 of Article 14 of this Joint Ministerial Decision**, consumer organisations, and associations of suppliers and professionals, are responsible for:

- disclosing on their websites and any other means they deem appropriate from the list of ADR entities referred to in Article 20 (4) of Directive 2013/11/EU
- promoting ADR entities and their processes
- promoting the use of ADR by professionals and consumers
- providing consumers with information on the relevant ADR entities when they receive complaints from consumers
- providing an electronic link to the ODR platform of Regulation (EU) 524/2013

The **JMC** provides that any dispute settlement body wishing to be recognised officially as an ADR entity is required prior to commencement of the mediation and consumer dispute resolution activity to request its registration in a special register recommended and maintained in the **Consumer Protection Directorate General**.

Do the aforementioned rules also apply to e-commerce in B2B?

E-commerce rules are largely directed towards the protection of the private consumer.

What do online traders need to know about law enforcement in e-commerce?

Through the use of the Internet which, as a result, also includes e-commerce, online traders may seek protection on both a criminal and a civil law basis, the latter being more common.

From the civil law point of view, there is a distinction between individual and collective protection of the consumer.

Consumer protection includes consumer lawsuits against the supplier (as well as consumer counterclaims against the supplier), the consumer's objection to the action of the supplier, the consumer's objection to a payment injunction issued against them by the consumer, the consumer's objection to the enforcement of the injunction against them, the consumer's injunction for securing their rights, etc.

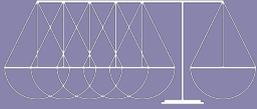
Each consumer association is entitled to seek legal remedies before the courts and administrative authorities for the rights of its members as consumers.

In particular, it is entitled to bring an action, bring an application for interim measures, appeal against administrative acts and to be represented as the political claimant. Each consumer association is entitled to intervene in addition to pending trials of its members to support rights as a consumer.

Peggy Giannakopoulou

FELIOS & ASSOCIATES LAW FIRM
Neofytou Vamva 10
Kolonaki
106 74 Athens
Greece

pgiannakopoulou@felioslawfirm.gr
Tel: +302 10 729 96 30



LIBRALEX

8.

Italy

Eve Mongin

Studio Legale Scassellati Sforzolini

What are the laws covering e-commerce?

- **L.10.10.1990 n.287**, which has implemented articles 101 e 102 of the Treaty on European Union and the Treaty on the Functioning of the European Union, and has set up an Antitrust Authority "AGCM" entitled to ensure the enforcement of fair trade practices rules, issue guidelines and sanction infringements
- **L.31.12.1996 n.675 on the protection and processing of personal data**, which has set up a regulatory body, the "**Garante per la Protezione dei dati personali**" ("**il Garante**"), which, as with the AGCM, ensures the enforcement of the law, issues guidelines and sanctions infringements
- **D.lgs 31.3.1998 n.114**, which has issued new rules regarding the trade practices, highlighting the necessity to promote the use of e-commerce and to protect the consumer in the related transactions
- **D.lgs 22.5.1999 n.185**, which has implemented the directive EC 97/7, dated 20 December 1996 on the consumer's protection in distance contracts
- **D.lgs 9.4.2003 n.70**, which has implemented the directive EC 2000/31, dated 8 June 2000 on e-commerce
- **D.lgs 30.6.2003 n.196 ("the Privacy Code")**, which has implemented the directive EC 2002/58, dated 12 July 2002, and has increased the protection of personal data and of privacy in electronic trade transactions, together with the Garante's powers
- **D.lgs 6.9.2005 n.206 ("the Consumer Code")**, which has set up a new legal frame for the consumer's protection in online transactions
- **D.lgs 21.2.2014 n.21**, which has implemented the directive EU 2011/83, dated 25 October 2011, regarding the consumer's rights in transactions out of commercial premises and in distance contracts, and has increased the AGCM's powers
- **D.lgs. 6.8.2015 n.130**, which has implemented the directive EU 2013/11, dated 21 May 2013, on ADR/ODR for consumer disputes, becoming part of the Consumer Code
- **D.lgs 19.12.2017, n.3**, which has implemented the directive EU 2014/104, dated 26 November 2014, on certain rules governing actions for damages under national law for infringements of the competition law provisions of the member states and of the EU

What information does an online seller have to provide before concluding a contract online?

The online seller has to provide accurate information about:

- characteristics of the products or services available for purchase
- identity and details on their business
- overall costs of the transaction, including taxes and any additional expenses
- terms of payment and delivery of the item
- terms and conditions of the right of withdrawal and the related attached form
- costs borne by the consumer in the event of withdrawal
- exemptions to the right of withdrawal (for example, edible, sealed, tailor-made products, etc.)
- terms and conditions of the warranty relating to the item

In the absence of such information, or in the presence of unfair or misleading contractual terms, the consumer is entitled to take action to the AGCM or a civil court.

Which rules apply when contracts are concluded in Web shops?

- **The conclusion of the contract**
Before submitting the order, the consumer must be given clear and unambiguous information regarding the different steps necessary to enter into the contract, as well as the possibility to review the order before finalising it.

Following **Article 11 of the directive EC 2000/31, dated 8 June 2000**, which has been integrated into D.lgs 9.4.2003 n.70, the contract is deemed concluded

when the seller has the opportunity to acknowledge the customer's acceptance. This is no longer the case, as provided in the previous applicable law, when the seller has effectively acknowledged the acceptance. According to the "point and click" or "virtual negotiating key" procedure, the customer, in order to complete the transaction, clicks on the icon corresponding to the selected product, which goes into a virtual shopping cart. Then, by clicking, the customer confirms their intent to enter into the contract and gives their express acceptance of the terms of the transaction through the payment of the price (for example, by submitting their credit card number). This procedure is followed by the receipt of the order, which must contain a summary of the terms of the contract, information on the purchased item, an indication of the price and terms of payment, delivery costs and applicable charges.

- **Applicable law and jurisdiction**

In accordance with **Article 6 of regulation EU 2008/593, dated 17 June 2008**, the transaction is governed by the law of the country in which the consumer resides, provided that the seller carries out its commercial activities in such country or, by any means, directs such activities to that country.

Following **Article 18 of regulation EU 2012/2015, dated 12 December 2012**, in case of dispute, the consumer may bring proceedings against the seller either to the courts of the country in which the seller has its registered office or, regardless of such location, to the courts of the consumer's country of residence. Regardless of whether the consumer is the defendant, proceedings shall be brought only to the courts of the consumer's country of residence.

What is important to know with regard to after sales issues?

Right of withdrawal

The customer may exercise their right of withdrawal within 14 business days (so-called reflection period), starting from the date of the effective disposal of the item or, in case of services, from the day of conclusion of the contract. The seller is not allowed to charge any penalty in case of withdrawal and the customer is entitled to cancel the contract without any justification. If no information was available on the website regarding the terms and conditions of the withdrawal, the withdrawal term is extended to 12 months.

Warranty

The consumer must also be informed of the right to benefit from the guarantees provided by law, depending upon the nature of the item. Such right must be exercised within 2 months from the discovery of the defect and in any case within 2 years from the delivery of the item. The remedies may be the replacement or the repair of the item, or any other remedy provided by law (such as price reduction, cancellation of the contract and integral refund, etc.).

Which rules apply with regard to the online seller's website design?

Company information

The seller's e-commerce website must provide mandatory information on the home page, on a separate page or in a footnote. The information, which must be updated constantly, must state the name or business name, kind of company (for example, incorporation, partnership, limited partnership, sole proprietorship), email address, legal seat, any necessary identification references (such as VAT number, etc.), share capital and any current insolvency proceedings, etc.

Privacy policy

The e-commerce website must comply with the formalities required by the **Privacy Code** about the collection and processing of personal data. It should specify what data is collected and processed by the seller, the intended use of such data, the duration of storage, the identity of the data protection officer and the entities to which the data may be communicated. It must also state the measures that will be enforced to ensure the protection of the collected data. Before pursuing the transaction, the consumer shall give their express consent to the collection of personal data by selecting a dedicated box.

As per unsolicited commercial emails, otherwise known as spam, the recipient must expressly agree to receive automatic emails regarding commercial communications. In accordance with the prior consent system (opt in), the sender must obtain the consumer's express consent to receive advertising by clicking on a dedicated box.

Spamming is deemed to be a criminal offence and is punishable by a 6-month to 3-year imprisonment penalty. The consumer is also entitled to claim for damages before a civil court, but such claims are often denied owing to the burden of proof and the lack of proper demonstration of the moral damage (Cass. 8 February 2017, n.3311).

In relation to cookies, the seller must insert a page on the website, easily retrievable by the user, where all cookies are collected, with a banner describing the use of cookies and containing a clickable link by the user. A pop-up must be displayed, ensuring the user's knowledge of the presence of cookies on the device, where the user must click to convey their explicit consent. Some of these pop-ups may disappear automatically assuming that, after a few seconds spent on the page, the user has implicitly accepted the installation of cookies.

The collected data shall also be accurate, truthful and, if necessary, updated.

What are the legal risks of online advertising?

The **AGCM** monitors the website's compliance with fair competition rules and it also sanctions misleading advertising practices. This ensures that online advertising and information provided to the customers is clear, truthful, accurate and clearly recognisable, and that it does not induce unwanted commercial transactions. Any misleading message that could influence the recipient's choice, compromise the fairness of the economic system and/or cause unfair damage to competitors is deemed illegitimate and is subject to sanction by the AGCM or by a civil court. In case of emergency, the AGCM is entitled to suspend any unfair business practice before issuing its ruling.

The AGCM may impose fines of up to €5,000,000.00 and the ruling can be appealed in front of an administrative court.

Following regulation EU 2013/524, dated 21 May 2013, since 15 February 2016, Italian consumers have access to an ODR platform regarding online purchases in the European Union, which takes place entirely online.

Do the aforementioned rules also apply to e-commerce in B2B?

Consumer protection rules do not apply to B2B commerce, which is governed by the **Civil Code**. The parties may freely negotiate terms and conditions of the transaction, provided they are consistent with the law. However, the unfair competition rules provided by the Civil Code apply to both B2B and B2C transactions.

Are there any national particularities on ADR/ODR?

Until 2015, ADR involving consumers' rights (B2C) was mandatory only when a lawsuit regarded banking, telephone/Internet and energy/water company contracts; on 3 September 2015, **Lgs. 6.8.2015 n.130** has entered into effect and has extended compulsory ADR to all lawsuits regarding consumers' rights as a mandatory step before taking the action to court.

As such, ADR compulsoriness was not provided in the directive EU n.2013/11, dated 21 May 2013. The European Court of Justice, following the Verona court's request, has recently stated the conformity of Italian law to the directive, but considers that the consumer is allowed to submit the claim without the assistance of a lawyer, which is required in the Italian ADR system (sentence 14 June 2017 no. C-75/16).

What do online traders need to know about law enforcement in e-commerce?

In case of infringement of data protection law or unfair trade practices, consumers and consumer associations are entitled to take action (i) to the **Garante** or the **AGCM**, or (ii) directly to courts; both regulatory bodies may also start a procedure on their own initiative and they have large investigative powers. Besides such activity, the Garante and the AGCM are also entitled to issue guidelines about any topics regarding their field of intervention and the applicable laws, to suggest some new regulation to the government and the parliament, to take action by a criminal court to refer a criminal offence of which they have knowledge, etc. Therefore, they play a fundamental role in the monitoring system of e-commerce law enforcement.

The proceeding takes place following the rules provided in the **Consumer Code** and the **Data Protection Code**. **However**, this is contradictory, the AGCM and Garante also being entitled, during the proceeding, to take provisory measures in order to stop the ongoing infringement. The defendant may challenge the alleged infringement by submitting briefs and documentation to sustain their position. If the ruling, which is due within a specified time frame to guarantee a quick outcome, ascertains the infringement, the monetary amount in fines imposed on the defendant depend upon the gravity and duration of such infringement, as well on their annual turnover. Neither the AGCM nor the Garante are entitled to grant damages. The appeal against the AGCM or the Garante's rulings does not suspend their immediate enforceability.

Eve Mongin

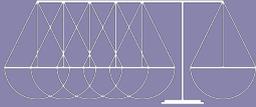
STUDIO LEGALE SCASSELLATI SFORZOLINI - MAZZI

28, Piazza Danti

06122 Perugia (PG)

Italy

pglex@pglex.com | Tel: +39 075 572 5244



LIBRALEX

9.

Latvia

Maryna Fomenko

Eterna Law

What are the laws covering e-commerce?

- "Advertising Law"
- Civil Law
- "Consumer Rights Protection Law"
- "Electronic Documents Law"
- "Personal Data Protection Law"
- "Commercial Law"
- "Value Added Tax Law"
- "Unfair Commercial Practices Prohibition Law"
- Cabinet of Ministers of Republic of Latvia Regulations No. 255
"Terms of the distance contract"

What information does an online seller have to provide before concluding a contract online?

The online seller shall provide:

- main characteristics of the goods or service
- identity of the online seller (name, legal address, actual address if it differs from the legal address, telephone number and email address, if such means of communication exist)
- final price of the goods or service, as well as delivery and other charges, or a method of calculation of the final price if, owing to the nature of the goods or service, the price and charges cannot reasonably be calculated in advance
- fee per billing period if open-ended contract or subscription contract
- payment terms, goods delivery or service provision terms and the procedure for managing complaints
- information on rights to return the goods
- reminder regarding legal rights of the recipient if the goods or service does not comply with the contract terms
- information on warranty, and aftersales support and services

Which rules apply when contracts are concluded in Web shops?

B2C:

Section 10 of Consumer Rights Protection Law

A distance contract is an agreement between a consumer and the trader or service provider that they have entered into without the simultaneous physical presence in one and the same location. Up to and including the time at which the contract is concluded, one or more means of distance communication as well as an organised sales or service provision scheme are used.

Clause 13 of Terms of the distance contract

A distance contract shall be deemed concluded at the moment when the customer accepts the trader's offer by clicking a button or triggering a similar function, labelled in an easily legible manner only with the words "order with obligation to pay" or a corresponding unambiguous formulation.

B2B:

If a contract is entered into between absent parties, it shall be regarded as entered into from the moment the trader has received the unconditional consent of the party to whom the offer was made.

Contracting parties must be sure of the existence and the seriousness of the expressed deal offered and, on the other hand, the expressed acceptance of the deal. The existence of a counterparty may be checked by standard KYC tools (COFACE or similar reports, Google check, receipt of the first payment directly from counterparty's bank account, etc.).

What is important to know with regard to after sales issues?

B2C:

Right of withdrawal:

Allows the consumer to withdraw unilaterally from the contract within 14 days, in which case the buyer would only have to pay the delivery costs for returning the purchased product to the seller. Right of withdrawal has to be made use of within 14 days by filling in a specific form.

It is important to specify that the right of withdrawal does not cover specific types of consumable products made according to the instructions of the consumer or personalised products. In addition, the right of withdrawal cannot be made use of if the product is perishable or soon exceeds its validity term, or if the consumer has opened the product's packaging and the contents cannot be put back into the package for health and hygiene reasons. This is true for products such as electric toothbrushes, epilators, bedding, blankets, pillows, slippers, bras, mattresses, electric razors, beard trimmers, hair clippers, earplugs and other similar goods, when these goods are unpacked or when their security seal is damaged.

Consumer rights protection:

Consumer rights shall be deemed violated if:

- goods are unsafe for use or consumption, or if they do not correspond to the offer of the seller
- payment for the purchase or the weight or measure is not correctly determined
- no opportunity is provided to the consumer to make use of their right of withdrawal

B2B:

As mentioned in point 3 of this document, there are no specific conditions in the B2B model. Parties are entitled and obliged to execute conventional rules set by Civil Law of the Republic of Latvia. For example, **Clause 2039 of Civil Law** declares that unilateral withdrawal from a purchase contract

shall not be permitted even if the other party does not perform their obligations. Exceptions to the above-mentioned rule can only be made if:

- the purchased goods show defects
- the right of withdrawal has been retained in the purchase contract
- one or other party would suffer excessive loss

A purchase deal between two legal bodies is referred to a commercial activity of a certain legal body and cannot be evaluated in matters of **Consumer Protection Law**.

Which rules apply with regard to the online seller's website design?

B2C:

Websites must follow internationally adopted standards of good conduct. They may not contain any kind of textual or graphic information that might harass or offend certain groups of community in regard to their belief, origin, ethnicity, nationality, sexual orientation, skin colour, native language, affiliation to a particular social group or any other feature.

If the Republic of Latvia is a target market for the online seller's products (orientated for consumers from Latvia), the online seller's website must contain all information regarding goods and services in Latvian language.

In accordance with **Clause 7 of Personal Data Protection Law**, every natural person has the right to have their personal data protected. Processing of personal data is permitted if the:

- data subject has given their consent
- processing of data results in contractual obligations of the data subject or if the processing of data is necessary in order to enter into the relevant contract

What are the legal risks of online advertising?

In advertising, it is prohibited to:

- express discrimination against a person owing to their race, skin colour, gender, age, religious, political or other convictions, national or social origin, financial status or other circumstances
- exploit the effect created by fear or superstition
- exploit the trust of a person and their lack of experience or knowledge
- defame, disparage or ridicule another person, or another person's activities, name (firm name), goods, services or trademarks
- exploit the name, surname, name (firm name) or other identifying designation (including a trademark) of another person without the consent of the person

Advertising of tobacco products as well as gambling advertising in mass media websites is prohibited.

In addition, such advertising that does not conform to professional diligence and has a substantial negative effect on the economic actions of the average consumer in relation to goods or services, or that is misleading or aggressive, is also not permissible.

Are there any national particularities on ADR/ODR?

The Republic of Latvia follows and implements national legislation **Directive 2009/22/EC** of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests.

In regard to national particularities, it is important to mention that the **Consumer Rights Protection Centre** implements the supervision and control of consumer rights protection, determined in Consumer Rights Protection Law and other laws and regulations. In addition, other competent and authorised state institutions in cooperation with local governments and associations follow for consumer rights protection and its compliance.

When defending consumer rights and lawful interests, the Consumer Rights Protection Centre is entitled to submit a statement of claim or application to a court or to provide an opinion on the matter.

The main principle set by Consumer Rights Protection Law is that any dispute arising between a consumer and the trader or service provider shall be settled by negotiations, in which the parties try to reach an agreement. If it is not possible to settle a dispute between a consumer and a trader or service provider by negotiation, the consumer shall submit a written submission to the trader or service provider. If the consumer is unsatisfied with the solution offered by the trader or service provider, the consumer is entitled to submit an application to the **Commission for Solving Consumer Disputes** (hereinafter "Commission"). The Commission is an independent collegial decision-making body which, on the basis of a submission by a consumer, solves a dispute between the consumer and the trader or service provider. The Commission is an out-of-court solver of disputes in accordance with the **Law on Out-of-Court Solvers of Consumer Disputes**.

Do the aforementioned rules also apply to e-commerce in B2B?

As mentioned earlier, if both contracting parties are legal entities, the deal is regulated by clauses, which are specified in Civil Law and Commercial Law of the Republic of Latvia.

The **Consumer Rights Protection Centre** assures the supervision and control of consumer rights protection, determined in Consumer Rights Protection Law and other laws and regulations. Additionally, on its home page, the Consumer Rights Protection Centre publishes past decisions concerning settled disputes between consumers and sellers, proving transparency in the field of consumer protection in the Republic of Latvia.

What do online traders need to know about law enforcement in e-commerce?

The legal framework in the scope of consumer rights and consumer protection in the Republic of Latvia and in the EU is generally at a very high standard.

The Republic of Latvia follows and implements national legislation **Directive 2009/22/EC** of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests. The Directive sets common and unified regulation demands for consumer rights, and fixes internal regulations in compliance with EU legislative acts. Latvian national regulation in respect of consumer rights protection is sorted and unified in accordance with demands on EU legislation.

Maryna Fomenko

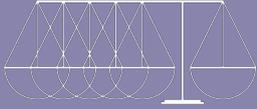
ETERNA LAW

6 Rylskiy prov., Sophia Business Centre

01601 Kiev

Ukraine

fomenko@eterna.law | Tel: +380 44 490 7001



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10.

Netherlands

Berber Brouwer

Bergh Stoop & Sanders

What are the laws covering e-commerce?

- BW: *Burgerlijk Wetboek, Boek 3, 6 and 7 (Civil Code, Book 3, 6 and 7)*, regarding formation requirements, information requirements, consumer purchase agreements, unfair commercial practices, electronic signatures, terms and conditions
- Wbp: *Wet bescherming persoonsgegevens (Privacy Act)*, regarding the collection and processing of personal data
- **GDPR: General Data Protection Regulation**, from May 2018
- Tw: *Telecommunicatiewet (Telecommunication Act)*, regarding cookies and spam
- Whc: *Wet handhaving consumentenbescherming (Consumer Protection Enforcement Act)*, regarding enforcement by the *Autoriteit Consument en Markt (ACM)*

What information does an online seller have to provide before concluding a contract online?

Before the sale is concluded, the online seller must provide the consumer with the following information in a clear and comprehensible manner:

- key characteristics of the goods or services
- identity of the online seller
- total price of the purchases, including taxes and other costs
- delivery costs and, if applicable, return costs
- any geographical restrictions regarding delivery within the Netherlands
- general terms and conditions (if applicable)
- right of withdrawal for consumers
- term of the agreement and the conditions for terminating the agreement (where applicable)
- payment methods

It is noted that under Dutch law, it cannot be agreed in general terms and conditions that a consumer should pay more than 50 per cent of the purchase price before delivery of the goods. Alternatives are either to state explicitly that the entire purchase price must be paid upfront or to provide for a payment option through which the payment is made following receipt of goods; it is sufficient to charge a credit card upon delivery

Which rules apply when contracts are concluded in Web shops?

1. Before entering into the agreement, the customer needs to be informed on: the steps leading to the conclusion of the contract, how to review the order and alter mistakes, the languages in which the contract can be concluded, if a code of conduct applies to seller.

2. The button used to place the order must clearly indicate that by clicking that button, the consumer is entering into an agreement with payment obligations.
3. In order for the general terms and conditions to be applicable and not able to be nullified, they should declare that they apply to the purchase agreement before concluding the purchase (explicit agreement is not required). They should also be made easily accessible, for example through a hyperlink, and available for saving on a durable medium.
4. The order must be confirmed via email.
5. The agreement must be provided on a durable medium (for example, PDF).
6. For most contracts (for example, purchase of non-registered goods) it is not a requirement for there to be a written and signed agreement. For agreements that require a deed (a signed agreement), an electronic signature is needed.
7. The consumer must be provided with a withdrawal template to exercise their right of withdrawal/cancellation.

What is important to know with regard to after sales issues?

Right of withdrawal/cancellation:

1. The consumer has the right to withdraw from the agreement within 14 days after the day of delivery where it concerns goods and 14 days after the day of the conclusion of the contract where it concerns services or digital content not supplied on a tangible medium.
2. The statutory right of withdrawal does not exist for specific types of goods, including: goods that deteriorate or expire quickly, personalised goods, sealed goods for hygiene or health protection purposes, goods that are inseparably mixed with other goods upon delivery, sealed audio and video recordings and software, delivery of magazines and newspapers (excluding subscriptions thereof).

3. The statutory right of withdrawal does not exist for digital content if: i) it is supplied during the cancellation period with the explicit prior approval of the consumer (not merely in the terms and conditions), and ii) the consumer has waived their right of withdrawal.
4. When the consumer invokes their right of withdrawal, the seller must reimburse the full costs, including the standard delivery costs. In case the return costs are not borne by the seller and the consumer has not been informed beforehand regarding the estimated return costs, these costs must be reimbursed as well. Reimbursement must be made within 14 days upon receipt of goods by the seller, using the same payment method.

Warranty rights

1. The delivered goods must conform to the agreement and the reasonable expectations of the consumer. They must also be fit for expected reasonable use. When there is a non-conformity/defect, the consumer must complain within 2 months after discovery thereof (or where it concerns services, the complaint must be timely upon discovery).
2. The statutory warranty period for consumers is not fixed.

In the order process, the following must be included (see also "What questions does an online seller have to provide before concluding a contract online?"):

1. At the beginning of the process, the payment methods and delivery restrictions must be set out.
2. Before concluding the contract, the general terms and conditions must be declared applicable and be provided (through a direct link).

The privacy policy must include:

- information regarding the identity of the data controller
- the manner, scope and purpose(s) of the collection and use of personal data

- types of data collected
- whether or not data is processed outside of the EU
- information regarding access to and correction of the processed personal data
- information regarding cookies (may also be set out in a separate cookie statement)

Which rules apply with regard to the online seller's website design?

The website must contain the following information in a clear and noticeable position:

- company's registered trade name and Chamber of Commerce number
- geographical address, fax number, email
- VAT number
- general terms and conditions
- privacy policy

Advertising codes

- Several advertising codes exist. Most of them are drawn up by a self-regulating body called the Foundation Advertising Code (Stichting Reclame Code). These codes are considered best practices.
- The standard rule is that all advertising must be "in line with the law, the truth, good taste and decency".
- Consumers can file a complaint at the Advertising Code Committee (Reclame Code Commissie). Rulings from the RCC are not legally binding. If a complaint is found to be grounded and the advertiser does not alter its advertising, they will be included in a non-compliant register and the relevant authority (ACM) will be informed thereof.
- There are also stricter sector-specific codes; for example, regarding alcohol and tobacco.

Direct marketing by electronic means

- For most direct marketing or regular newsletters, consent of the addressee is required. However, for promotion on a non-regular basis (for example, a few times per year), consent is not required if the email relates to similar goods or services as previously purchased from the sender.
- In every newsletter or other direct marketing communications, information must be provided regarding the opportunity to opt out.

Cookies

- The user of a website must be informed of the use of tracking cookies or other cookies used for targeted advertising. When entering the website, the user must be informed, generally through a pop-up, that certain cookies (not being necessary or merely analytical cookies) are used on the website. A link to the privacy policy or a separate cookie statement must be provided in which further information is given regarding the cookies.

What are the legal risks of online advertising?

Risk of fines in case of unfair commercial practices

- Advertising may not be misleading or unfair.
- Consumers and, in some cases, competitors can file a lawsuit at the civil courts.

Are there any national particularities on ADR/ODR?

Sellers are not obliged by law to agree with ADR or ODR proceedings. Further, a consumer cannot be bound to participate in ADR – in other words, arbitration; they will always have the option to go before the civil courts.

Do the aforementioned rules also apply to e-commerce in B2B?

Most of the rules are specific for consumers and do not apply to B2B.

Requirements regarding the design of the website (information of the identity of the company), as well as information regarding key characteristics of the products (deriving from the **E-commerce Directive**) also apply to B2B.

What do online traders need to know about law enforcement in e-commerce?

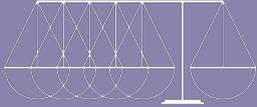
The **ACM** is the authority that enforces compliance with consumer laws and telecommunication laws (including laws regarding e-commerce, cookies and direct marketing). The ACM can impose an order subject to a penalty or a penalty in the amount of a maximum of €900,000.00 or 1 per cent of the yearly turnover.

The **Authority Personal Data (AP)** is the authority that enforces compliance with privacy law (the *Wbp*). The AP can impose an order subject to a penalty or a penalty in the amount of a maximum of €900,000.00 or 10 per cent of annual turnover.

Berber Brouwer

BERGH STOOP & SANDERS
Herengracht 481
1017 BT Amsterdam
Netherlands

brouwer@berghstoop.com | Tel: +31 20 6202288



LIBRALEX

11.

Poland

Anna Masiota

Masiota Adwokaci I Radcowie Prawni

What are the laws covering e-commerce?

- **Polish Civil Code** (23 April 1964)
- **Consumer Rights Law** (30 May 2014)
- **Provision of Services by Electronic Means Law** (18 July 2002)
- **Personal Data Protection Law** (29 August 1997)
- **Competition and Consumer Protection Law** (16 February 2007)
- **General Product Safety Law** (12 December 2003)
- **Copyright and Related Rights Law** (4 February 1994)
- **Telecommunication Law** (16 July 2014)
- **Combating Unfair Competition Law** (16 April 1993)

What information does an online seller have to provide before concluding a contract online?

According to **Article 12 of the Consumer Rights Law**, an online seller entering into a contract with the consumer outside their premises or at a distance is obliged – at the latest when the consumer expresses the will to sign the contract – to inform the consumer in a clear and comprehensible manner of the following:

- main features of the service, including its subject matter and the way in which it communicates with the consumer (for example, by telephone, email, etc.)
- its identification data, in particular the business name and the number under which it was registered (National Court Register or NIP)
- business address (relevant in the event of litigation), email address and telephone or fax numbers (if available), so that the consumer can contact the trader quickly and effectively
- address at which the consumer can make a complaint, if it is different from the address of the trader's business
- total price or remuneration for the benefit plus tax – if the nature of the benefit does not allow for the earlier calculation of their amount, the manner in which they will be calculated, as well as the existence of additional charges (for example, delivery costs) and their amount or obligation pay (if the amount is known)
- costs of using a means of remote communication (for example, telephone) to conclude an agreement if they are higher than usual for such means of communication – for example, if a contract is concluded by telephone on the consumer's initiative
- method and date of payment
- method and time of fulfilment of the service and the complaint procedure used by the trader
- method and date of exercising the right of withdrawal, as well as the necessary form of withdrawal
- costs of return of goods in the event of withdrawal from the contract, which is borne by the consumer
- obligation for the consumer to pay reasonable costs incurred by the trader if the buyer withdraws from the contract after the service has been declared and before the expiry of the withdrawal period
- cases where the consumer loses the right to withdraw from the contract
- duty of the trader to deliver products without defects
- existence and content of guarantees and aftersales services, and the method in which they are implemented
- code of good practice, if committed to observe it, and how to get acquainted with it
- duration of the contract or the method and grounds for its termination – if the contract is concluded for an indefinite period or if it is to be renewed automatically
- minimum duration of the consumer's contractual obligations
- possibility of using out-of-court complaints and redress procedures, and details of access to these procedures

Which rules apply when contracts are concluded in Web shops?

In general, in the case of concluding a contract in Web shops, all general civil legal rules apply, such as the enforcement of wills, defects of will statements or sales contracts. In addition, special provisions concerning distance contracts and consumer protection apply (**Consumer Rights Law**). These specific regulations establish additional responsibilities for the seller and additional consumer rights; for example, the obligation of providing information, the consumer's right to withdrawal, etc.

Article 18 of the Consumer Rights Law states that e-commerce websites clearly indicate, at the very beginning of the order, clear and readable information about the restrictions on delivery and accepted payment methods.

What is important to know with regard to after sales issues?

Right to withdraw

According to **Article 27 of the Consumer Rights Law**, the consumer has a right to withdraw from the purchase contract within 14 days after the delivery, without having to state any reasons and with no additional costs.

Several exceptions to the above-mentioned right are introduced by **Article 38 of the Consumer Rights Law**. The consumer is not allowed to withdraw:

- if the service is fully delivered with the customer's consent
- if the price or remuneration depends on fluctuations in the financial market
- if the item was made for an individual and specific order
- after delivering digital content, or
- if the item goes rotten quickly

Which rules apply with regard to the online seller's website design?

According to **Article 8 of the Provision of Services by Electronic Means Law**, every online seller must have their own regulations and make it available to customers free of charge before entering into a contract. The customer, if requested, should be able to acquire, reproduce and preserve its contents. Importantly, provisions of the regulations that have not been made available in this way are not binding on customers.

The aforementioned regulations should contain information that the seller is obliged to the consumer before entering into the contract (see "What information does an online seller have to provide before concluding a contract online?").

According to **Article 173 of the Telecommunication Law**, the online seller is required to inform consumers about the use of cookies, how they will be installed on the consumer's device and how to use them. In addition, the consumer should be informed how to delete the cookies. They should also have to give consent for their installation and use before installation.

Additionally, based on **Article 19 of the Provision of Services by Electronic Means Law**, the online seller may not process the buyer's personal data after the end of the use of the electronic mail service, unless the client agrees. Therefore, the seller can only use personal data if their privacy policy includes manner, scope and purpose of the gathering and use of personal data.

What are the legal risks of online advertising?

Advertising as an act of unfair competition

According to **Article 16 of the Combating Unfair Competition Act**, the act of unfair competition in the field of advertising particularly concerns:

- advertising against the law, good morals or disobeying human dignity
- advertising that deceives the customer and thereby influences his decisions as to the purchase of goods or services
- advertising which abuses the emotions of customers by creating anxiety, using superstitions or the credulity of children
- a statement which encourages the acquisition of goods or services, whilst giving the impression of neutral information
- advertising which is a significant interference in the privacy sphere, in particular troublesome customer solicitation in public places, goods or advertising material sent to customers at unpaid cost or overuse of technical means of communication.

E-mail advertising

Article 172 of the Communication Law states that the use of telecommunications terminal equipment and automatic calling systems for direct marketing purposes is prohibited, unless the subscriber or end-user has previously given his consent.

In addition, pursuant to **article 10 of the Provision of Services by Electronic Means Law**, it is forbidden to send unsolicited commercial information to a specified recipient, who is a natural person, by electronic means including e-mail. The commercial information is considered to be solicited if the recipient clearly expressed his consent to receive such information, in particular if the recipient for this purpose provided his e-mail address. It is, however, a matter of dispute whether this regulation applies to entrepreneurs who are natural persons and who place their e-mail address on the Internet.

So, in order to be able to distribute advertising e-mails, you must first obtain the consent of the people to whom your advert will be directed. In order to facilitate potential customers, it is possible to obtain a personal database, but it should be kept in mind that the collection and sharing of databases must take place in accordance with the provisions of the Personal Data Protection Act.

Are there any national particularities on ADR/ODR?

The parties to the dispute are required to have recourse to the ADR, but there is now no obligation. If there is no agreement between the parties as to ADR, the dispute may be settled on a general basis.

Do the aforementioned rules also apply to e-commerce in B2B?

Generally, regulations regarding sale-on-distance, including e-commerce, apply only to the contracts concluded by consumers. The goal of these regulations is to provide the consumers with specific protection from threats they are exposed to. Traders, as professionals, do not benefit from consumer facilitation, but can pursue their claims and seek legal protection based on general rules (such as the **Civil Code**).

What do online traders need to know about law enforcement in e-commerce?

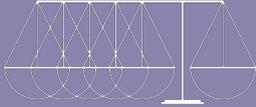
The consequences of infringements of e-commerce rights can be divided into two groups:

1. The first concerns the consequences of private law providing for additional rights for consumers whose rights have been violated, such as extending the withdrawal deadline for consumers who, without a reason, have not received any withdrawal information.
2. The second concerns administrative and criminal penalties, such as fines. In the case of competition or collective consumer rights having been violated, the President of the **Competition and Consumer Protection Office** may fine the trader up to 10 per cent of the trader's annual revenue.

Anna Masiota

MASIOTA – ADWOKACI I RADCOWIE PRAWNI
ul. Matejki 32/33/2
60-678 Poznań
Poland

a.masiota@masiota.com | Tel: +48 61 852 36 23



LIBRALEX

12.

Portugal

Pedro Ghidoni de Pina

GDP Advogados Associados

What are the laws covering e-commerce?

- **Decree-Law no. 7/2004, of 7 January 2004**, which regulates electronic commerce in the internal market and personal data
- **Decree-Law no. 24/2014, of 14 February 2014**, which regulates distance and off-premises contracts
- **Law no. 24/96, of 31 July 1996**, which regulates consumer protection
- **Law no. 67/98, of 26 October 1998**, which regulates personal data protection
- **Law no. 41/2004, of 18 August 2004**, which regulates the protection of personal data and privacy in the telecommunications network
- **Decree-Law no. 57/2008, of 26 March 2008**, concerning unfair business-to-consumer commercial practices
- **Decree-Law no. 290-D/99, of 2 August 1999**, which regulates the electronic signature
- **Decree-Law no. 330/90, of 23 October 1990**, "Advertising Code"
- Article no. 35, of the Constitution of the Portuguese Republic, about the use of information technology
- **Decree-Law no. 133/2009, of 2 June 2009**, concerning agreements covering credit for consumers

What information does an online seller have to provide before concluding a contract online?

Prior to the order being placed by the recipient of the service, traders must provide clear, comprehensible and unambiguous information, including:

- different technical steps to be followed to conclude the contract
- whether or not the concluded contract will be filed by the service provider and whether or not it will be accessible to the customer
- languages offered for the conclusion of the contract
- technical means for identifying and correcting input errors prior to placing the order
- applicable codes of conduct subscribed to and information on how these codes can be perused
- contract terms and general conditions
- identity of the supplier of goods or services, including trade name or company name, address, principal place of business, telephone number and email
- total price of the goods or services, including all applicable fees, taxes and surcharges
- payment methods
- delivery charges and other costs
- payment and delivery arrangements, and time frame for performance
- existence or non-existence of the right of withdrawal, including the period and procedures for the exercise of such right
- obligation to pay an amount to the trader for services and goods provided prior to withdrawal
- existence of a legal guarantee of conformity for goods
- duration of the contract and, if applicable, conditions for terminating the contract

Which rules apply when contracts are concluded in Web shops?

The law provides that the contracts concluded by electronic means have the same legal effectiveness and validity of those personally signed by the parties.

As soon as a purchaser places an order, the trader has to acknowledge receipt of the order by electronic means. The order and the acknowledgement of receipt are deemed to be received when the parties to whom they are addressed are able to access them.

The trader must ensure that the contract terms and general conditions, in addition to the order and acknowledgement of receipt provided, are made available in a way that allows the consumer to access, store and reproduce them.

The trader should execute the order within a maximum of 30 days from the day following the consumer's placement of the order. If the goods or services ordered are unavailable, the trader must inform the consumer and reimburse the sums paid by the consumer within 30 days. Nevertheless, the trader may provide other goods or services of equivalent quality and price, provided that this possibility was communicated prior to the conclusion of the contract or provided in the contract and that the consumer has explicitly agreed to it.

What is important to know with regard to after sales issues?

Right of Withdrawal

The law provides that the consumer has a right to withdraw, to be exercised within a period of 14 days without giving any reason, by using the model withdrawal form (approved by law) or any other clearly worded statement.

If the trader has not informed the consumer of their right of withdrawal prior to the conclusion of the contract, the withdrawal period is extended to 12 months.

The law sets out that any contractual provisions concerning the waiver or penalty regarding the right of withdrawal are null and void.

In the case of withdrawal, the trader should reimburse all payments received from the consumer, including delivery costs, except if the consumer was previously and duly informed about the return costs after withdrawal.

Obligations of the Consumer in case of Withdrawal

If the trader does not offer to collect the goods themselves, the consumer should send the goods, or hand them over to the seller or to an authorised person, within 14 days from the day on which they communicated their withdrawal to the trader.

The consumer shall be liable for any diminishment in the value of the goods resulting from any handling, other than what is necessary to ascertain the nature and functioning of the goods.

Exceptions from the Right of Withdrawal

The right of withdrawal shall not apply in the following situations:

- supply of goods or services whose price is subject to fluctuations on the financial market, which cannot be controlled by the seller
- supply of goods made to the consumer's specifications or clearly personalised
- supply of goods liable to deteriorate or expire rapidly
- supply of sealed audio or video recordings, or computer software, that was unsealed by the consumer
- supply of sealed goods that cannot be returned for reasons of health and hygiene
- supply of alcoholic beverages whose: (i) price has been agreed upon at the time of conclusion of the sale, (ii) delivery can only take place within 30 days, and (iii) value depends on fluctuations on the market that cannot be controlled by the seller
- supply of newspapers, periodicals and magazines
- contracts concluded at an auction
- contracts for the supply of food, beverages or other goods intended for immediate consumption in the household, selected in advance by the consumer, by remote communication, and physically supplied to the consumer's home, residence or workplace by the seller, who usually sells such goods on their own business premises
- contracts for which the consumer has specifically requested the trader, by remote communication, to visit their home for the purpose of repairing or performing maintenance on their property
- contracts for which the consumer has specifically requested the Trader, by remote communication, to visit his home for the purpose of repairing or performing maintenance on his property.

Which rules apply with regard to the online seller's website design?

The website must provide easily, directly and permanently accessible information about

- the seller, namely the identity of the natural or legal person, with their address and principal place of business, telephone number and email address
- promotional offers, such as discounts, premiums and gifts, with any conditions presented clearly and unambiguously
- the seller's privacy policy and the dispute out-of-court through an Alternative Dispute Resolution procedure and the respective dispute resolution entities

If personal data is collected, the website must communicate:

- that personal data is collected, the purposes of the processing for which the personal data is intended, as well as the legal basis for the processing
- the period for which the personal data will be stored or, if that is not possible, the criteria used to determine that period
- the existence of the right to request access to, rectification of or removal of personal data, or restriction of processing concerning the data subject
- that the consumer's consent is needed as a legal ground for processing personal data and should be given by a clear affirmative act, establishing a freely given, specific, informed and unambiguous indication of the data subject's agreement to the processing of personal data relating to them, such as by a written statement, including by electronic means, or an oral statement

What are the legal risks of online advertising?

Unsolicited Communications for Direct Marketing

Purposes

Unsolicited commercial communications are prohibited, unless previously and expressly consented to by the consumer.

The trader must inform the consumer of a valid address to which the recipient may send a request in order to cease any commercial communication.

Website Tracking

The use of cookies, namely to track and profile the consumer's habits and preferences, must be previously and expressly consented to by the consumer. The traders should also notify the consumers about the type of traffic and location data being processed, in addition to their right to refuse such processing.

Unfair Commercial Practices

In connection with unfair business-to-consumer commercial practices, Portuguese Law establishes a general prohibition of commercial practices (which applies to any act or omission directly related to the promotion, sale or supply of a product by a trader to consumers) that may be contrary to the requirements of professional diligence and are likely to distort the economic behaviour of the consumer materially.

Are there any national particularities on ADR/ODR?

The validity of the settlements obtained in special mediation centres is recognised by the court and enforceable. However, courts cannot compel the parties to mediate before commencing arbitration or litigation, or to participate in an ADR process. Any consent the party gave to participate in a mediation procedure may be revoked at any time and there is no consequence from not agreeing to mediate.

Do the aforementioned rules also apply to e-commerce in B2B?

With the exception of the **Unfair Commercial Practices**, the aforementioned rules are generally not applied in B2B e-commerce. However, the trader must also clearly, comprehensibly and unambiguously provide all relevant commercial and business information, namely terms and conditions of trading, and transfer of property and risk, among others.

What do online traders need to know about law enforcement in e-commerce?

National laws covering e-commerce provide the application of penalties for infringements of the aforementioned rules and the necessary measures to ensure that they are implemented. Supervisory authorities were created or given jurisdiction (ICP-ANACOM, ASAE, CNPD) for monitoring compliance with the rules of electronic commerce and personal data protection. These authorities can proceed with inspections and administrative procedures, and apply the penalties provided for in the applicable legislation.

The infringement of the aforementioned rules may be punishable through the payment of fines between €2,500.00 and €100,000.00. Additional sanctions may also be applied, such as temporary or permanent disqualification from the pursuit of commercial activities and the closure of an existing commercial establishment.

Pedro Ghidoni de Pina

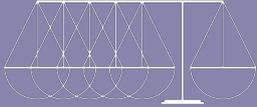
GDP ADVOGADOS ASSOCIADOS

Av. 5 de Outubro, 176, 5º Esq.

1050-063 Lisbon

Portugal

pgp@gdpalegal.com | Tel: +351 21 793 11 43



LIBRALEX

13.

Romania

Andrej Vasilescu

Mocanu Associates

What are the laws covering e-commerce?

- **Emergency Ordinance no. 34/2014** on consumer rights in contracts concluded with professionals, as well as amending and supplementing normative acts
- **Law no. 365/2002** on electronic commerce
- **Ordinance no. 85/2004** on the protection of consumers in the conclusion and execution of distance contracts for financial services
- **Law no. 677/2001** on the protection of individuals with regard to the processing of personal data and the free movement of such data
- **Law no. 506/2004** on the processing of personal data and the protection of privacy in the electronic communications sector
- **Law no. 455/2001** on electronic signature
- **Ordinance no. 21/1992** on consumer protection
- **Law no. 193/2000** on unfair terms in contracts concluded between professionals and consumers
- **Law no. 363/2007** on combating the misconduct of traders in relation to consumers and harmonising regulations with European consumer protection legislation
- **Order no. 72/2010** on measures to inform consumers
- **Ordinance no. 38/2015** on alternative dispute resolution between consumers and traders

What information does an online seller have to provide before concluding a contract online?

Before a distance contract produces binding effects on the consumer, the professional must provide the consumer with the following information in a clear and comprehensible manner:

- main characteristics of the products or services, taking into account the media and the products or services in question
- identity of the professional, such as their trade name
- dates at which the professional can actually be contacted
- total price of the goods and services with all taxes included or, if the price cannot be reasonably calculated in advance owing to the nature of the goods or services, the method of calculating the price
- payment, delivery, execution, the date until which the professional undertakes to deliver the goods or to provide the services and, as the case may be, the professional complaints procedure
- if there is a right of withdrawal, the conditions, terms and procedures for exercising the respective right
- indication as to the existence of a legal guarantee of conformity of the products
- where applicable, the existence and conditions of aftersales assistance, aftersales services and commercial guarantees
- duration of the contract where applicable or, if the contract is of indeterminate duration or is to be extended automatically, the conditions for terminating the contract, including applicable penalties, if any
- where applicable, the minimum period of validity of the consumer's obligations under the contract;
- where applicable, the existence and conditions of advances or other financial guarantees to be paid or offered by the consumer at the request of the professional

- where appropriate, functionality, including the application of technical protection measures for digital content
- where applicable, any relevant interoperability of digital content with hardware and software that the professional is aware of or reasonably expected to be aware of
- where appropriate, whether and how to use an extrajudicial mechanism for submitting complaints

Which rules apply when contracts are concluded in Web shops?

Contracts concluded by electronic means produce all the effects that the law recognises when the conditions required by law for their validity are met.

If the recipient sends by email the offer to contract or their acceptance of the firm offer to contract made by the service provider, the service provider has the obligation to acknowledge the receipt of the offer or, as the case may be, its acceptance in one of the following ways:

- sending proof of receipt by email or other equivalent means of communication to the address indicated by the addressee without delay
- confirming receipt of the offer or acceptance of the offer by a means equivalent to the one used to send the offer or accept the offer as soon as the offer or acceptance has been received by the service provider, provided that such confirmation can be stored and reproduced by the recipient

The offer or acceptance of the offer, as well as confirmation of receipt of the offer or acceptance of the offer, shall be deemed received when the parties to whom they are addressed may access them.

Unless otherwise agreed by the parties with regard to the time of delivery, the professional shall deliver the products by transferring the physical possession or control of the products to the consumer without undue delay and, in any case, no more than 30 days after the conclusion of the contract.

If the professional has not fulfilled their obligation to deliver the products at the time agreed with the consumer or within 30 days, the consumer asks the professional to make the delivery within an additional period, according to the circumstances. If the professional does not deliver the products within that additional time limit, the consumer is entitled, as the case may be, to terminate the contract.

If

- i. the professional refuses to deliver the goods, or
- ii. the delivery within the agreed time is essential in view of all the circumstances existing at the time of the conclusion of the contract, or
- iii. the consumer informs the professional, before the contract is concluded, that punctual delivery is essential,

then if the professional does not deliver the goods at the time agreed with the consumer or within 30 days, the consumer is entitled, as the case may be, to rescind or terminate the contract.

Upon termination of the contract, the professional shall reimburse, without undue delay, all sums paid under the contract by the consumer and within not more than 7 days from the date on which the consumer informed the professional of their decision to terminate the contract.

What is important to know with regard to after sales issues?

Right of withdrawal

The consumer benefits from a 14-day period of withdrawal without having to justify their decision. For this purpose, the consumer can choose one of the following options:

- to use the model withdrawal form provided by law
- to make any other unequivocal statement in which they express their decision to withdraw from the contract

If the professional did not inform the consumer regarding their right to withdraw, the withdrawal period expires 12 months after the end of the 14-day withdrawal period.

Obligations of the professional in case of withdrawal

If the trader does not offer to collect the goods themselves, the consumer should send the goods, or hand them over to the seller or to an authorised person, within 14 days from the day on which they communicate their withdrawal to the trader.

The consumer shall be liable for any diminishment of the value of the goods resulting from any handling other than that which is necessary to ascertain the nature and functioning of the goods.

Obligations of the consumer in case of withdrawal

Unless the professional offers to recover the products themselves, the consumer should return the products or hand them to the professional or a person authorised by the professional to receive the products without undue delay and within 14 days from the date on which they communicated in writing to withdraw from the contract.

The consumer shall be liable for any diminishment of the value of the products resulting from any handling, different from that which is necessary to determine the nature, characteristics and operation of the products. The diminishment of the value of the products should not discourage the consumer to exercise their right of withdrawal.

Exceptions to the right of withdrawal

The following are exempt from the right of withdrawal:

- service contracts, after full service, if execution has begun with the express prior consent of the consumer and after they have confirmed that they have become aware that they will lose the right to withdraw after the full performance of the contract by the consumer
- supply of products or services the price of which is subject to fluctuations on the financial market that the professional cannot control and which can occur during the withdrawal period
- provision of products made to the consumer's specifications or that are clearly personalised
- supply of products that are likely to deteriorate or expire rapidly
- supply of sealed products that cannot be returned for health or hygiene reasons and that have been unsealed by the consumer
- supply of products that, by their nature, become inseparably mixed with other elements after delivery
- supply of alcoholic beverages whose price has been agreed on at the time of conclusion of the sales contract, the delivery of which cannot be made before 30 days and whose actual value depends on fluctuations on the market that is out of the professional's control
- contracts in which the consumer specifically requested the professional to travel to their home for urgent repair or maintenance work. (If, in the course of such a visit, the professional provides services other than those expressly requested by the consumer, or supplies products other than spare parts indispensable for the performance of maintenance or repairs, the right of withdrawal shall apply to those additional services or products.)
- provision of sealed audio or video recordings or sealed computer programs that have been unsealed after delivery
- provision of newspapers, periodicals and magazines, with the exception of subscription contracts for the provision of such publications
- contracts concluded in the framework of an auction
- provision of accommodation services for non-residential purposes, carriage of goods, car rental, catering or recreational activities, where the contract provides for a specific date or period of performance
- supply of digital content that is not supplied on a physical medium if the supply has begun with the express prior consent of the consumer and after they have confirmed that they have become aware that they will lose their right of withdrawal.

Which rules apply with regard to the online seller's website design?

The service provider must provide the following information in a clear, visible and permanent form on the web page through which the service is provided:

- name or business name of the service provider
- domicile or headquarters of the service provider
- telephone, fax, email address and any other data necessary to contact the service provider directly and effectively
- registration number or other similar means of identification, if the service provider is entered in the trade register or in another similar public register
- fiscal registration code
- identification data of the competent authority, where the activity of the service provider is subject to an authorisation regime
 - i. professional title and the state in which it was awarded,
 - ii. the professional body or any other similar body to which it belongs,
 - iii. an indication of the regulations applicable to the profession in question in the state where the service provider is established,
 - iv. an indication of the means of access thereto where the service provider carries out regulated professional activity

- tariffs for the services offered, which must be indicated in compliance with the rules on marketing of market products and services, specifying the exemption, inclusion or non-inclusion of VAT, as well as the amount thereof
- inclusion or non-inclusion of delivery costs in the total price, as well as their value, if applicable

Any processing of personal data may be carried out only if the data subject expressly and unambiguously consented to that processing. If personal data is collected, the website must indicate:

- identity of the operator and their representative, if any
- purpose of data processing
- additional information, such as: recipients or categories of data recipients
- if the provision of all required data is mandatory and the consequences of the refusal to provide them
- existence of the rights provided for by this law for the data subject, in particular the right of access, data interference and opposition, as well as the conditions under which they may be exercised
- any other information, the provision of which is required by the supervisory authority's order, taking into account the specific nature of the processing

What are the legal risks of online advertising?

Unsolicited communications for direct marketing purposes

Making commercial communications via email is prohibited, unless the recipient has expressly consented to receive such communications in advance.

It is forbidden to make electronic mail of commercial communications in which the real identity of the person in

whose name and on whose behalf it is made is hidden or that does not specify a valid address to which the addressee may submit their request for the termination of such communications.

Website tracking

Use of cookies is permitted under the condition that users are informed in a clear, complete and easily accessible manner about:

- placement of cookies in the user's computer memory by a certain website
- purpose of using cookies (information stored in cookies and the purpose for which that information is used)
- how the user can delete cookies or refuse third-party access to information stored by those cookies
- how to obtain user consent for the placement of cookies and for using the information contained therein

Although user consent can also be expressed using browser settings, it is also necessary in this case to have prior user information about the placement of cookies and their purpose.

Unfair commercial practices

Romanian Law ensures a high level of consumer protection by regulating commercial practices that can harm consumers' economic interests.

Commercial practices means any act, omission, conduct, solicitation or commercial presentation, including advertising and marketing, carried out by a trader in close connection with the promotion, sale or supply of a product to consumers.

Are there any national particularities on ADR/ODR?

In the event of a conflict between the trader and the consumer, the parties have the opportunity to resort to the mediation procedure, without being bound to this procedure prior to the arbitration or other out-of-court settlement procedure.

The mediator cannot impose on the parties a solution to the conflict subject to mediation and at any stage of the mediation procedure; any party to the dispute has the right to terminate the mediation contract.

The parties may appear before the court to ask, in accordance with legal procedures, to give a decision to consent to their understanding, if such an agreement has been reached.

Do the aforementioned rules also apply to e-commerce in B2B?

Romanian law does not explicitly regulate B2B e-commerce, but the provisions of the law on professionals are applicable.

However, the trader must provide the relevant information in a clear, unambiguous and accessible language, with the requirements of fair competition.

What do online traders need to know about law enforcement in e-commerce?

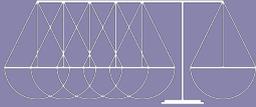
The Regulatory Authority in Information Technology is competent to supervise and control the compliance of traders with the applicable legal norms. They may also request any information necessary for the exercise of its duties, in addition to carrying out investigations and other necessary operations. They may find contraventions and apply sanctions in the event of non-compliance with the law.

If the deviance of traders does not constitute a criminal offence, it can be qualified as a contravention and is sanctioned with a fine from 1.000,00 lei to 50.000,00 lei (from about €220,00 to about €11.000,00)

Andrej Vasilescu

MOCANU SI ASSOCIATII SPRL
70 Jean Louis Calderon Street, District 2
020039 Bucharest
Romania

andrei.vasilescu@mocanusprl.ro | Tel: +40 21 319 44 66



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14.

Russia

Maryna Fomenko

Eterna Law

What are the laws covering e-commerce?

- **The Civil Code of the Russian Federation** (Part I), dated 30 November 1994 (**hereinafter – Civil Code**)
- **The Federal Law of the Russian Federation “On Electronic Signature” No. 63-FZ**, dated 6 April 2011 (**hereinafter – Law on E-sign**)
- **The Law of the Russian Federation “On Consumer Rights Protection” No. 2300-1**, dated 7 February 1992 (**hereinafter – Law on Consumers**)
- **Federal Law of the Russian Federation “On Personal Data” No. 152-FZ**, dated 27 July 2006 (**hereinafter – Law on Personal Data**).
- **Federal Law of the Russian Federation “On Information, Information Technologies and Data Protection” No. 149-FZ**, dated 27 July 2006
- **Ruling of the Government of the Russian Federation “On Approval of Rules of Distant Sales of Goods” No. 612**, dated 27 September 2007 (**hereinafter – Rules of Distant Sales**)

What information does an online seller have to provide before concluding a contract online?

The practice of Russian courts confirms the legal force of contracts, which are concluded by the user clicking on an "I agree" or a "Buy" button on the screen (click-wrap agreements).

In accordance with the **Law on Consumers** and the **Rules of Distant Sales**, before the contract is concluded, the seller shall provide the following information to the buyer:

- seller's full company name
- general characteristics of the goods
- address of the seller
- place of manufacture of the goods
- price and terms of purchase
- terms of delivery
- period of service life
- period of warranty
- payment procedure
- Goods delivery;
- Period of service life;
- Period of warranty;
- Payment procedure;
- The terms

Which rules apply when contracts are concluded in Web shops?

The general provisions of the **Civil Code** are applicable for online contracts.

In accordance with the **Rules of Distant Sales**, if the proposal of goods is addressed to an indefinite group of people and it contains all of the essential terms of the contract, the aforementioned proposal shall be regarded as a public offer.

The seller who proposed the public offer shall conclude the contract with any person who accepts the public offer. Moreover, the delivery-service option shall be provided by the seller. In case the seller avoids the conclusion of a public contract without viable grounds to do so, the seller can be forced to conclude such a contract.

What is important to know with regard to after sales issues?

The buyer has a right to return the goods

- any time before the goods are delivered
- within 7 days after the goods are delivered

If the seller violates their obligation to inform the buyer about the terms of the contract and the goods, the purchase can be returned within 3 months from the moment the goods are delivered.

If the buyer returns the goods, the entire amount paid (excluding delivery costs) shall be refunded by the seller within 10 days.

Which rules apply with regard to the online seller's website design?

In accordance with the Federal Law No. 149-FZ, the owner of the website shall provide the following information:

- full company name/full name of individual trader
- location of the legal entity/address of individual trader
- email address

Additionally, information about the proposed goods shall be provided (see "What information does an online seller have to provide before concluding a contract online?").

Personal data protection requirements

In accordance with the **Law on Personal Data**, the seller, being an operator of personal data, shall:

- develop a personal data protection policy and provide unrestricted access to said policy
- inform website users regarding personal data protection measures, legal grounds, aims, composition, content and source of personal data, as well as the terms of storage regarding personal data
- protect personal data from disclosure

Law on Consumer Protection

Taking into account the fact that marketing text messages or emails may only be sent to individuals based on receipt of their respective permission, the trader should add an "unsubscribe" link to their message or foresee some similar method to withdraw the consumer's permission.

Unfair Competition and Antitrust Law

- the sellers are prohibited from using such names, trademarks, advertising materials or other designations that, in a same or similar form, have been or are being used by another entity for its business without the permission of this entity, as this may lead to confusion
- comparative advertising is prohibited, except if the information provided about goods or services is confirmed by factual data and, moreover, is reliable, objective and useful for informing consumers
- distribution of misleading information is prohibited
- the disclosure of commercial secrets is prohibited
- any other actions resulting in unfair competition are prohibited

What are the legal risks of online advertising?

Law on Advertising

Online advertising is subject to the same requirements as any other advertising. The advertising shall be trustworthy, reliable and based on good faith.

The advertising of tobacco products and products under certification or licensing requirements (if the seller does not have corresponding certificates or licenses) is prohibited.

The online advertising shall include information about:

- full company name/full name of individual trader
- location of the legal entity/address of individual trader
- company registration number

Are there any national particularities on ADR/ODR?

Disputes arising in the field of e-commerce are usually solved by the courts of the Russian Federation. The main issue is in providing trustworthy evidence to prove that a contract has been concluded and that certain content appeared on a website in the first place.

The notary procedure of assurance of a web page's content is highly recommended for court proceedings.

In accordance with Russian legislation, the arbitration clause in e-commerce contracts is to be concluded exclusively after the dispute has arisen.

Do the aforementioned rules also apply to e-commerce in B2B?

Individuals acting as consumers are formally provided with high protection under the legislation of the Russian Federation in order to protect their rights. Regarding the relationship between legal entities, the general rules established by the Civil Code and the arrangement between the parties are applied.

What do online traders need to know about law enforcement in e-commerce?

The current court practice significantly leans to protection of consumers' rights (consumers generally being regarded as the weak, unprotected parties to such contracts).

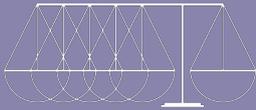
The courts recover great amounts of fines and compensation in favour of the consumer. Consequently, the pre-trial procedure is preferable.

Finally, online sellers shall carefully examine taxation legislation and choose the proper taxation system.

Maryna Fomenko

ETERNA LAW
MIBC "Moscow-City", Imperia Tower Presnenskaya
embankment 6, build 2
123317 Moscow
Russian Federation

fomenko@eterna.law | Tel: +7 (495) 987 1210



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15.

Spain

Andrea PolICASTRO | Arino y Villar

What are the laws covering e-commerce?

- *Ley 34/2002, de servicios de la sociedad de la información y del comercio electrónico (Law for the Information Society and Electronic Commerce Services).*
 - i. is the regulatory norm for electronic commerce and other Internet services when they are part of an economic activity.
 - ii. establishes certain information obligations for those companies that carry out electronic commerce
 - iii. regulates advertising activity by electronic means.

These information obligations are extended to companies that enter into contracts electronically in order to reduce the legal uncertainty of the operation.

In addition, there are other rules that regulate the commercial activity in Internet. They are the following:

- *Ley 7/1996, de 15 de enero, de Ordenación del Comercio Minorista (Law 7/1996 of 15 January 1996 Regulating the Retail Trade).*
- *Ley 7/1998, de 13 de abril, de Condiciones Generales de la Contratación (Law 7/1998 of 13 April 1998 on General Contracting Terms Act).*
- *Real Decreto Legislativo 1/2007, de 16 de noviembre, por el que se aprueba el texto refundido de la Ley General para la Defensa de los Consumidores y Usuarios y otras leyes complementarias (Law 1/2007 on 16 November on General Law on Consumer Protection)*
- *Ley 59/2003, de 19 de diciembre, de firma electrónica (Law 59/2003 of 19 December on Electronic Signatures)*
- *Ley 34/1988 de 11 de noviembre, General de Publicidad (Law 34/1988 on 11 November on General Law on Advertising)*
- *Real Decreto Legislativo 1/1996, de 12 de abril, por el que se aprueba el texto refundido de la Ley de Propiedad Intelectual, regularizando, aclarando y armonizando las disposiciones legales vigentes sobre la materia (Law 1/1996 of 12 April on Intellectual Property Law)*
- *Ley Orgánica 15/1999, de 13 de diciembre, de Protección de Datos de Carácter Personal (Law 15/1999 of 13 December on Personal Data Protection Law)*
- *Ley 56/2007, de 28 de diciembre, de Medidas de Impulso de la Sociedad de la Información (Law 56/2007 of 28 December on Law to Promote the Information Society)*
- *Ley 22/2007, de 11 de julio, sobre comercialización a distancia de servicios financieros destinados a los consumidores (Law 22/2007 of 11 July on Distance Marketing of Financial Services Law)*

What information does an online seller have to provide before concluding a contract online?

The seller must prove that they have informed the consumer correctly of the following aspects before execution of the order:

- main characteristics of the goods or services that are marketed (may be made by a general description in the general conditions)
- full and accurate identity of the seller
- address of the seller's establishment with all contact details
- total price, including taxes, fees and transportation costs
- terms of payment and delivery
- if the service is provided by telephone, it is necessary to report the costs thus incurred
- conditions, term and procedure to request the return of the goods (the withdrawal form necessary to exercise the right of withdrawal must be made available)
- a reminder of the existence of the legal guarantee and its content in case goods need to be repaired or replaced because they are defective or do not comply with the specifications of the contract.
- costs borne by the consumer, if any
- existence of technical assistance and aftersales services, where appropriate
- duration of online contract and the conditions under which it can be finalised.

The consumer must expressly accept these conditions before concluding a contract.

Which rules apply when contracts are concluded in Web shops?

The prospective buyer must be informed of the following:

- the different steps to follow to formalise the contract
- if the electronic document formalising the contract will be filed
- technical means to correct errors in data entry
- languages in which the contract can be formalised

The applicable law and jurisdiction are those of the place of residence of the buyer.

The seller must confirm to the buyer the conclusion of the contract, either via email sent not later than 24 hours after conclusion of the purchase or by using the confirmation screen that appears when the purchase process is complete.

Once the purchase is accepted, the seller must deliver the purchased product within 30 days.

Along with the purchased product, the consumer will receive all information about the name and address of the seller's establishment, its registered office, payment conditions and the withdrawal document, as well as the invoice, receipt or document in which the rights of the buyer and guarantees of the purchased item can be viewed.

What is important to know with regard to after sales issues?

Right of withdrawal

Any consumer who signs an online sales contract with a company is entitled to a right of withdrawal set by law. If the consumer has been correctly informed as regards their right of withdrawal, they may use this right for 14 days after the receipt of goods. Otherwise, the right of withdrawal will be valid for 2 months.

The consumer is obliged to return the goods within a period of 14 days, counted from the date of declaration of the withdrawal. The refund must be made within 14 days from the date of the declaration of withdrawal. In case of non-compliance, the consumer will have the right to demand double the amount of the refund. The seller may decide that the consumer will bear the costs of withdrawal, of which the consumer must be informed in advance.

Which rules apply with regard to the online seller's website design?

The legal notice and privacy policy must be placed at the bottom of the main page or on a separate page.

Said notice must contain the following **information**:

- company name and contact details
- if the company is registered in the commercial register, it should indicate the registration number
- VAT number
- if the activity requires prior administrative authorisation, the information relating to it and the identification of the supervisory body must be mentioned
- where appropriate, an indication of whether or not the seller is subject to an extrajudicial dispute resolution procedure

Privacy policy

The law requires reporting on the treatment of personal data and the purposes for which the company requires such data. The personal data collected on websites should be dealt with in accordance with the provisions of **LOPD 15/1999**. Users may exercise the rights of opposition, access, information, rectification, cancellation and revocation of authorisation to the use of personal data. In addition, the law also requires that consent is requested for transfer of data between companies.

Cookies

When the website uses cookies, it is necessary to obtain the consent of the user. It is not necessary to obtain consent when the cookies are necessary for navigation or for the provision of the service requested by the user, although the user must be informed of this fact.

General conditions of sale

There should be clear and detailed information, including:

- whether or not prices include corresponding taxes and shipping costs; if this is not the case, details should be provided on how much these are
- description of the purchase process
- obligations for both seller and buyer
- conditions of purchase, terms, form of delivery, payment methods, etc.
- solutions in case the order is defective
- language in which the contract is to be concluded

What are the legal risks of online advertising?

The risks of advertising are essentially the same whether you advertise online or through conventional media.

Are there any national particularities on ADR/ODR?

Not as such, but sellers affiliated with quality labels (Confianza Online, Quality AGACE and Optima Web), which have the "public trust online seal" (regulated by **Royal Decree 1163/2005, dated 30 September 2005**), have the obligation to accept an internal system of conflict resolution directed by the managing entity of each label. It is a free and impartial system, and is to be relied on prior to any other resolution process.

Do the aforementioned rules also apply to e-commerce in B2B?

Neither consumer protection rules nor the personal data protection law apply to B2B commerce.

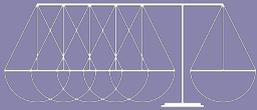
What do online traders need to know about law enforcement in e-commerce?

Data protection breaches are becoming a major concern for online sellers.

Andrea Policastro

ARIÑO Y VILLAR ABOGADOS
Calle Serrano núm. 6 Piso 5
CP. 28001 Madrid
Spain

apolicastro@arinoyvillar.com | Tel: +34 915779289



LIBRALEX

16.

Sweden

Arne Källén

Källén & Ingvar

What are the laws covering e-commerce?

- **The Distance and Off-Premises Contracts Act**, *Distansavtalslagen* (2005:59)
- **Law on Contracts**, *Avtalslagen* (1915:218)
- **Consumer Sales Act**, *Konsumentköplagen* (1990:932)
- **Consumer Services Act**, *Konsumenttjänstlagen* (1985:716)
- **Consumer Credit Act**, *Konsumentkreditlagen* (2010:1846)
- **Law on Price Information to Consumers**, *Prisinformationslagen* (2004:347)
- **Product Safety Act**, *Produktsäkerhetslagen* (2004:451)
- **Marketing Practices Act**, *Marknadsföringslagen* (2008:486)
- **Data Protection Act**, *Personuppgiftslagen* (1998:204) (to be replaced by GDPR)

Further, there are specific regulations regarding certain products and services; for example, alcohol, cigarettes, medical drugs, the lottery, financial services, certain services provided at a distance, package (all-inclusive) tours, time-sharing and public transportation.

What information does an online seller have to provide before concluding a contract online?

- name, registration number, telephone number, fax number, address, email
- the main characteristics of the goods or service(s)
- price, including taxes and charges
- cost for delivery or postage and other additional costs
- costs for use of a means of distance communication
- payment terms and accepted methods of payment
- deposit or other financial guarantees requested by the seller
- consumer's statutory right to complain pursuant to law, how complaints can be made and the address of the place of business to which the consumer can turn in order to lodge complaints
- consumer's right of withdrawal from the contract, time limits and forms to be used when withdrawing from the contract
- obligation of the consumer when exercising the right of withdrawal to return goods at their own expense and the cost of returning goods
- fees to be paid at withdrawal
- warranties or similar undertakings, as well as the assistance and service that applies after the sale
- codes of conduct that apply to the seller
- terms of the contract
- shortest term of validity for the consumer's obligations under the contract
- terms and conditions for terminating the contract where it is for an indefinite term or where it is automatically renewed
- functionality of digital content, including technical security measures, as well as the hardware and software that may be necessary in order to use the digital content, and
- potential for a dispute with the trader to be determined out of court

Which rules apply when contracts are concluded in Web shops?

See "What are the laws governing e-commerce?".

What is important to know with regard to after sales issues?

A consumer has certain minimum rights under the **Consumer Sales Act** in case goods are defective. Remedies available for the consumer are to demand rectification, the delivery of replacement goods, a reduction in price or compensation in order to rectify the defect. If the defect is material, the consumer may terminate the contract.

If the consumer has paid for the goods by credit card, they may stop their payment or claim a refund from the credit card issuer in order to be compensated for the defective goods.

Which rules apply with regard to the online seller's website design?

Under the **Companies Act**, the corporate name, the seat of the board of directors and the corporate registration number must be set out in the company's letterheaded papers, orders and web pages. Further, in connection with a sale, the aforementioned information ("What information does an online seller have to provide before concluding a contract online?") must be given and no information may be misleading.

What are the legal risks of online advertising?

A trader whose marketing practice is unfair may be restrained from continuing the practice or from adopting any other similar practice (**Marketing Practices Act**). Such injunction is normally combined with a fine in the range of kr 10,000 – kr 10 million. Any intentional or negligent breach of an injunction may lead to an obligation to pay damages to consumers or other traders.

In addition, the sanction system of the **Personal Data Protection Act/GDPR** may apply.

Are there any national particularities on ADR/ODR?

The **National Board for Consumer Disputes (ARN)** is a public authority that functions roughly like a court. The ARN's main task is to try disputes impartially between consumers and business operators. Claims are filed by the consumer. Before the complaint is filed with the ARN, the business operator must have rejected the complaint in part or in whole (or not answered at all).

The ARN submits recommendations on how disputes should be resolved; for example, by suggesting that the business operator repair the product. The ARN's recommendations are not binding, but the majority of companies follow them.

It usually takes about 6 months from filing a lawsuit to reaching a decision. Inquiries directed at the ARN are free of charge.

Do the aforementioned rules also apply to e-commerce in B2B?

The ARN dispute handling is not available in B2B disputes.

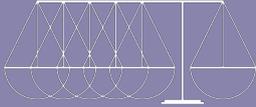
What do online traders need to know about law enforcement in e-commerce?

In Sweden, the **Brussels Regulation (Brussels I)** on jurisdiction, and the recognition and enforcement of judgements in civil and commercial matters, applies. Further, under Swedish law, a consumer is normally entitled to choose the court in their own jurisdiction when initiating legal proceedings in a consumer dispute.

Arne Källén

ADVOKATFIRMAN KÄLLÉN & INGVAR AB
Gustav Adolfs Torg 47
SE-211 39 Malmö
Sweden

arne.kallen@kalleningvar.se | Tel: +46 40 33 02 40



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17.

Switzerland

Cédric Berger

Köstenbaum & Associates SA KBHB

What are the laws covering e-commerce?

- **CO:** Federal Act on the Amendment of the Swiss Civil Code (Part Five: The Code of Obligations)
- **LCD:** Federal Act against Unfair Competition
- **OIP:** Prescription on the Indication of Prices
- **LPD:** Federal Act on Data Protection

What information does an online seller have to provide before concluding a contract online?

E-commerce in Switzerland is subject to the conditions set forth by article 3, para. 1, litt. S LCD. The online seller shall:

- provide clear and complete data concerning their identity, address and a valid email
- indicate the different technical steps leading to the conclusion of a contract; the customer must know in particular which click establishes the confirmation of their order and from which moment the contract is concluded
- allow the customer to identify and correct input errors before the order's confirmation
- confirm the order immediately by email

Moreover, the seller shall indicate in a clear and accurate manner the General Terms and Conditions applicable on their website. In order to be valid, GT&Cs require the approval of both parties. They must be clearly put at the disposal of the customer before their order. E-commerce may, for example, include a "general terms read and approved" tab that is checked during the ordering process. The more the customer's approval is visible during the purchase, the more the court is on the side of the seller in case of dispute, as it declares that the general terms of sale have been acknowledged and accepted by the customer at the time of sale. The terms can be updated regularly and a complete copy of each contract should be retained.

General terms shall contain at least:

- warranty conditions that apply to the goods or services sold in the transaction
- data protection, use of collected data, technical data encryption, etc.
- orders, billing and payment terms, VAT, etc.
- liability—for instance, in the event of the alteration of goods during shipment

- return or exchange policy
- governing law and place of jurisdiction in case of dispute

In the general terms, excessive or inappropriate declarations such as "shipment to buyer's risk" are a violation of the law. Clauses involving greater risks to the customer must be clearly identified in the general terms.

Which rules apply when contracts are concluded in Web shops?

According to **Article 184 CO** and following articles, the customer of a Swiss online shop can conclude a purchase contract with a single click on the "buy" button.

Requirement condition: both parties must agree on the essential points, the object of the sale, the price and the conclusion of the contract.

Article 3, para. 1, litt. S LCD

The online seller shall:

- Indicate the different technical steps leading to the conclusion of a contract. The customer must be able to determine at all times exactly at which stage they are at in the ordering process. They must know when the contract is definitively concluded. A clear wording such as "buy" or "order with obligation to pay" is demanded.
- Provide technical tools to detect and correct input errors before entering an order. The contract details shall be verifiable and, if necessary, be correctable by the customer before the contract's conclusion. The customer shall be able to visualise the concluded contract, in particular the quantity and type of product, the total order price and its billing/delivery details.
- Confirm the customer's order by email.

Article 3 and 4 OIP

- The price must be indicated in Swiss francs, including non-optional supplements of any kind such as VAT, recycling tax, etc.
- Shipping costs may be indicated separately.

Article 7 and 8 OIP

The price and all the relevant information related to the goods shall be clearly visible and easily readable next to the goods.

What is important to know with regard to after sales issues?

While Swiss law does not provide for a withdrawal period for e-commerce, the seller can provide one, but they are not legally required to do so.

If the seller provides for a withdrawal period, the following information must be clearly stipulated in the general terms:

- information on the customer's right to withdraw
- information on the withdrawal period
- the modalities of the withdrawal right

Swiss law does not provide for a maximum delivery term, but it is a violation of the LCD (Federal Act against Unfair Competition) to set a delivery term so short that it is impossible to comply solely in the aim of attracting customers. If a product is defective or does not meet the promised characteristics, the buyer has 2 years to file a warranty claim. In such a case, the law allows for the contract's termination (Article 208 CO) or compensation for the goods equivalent to its depreciation (Article 205 CO).

Article 8 LCD forbids excessive use of GT&Cs by providing a notable and inequitable disproportion of the customer's rights and obligations under the contract.

Which rules apply with regard to the online seller's website design?

Article 3, Art. 1, litt. S LCD

The online seller must display their:

- identity in a clear and complete manner, including the name of their registered company
- contact information, including their email address
- their telephone number, where applicable

When sensitive data is collected from customers (name, address, payment information), an e-commerce website is subject to the **Federal Act on Data Protection (LPD)**:

- personal data shall only be handled for the purpose claimed at the time of their collection
- information cannot be communicated outside the Swiss borders unless legal conditions are met
- personal data must be protected against unauthorised treatment by appropriate technical and organisational measures

A declaration of data protection is not legally required, but is welcomed for the confidence of customers. It must state at least:

- the legal requirements that govern the seller's practice regarding data processing
- which personal data is collected and for what purpose
- which personal data is communicated to third parties and for what purpose
- which choices are offered to the user regarding the processing of their data
- which rights (access and rectification) are available to the users
- which department is in charge of answering questions on data processing
- which security measures are applied to protect personal data

What are the legal risks of online advertising?

Article 3 LCD applies to all forms of advertisements, including Internet advertisement.

According to **article 3, para. 1, litt. O LCD**, it is unfair if a seller, by means of mass telecommunication, sends to a client such advertising that has no direct link with the information the client requested without the client's prior consent or without allowing them to oppose it freely and easily.

According to **article 23, para. 1 LCD**, the violation of article 3 LCD may result in an imprisonment sentence of up to 3 years or a pecuniary penalty.

Article 24, para. 1, litt. B LCD provides a sentence of up to 20,000.00 CHF for anyone who intentionally violates the obligation to indicate the price of a product or service in an advertisement.

Are there any national particularities on ADR/ODR?

At the start of proceedings, the judge will attempt a conciliation according to article 197 CPC (**Swiss Civil Procedure Code**).

Mediation is possible instead of conciliation according to article **213 CPC**.

There are currently no plans to install an ODR in Switzerland.

Do the aforementioned rules also apply to e-commerce in B2B?

The OIP prescription applies to offers made to customers and not to B2B offers.

What do online traders need to know about law enforcement in e-commerce?

In case of a dispute arising from a consumer contract, the consumer may sue either at their place of residence or at the seller's place*. The consumer cannot waive this right in advance (**articles 114 and 120 LDIP; Federal Law on Private International Law**).

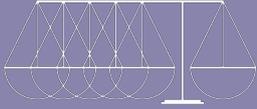
** If the seller is an individual, this means the seller's legal domicile. If the seller is a company, this means the company's headquarters.*

Articles 23 and 24 LCD provide for criminal penalty in case of violation.

Cédric Berger

KÖSTENBAUM & ASSOCIÉS
10, Cours de Rive
1204 Geneva
Switzerland

Cedric.Berger@kbhb.ch | Tel: +41 22 818 50 52



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18.

Ukraine

Maryna Fomenko

Eterna Law

What are the laws covering e-commerce?

- **The Law of Ukraine "On Electronic Commerce"**
No. 675, dated 3 September 2015 (the "Law on EC")
- **The Law of Ukraine "On Electronic Documents and Electronic Workflow"**
No. 851 dated 22 May 2003 (the "Law on Electronic Workflow")
- **The Law of Ukraine "On Electronic Digital Signature"**
No. 852, dated 22 May 2003 (the "Law on EDS");
- **The Law of Ukraine "On Protection of Consumers' Rights"**
No. 1023, 12 May 1991 (the "Law on Consumers");
- **The Civil Code of Ukraine** dated 16 January 2003;
- **Order of the Ministry of Economy of Ukraine On approval of the Rules for the sale of goods for orders and out of commercial or office premises** dated 19 April 2007 N 103.

What information does an online seller have to provide before concluding a contract online?

The online seller is obliged to provide consumers with the necessary reliable, timely and accessible information on the list of services provided, tariffs, time frame between acceptance and delivery of orders, the range and prices for the goods offered for sale, confirmation of delivery of orders, properties of goods, terms of their suitability for consumption or warranty terms and service life.

At the request of the consumer, the online seller is obliged to provide them with documents confirming the quality, safety and price of the goods.

In the documents for products subject to mandatory certification in the state certification system, the registration numbers of the certificate of conformity or the certificate of conformity itself are to be indicated.

Which rules apply when contracts are concluded in Web shops?

Article 11 of the Law on EC – electronic agreement – is concluded by one party making an offer and another accepting it. Electronic agreement is concluded from the moment of receipt of the acceptance by the trader.

An offer may contain provisions that are embodied in another document, subject to referencing it to such document. Unrestricted access will be provided to the customer by redirecting (linking) to all documents containing provisions of the offer.

An offer shall be made in the form that makes it impossible to change the content.

An acceptance can be made by sending an electronic message, or a filled-in form on accepting such offer, to the seller, or by carrying out any action that can be considered as an acceptance of offer. At the same time, the effect of such actions has to be clearly explained on the website of the seller, and these explanations have to be clearly related to the offer

An electronic message or completed form on accepting such an offer shall bear

- an electronic signature agreed to by the parties, or
- an electronic digital signature (the Law on EDS), or
- an electronic signature with one-time identifier, or
- an analogue of handwritten signature, which is agreed by the parties in writing with samples of such signatures.

The buyer shall receive confirmation of the conclusion of an electronic agreement in the form of an electronic document, receipt, cheque or other document.

Such confirmation shall contain:

- conditions and procedure for the exchange or return of goods
- name of the seller, its registered office and procedure for accepting claims
- warranty obligations and other services connected to maintaining and repairing the goods
- procedure of termination of the agreement, if the term of agreement is not defined

What is important to know with regard to after sales issues?

Articles 17 to 19 of the Law on EC – the parties to an electronic agreement are subject to liability established by the agreement or by law for the specific type of agreements. Disputes arising out of electronic agreements shall be settled in the general order established by law.

Article 8 of the **Law on Consumers** – where a consumer, within the warranty period, finds defects in purchased goods, they can demand (i) a proportionate decrease in price, or (ii) free repairs of the defects within a reasonable term, or (iii) recovery of expenses incurred for repairs of the defects.

Where a consumer, within the warranty period,

- finds substantial defects in purchased goods, which arose owing to the manufacturer's (seller's) fault, or
- finds falsification of goods (in both cases confirmed by an expert, if needed), they can demand from a manufacturer or seller
 - i. termination of the agreement and compensation of the sum paid for the goods, or
 - ii. an exchange of goods for the same or a similar product the manufacturer (seller) has in stock.

Article 9 of the Law on Consumers – a consumer has the right to demand that the seller exchange a non-food product of poor quality for a similar one. The same applies if a consumer is dissatisfied with a product's shape, dimensions, colour or size, or if, for any other reasons, the product cannot be used for its intended purpose. The term for such exchange is 14 days after the day of purchase, if a longer term is not established by the seller.

Such an exchange can be made if the goods have not been used and they are still in a marketable condition, i.e. if its useful qualities, seals, labels and receipt are preserved.

If the seller has no similar goods at the moment of the demand, the consumer may (i) freely choose from the other goods in stock, with corresponding change in price, or (ii) terminate the agreement and receive a full refund, or (iii) have the goods exchanged for a similar product once the seller obtains such a product. The seller is immediately obliged to inform the consumer once such a product has been obtained.

Which rules apply with regard to the online seller's website design?

In general, the online seller must provide everyone with "direct, easy and stable" access to the following information:

Information on the online seller

- full name of legal entity/full name, first name, patronymic of the trade
- location of the legal entity/place of registration and the place of the actual residence of the trader (if different)
- email address and/or e-shop address
- USREOU* code and tax number of legal entity/ identification number of the trader (passport series, if the individual does not have an ID-code owing to their religious beliefs)
- information on the licence (series, number, expiry date and date of issue), if the economic activity is subject to licencing
- facts regarding the inclusion of taxes in the calculation of the cost of goods or services and, in the case of delivery of goods, information on the cost of delivery

* *United State Register of Enterprises and Organizations of Ukraine*

Information on the customers' personal data protection

- information allowing identification of the online seller as the possessor of customers' personal data
- composition and content of the collected personal data
- customers' rights under the Law of Ukraine "On Personal Data Protection"
- the purpose of collecting personal data (such as direct marketing purposes)
- persons to whom customers' personal data are transferred, if any

What are the legal risks of online advertising?

Law on Advertising

Online advertising is subject to the same requirements as any other advertising. The basic principles of advertising are its "legality, accuracy, authenticity, use of forms and means that do not inflict harm on the consumer".

Advertising via the Internet of tobacco products, signs for goods and services, and other objects of intellectual property rights under which tobacco products are manufactured is prohibited (excluding websites intended for adults, the mandatory condition of access to which is a preliminary age identification of users).

Law on Consumer Protection

Taking into account the fact that marketing text messages or emails may only be sent to individuals based on their respective permission, the trader should add an "unsubscribe" link to their message or foresee some similar method for the consumer to withdraw their permission.

Unfair Competition Law

1. Traders are prohibited from using names, trademarks, advertising materials or other designations without the permission of an entity that has previously started using such or similar names, trademarks, etc., in its business that has led or may lead to confusion with the activity of this entity.
2. Comparative advertising is prohibited, except if the given information about goods, works and services is confirmed by factual data, and is reliable, objective and useful for informing consumers
3. Distribution of misleading information is prohibited.
4. Dishonest business practices are prohibited. Such practices include:
 - a. committing acts qualifying by law as a manifestation of unfair competition
 - b. any activity (action or inaction) that misleads the consumer or is aggressive

An entrepreneurial practice is misleading if, when offering products, the consumer is provided with "indistinct, incomprehensible or ambiguous information that does not allow them to make informed choices". The fact that the list of misleading business practices is not exhaustive constitutes a particular risk.

An entrepreneurial practice is aggressive if it contains elements of coercion, torment or inappropriate influence. It is also deemed aggressive if it significantly affects or may affect the freedom of choice or behaviour of the consumer in relation to the purchase of products. Particularly risky is the fact that the list of aggressive business practices is not exhaustive.

Are there any national particularities on ADR/ODR?

Disputes arising in the field of e-commerce are usually solved by the courts of Ukraine. Taking into account the fact that the legal framework in the field of e-commerce, as well as the mechanisms for evidence in the court process, are not fully developed, it is often difficult for the courts to resolve the dispute properly.

ICAC

The International Commercial Arbitration Court at the Ukrainian CCI (ICAC) is guided in its activities by the Law of Ukraine "On International Commercial Arbitration Act of Ukraine", as well as the ICAC's Arbitration Rules. The seat of the ICAC and the venue of its meetings on consideration of cases is the city of Kiev.

The resolution of disputes in this arbitration is not widespread among companies in Ukraine. Large traders usually give their dispute for consideration by courts of general jurisdiction or foreign arbitrations.

Mediation

At present, in Ukraine, the mediation procedure is not regulated on a legislative level, which greatly complicates its practical application. On 3 November 2016, the **Law of Ukraine “On Mediation”** was adopted in the first reading and is expected to be adopted by the Verkhovna Rada of Ukraine in 2018.

Do the aforementioned rules also apply to e-commerce in B2B?

Individuals as consumers are formally provided with high protection under the legislation of Ukraine in order to protect their rights. Regarding the relationship between legal entities, the general rules established by the Civil Code, the economic code and the arrangement between the parties are applied.

What do online traders need to know about law enforcement in e-commerce?

Owing to the imperfection of the legal framework of Ukraine, it is often difficult to prove the offender in the court (for example, if a trader does not post information that would identify them on their website). Given the large number of formal requirements that an online trader must comply with, often a sales contract concluded online is not legally concluded at all. Print screens are not considered by the courts of Ukraine as proper evidence, which further complicates the process of collecting proof.

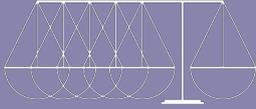
At the same time, there is a large number of court cases dealing with the violation of consumer rights, as well as with unfair competition. In the first case, competent authorities usually make the trader pay a fine in the event of a breach

of contract. Secondary methods are to make the trader reimburse consumer losses or even sometimes to make them pay a moral compensation. In the second case (unfair competition), the Antimonopoly Committee of Ukraine imposes a fine upon the offender in the amount of a certain percentage of their annual income (up to 10 per cent, depending on the severity of the violation).

Maryna Fomenko

ETERNA LAW
6 Rylskiy prov., Sophia Business Centre
01601 Kiev
Ukraine

fomenko@eterna.law | Tel: +380 44 490 7001



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19.

United Kingdom
Esther Gunaratnam
Laytons LLP

What are the laws covering e-commerce?

- Consumer Rights Act 2015
- Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013
- Consumer Rights (Payment Surcharges) Regulations 2012 (SI 2012/3110)
- Consumer Protection from Unfair Trading Regulations 2008
- Consumer Protection Co-Operation Regulation 2006
- Financial Services (Distance Marketing) Regulations 2004
- Data Protection Act 1998
- The Unfair Contract Terms Act 1977

What information does an online Seller have to provide before concluding a contract online?

If selling online to consumers, certain information must be supplied to them in a clear and comprehensible manner before the point of sale. The full list of information that must be provided is set out in detail in Schedule 2 of the UK's Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (CCR) and should be carefully adhered to by all UK online sellers. Key information that must be provided includes, amongst other things:

- key characteristics of the goods or services
- total price of the goods or services, inclusive of taxes
- delivery charges and other costs
- arrangements for payment and delivery, and the time frame for performance
- goods and services of the online seller to which the right to cancel applies (and those to which the right does not apply), in addition to the conditions, time limits and procedures for exercising such right to cancel, and
- duration of the contract and the conditions for terminating the contract (as applicable)

Which rules apply when contracts are concluded in Web shops?

When selling to customers online, it is important that sales contracts are correctly incorporated, valid and enforceable. The online seller should ensure that:

1. Its terms and conditions:

- are fair and reasonable
- state whether or not the contract will be retained and made available to the customer
- are clearly highlighted to the customer before purchase

- can be saved and printed by the customer, and
- make clear the languages of the contract

2. Every technical step in the sales process is clear:

- customers should be informed that, by placing an order on the seller's website, they are making an offer to purchase, which the seller may accept or reject
- receipt of the customer's offer should be acknowledged electronically and without undue delay, and
- the technical means are made available to customers to identify and amend input errors made before they submit their order

What is important to know with regard to after sales issues?

Right to cancel

Generally, UK law gives consumers the right to cancel any order that they make "over distance" (orders placed online or by telephone) during the cancellation (or "cooling off") period. The cancellation period is generally 14 days after the day on which the contract is entered into for services or digital content not supplied on a tangible medium. For physical goods, the cancellation period ends 14 days after the day on which the goods come into the physical possession of the consumer.

Further, when purchasing digital content, the right to cancel expires if

1. the customer has agreed that the online seller may supply the digital content during the cancellation period,
2. the digital content has been supplied during that period (for example, the customer has downloaded a purchased music file), and
3. the seller had explained that the right to cancel would expire in these circumstances before the customer purchased the digital content.

Online sellers must comply with the right-to-cancel rules and communicate it to their customers before the point of sale (normally by way of their terms and conditions of sale).

Exceptions to the right to cancel

Certain contracts do not enjoy the right to cancel and these include:

- medicinal products
- passenger transport services
- bespoke or personalised goods
- goods that deteriorate or expire quickly
- accommodation, transport of goods, vehicle rental services, catering or services related to leisure activities, if the contract stipulates a specific date or period of performance
- sealed goods that are unsealed and are inappropriate for return owing to health protection or hygiene reasons
- sealed audio or video recordings or computer software that is unsealed, and
- goods that are inseparably mixed with other items after delivery

Reimbursement

Where a consumer exercises their right to cancel, the online seller must generally refund the purchase price in full (including the basic delivery cost). The following exceptions apply:

- for physical goods, the seller is entitled to make a deduction from the reimbursement for loss in value of the rejected goods, if the loss is the result of unnecessary handling by the consumer
- for the supply of digital content and services to consumers within the cancellation period, there are some exceptions to the full refund rule

Reimbursement must be made without undue delay and in any event within 14 days of the trader receiving the goods back (where the seller has not offered to collect the goods). Otherwise, reimbursement must be within 14 days after the day on which the trader is informed of the consumer's decision to cancel the contract.

The trader must make the reimbursement using the same means of payment as the consumer used for the initial transaction, unless the consumer has expressly agreed otherwise.

Consumer Rights Act 2015 ("CRA")

This UK statute provides a number of rules that will apply to goods and services sold to consumers, whether they are sold online or otherwise, and which cannot be excluded or overridden by anything that an online seller states in its terms and conditions.

The CRA rules cover areas such as:

- statutory rights and remedies for faulty goods
- late delivery of goods
- consumer rights in respect of digital goods
- consumer protection rules regarding the supply of services, and
- unfair contract terms

For further information, Laytons' summary of the CRA rules is available online here:

<https://www.laytons.com/publications/consumer-rights-act-2015>

Which rules apply with regard to the online seller's website design?

Company information

The seller's website must state the following in a noticeable position:

- company's registered name and number
- for UK companies, the part of the UK in which the company is registered
- VAT number
- geographic address, and registered office address (if different), and
- email address

Further information may be necessary if the online seller is registered in a trade register or operates in a regulated industry.

Obligation to pay

Where consumers place orders by activating a button (or a similar function), the online seller must ensure that the button or similar function is labelled in an easily legible manner. The only words that should be used are “order with obligation to pay” or a similar statement that makes it clear that placing the order entails an obligation to pay. If the online seller does not do this, consumers will not be bound by their order.

Privacy policy

A privacy policy is required to ensure that the business is being transparent with customers about how it processes their personal data. It is also designed to help obtain customers' consent for processing their data for certain purposes (such as for direct marketing purposes).

Amongst other things, the privacy policy should explain:

- the identity of the company that controls how customer personal data is processed (the data controller)
- what types of personal data will be collected, how it will be used, whether or not it will be disclosed and to whom it will be disclosed
- establish customers' right to access their personal data and the steps that can be taken to correct any inaccuracies in their personal data stored by the seller, and
- whether or not personal data may be transferred outside of the European Economic Area

From May 2018, the transparency requirements contained in **Article 13 of the GDPR** will need to be closely adhered to.

What are the legal risks of online advertising?

Online advertising

Non-broadcast advertising (including press, online and cinema advertising) is regulated by the **Advertising Standards Authority**, which adjudicates on the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing (**CAP Code**). The **Committee of Advertising Practice (CAP)** is responsible for the CAP Code. The basic premise of the CAP Code is that marketing communications should be “legal, decent, honest, and truthful”. If informal resolution of a complaint is unsuccessful, sanctions for non-compliance include adverse publicity, media refusal to accept copy from the offender and referral to trading standards authorities, which can take action under the **Consumer Protection from Unfair Trading Regulations 2008** (discussed later) or the **Business Protection from Misleading Marketing Regulations 2008**.

Direct marketing by electronic means

Non-compliance with the rules for direct marketing by electronic means (including by text message and email) can result in decision notices and penalty fines being issued against businesses by the Information Commissioner's Office (“ICO”). The maximum fine for a data protection breach in the UK is currently £500,000.00 but this will rise to €20 million in May 2018 under the GDPR.

Businesses can generally only send marketing text messages or emails to individuals (including sole traders and some partnerships) if that person has specifically consented to receiving them. Indirect consent (that is, consent obtained by a third party) is unlikely to be sufficient unless certain conditions are met.

There is, however, a limited opt-out exception for previous or existing customers that an organisation can use if they meet the following four-fold test:

1. the email address of the recipient must have been obtained by the seller directly from that individual in the course of a sale or negotiation for the sale of a product or service
2. the products or services promoted must be provided by the sender (rather than an unrelated third party) and be similar to those for which the recipient is regarded as a customer
3. the opportunity to opt out must be given when the individual's details are collected, and
4. the opportunity to opt out must be repeated in every promotional email that is sent

Organisations must not disguise or conceal their identity in marketing text messages or emails. Nor should they make it difficult to opt out. It is good practice to allow individuals to reply directly to the message to opt out or to provide a clear "unsubscribe" link.

Individuals also have the right to object to the use of their personal data for direct marketing purposes. This means that, for all types of direct marketing, sellers must promptly comply with opt-out requests that they receive from individuals who do not want to be sent marketing materials. In addition to deleting individuals who have opted out from their mailing lists, it is also best practice for sellers to maintain a separate "suppression list" of individuals to ensure that their preferences are respected in the future.

Cookies

A website user's informed consent is required for cookies to be used to carry out targeted advertising. To obtain informed consent, the user must be presented with a transparent and comprehensive cookies policy explaining how and for what purposes the online seller's website uses cookies.

Are there any national particularities on ADR/ODR?

Parties to disputes in England and Wales are required to consider ADR. The court will not compel a party to engage in ADR, but it attaches great weight to it. A party who refuses or ignores ADR risks the imposition of sanctions (usually an adverse costs order) by the court.

Do the aforementioned rules also apply to e-commerce in B2B?

As specified earlier, many of the rules are specific to consumers rather than to B2B customers; since consumers are granted increased protections under English law. However, the general rules about website design and compulsory company disclosures apply to both B2B and B2C sales.

While not as strict as the analogous consumer law requirements, a requirement of reasonableness also applies to provisions that are contained in an online seller's B2B contracts, where they are comprised of the seller's standard terms and conditions. The test is that terms must be fair and reasonable. They must have regard to the circumstances which were, or ought reasonably to have been, known to or in the contemplation of the contractual parties at the time the contract was made. Standard terms that are found to fail this test by an English court will be void and unenforceable.

What do online traders need to know about law enforcement in e-commerce?

Privacy

Increasingly, data protection law is a high-risk area in the UK, particularly for e-commerce businesses that process personal data in large volume. Serious data protection breaches, including non-compliance with the rules for direct marketing by electronic means, regularly results in decision notices and sizeable penalty fines being issued against businesses by the ICO. The maximum fine for a data protection breach in the UK is currently £500,000.00 but this will rise to €20 million in May 2018 under the GDPR.

Some of the largest fines have been issued for inadequate security measures. (In October 2016, the telecoms company TalkTalk was issued with a £400,000.00 fine by the ICO for security failings that allowed a cyber attacker to access customer data “with ease”.) But other breaches, such as unlawful data sharing, data profiling and emailing marketing communications to individuals without their consent have also attracted significant penalty fines.

Consumer Protection from Unfair Trading Regulations 2008

These Regulations prohibit all UK traders (including online sellers) from carrying out unfair commercial practices when selling to consumers, including:

- misleading consumers
- aggressive practices
- certain blacklisted practices under the Regulations (such as falsely claiming that a product can cure illness or falsely indicating that availability of a product is very limited in order to elicit an immediate purchasing decision), and
- making communications to consumers that would not satisfy a test of professional diligence (this relates to a duty to act with honesty and good faith towards consumers)

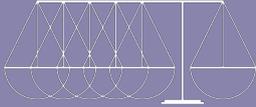
These prohibited practices are enforced by trading standards officers (who work for local authorities in the UK) and the national Competition and Markets Authority.

Non-compliance can result in consumer contracts being unenforceable. It can also result in the company and/or its directors and senior employees committing a criminal offence, attracting a penalty fine (on which no limit has been placed) and up to a 2-year prison sentence.

Esther Gunaratnam

LAYTONS LLP
2 More London Riverside
London SE1 2AP
UK

esther.gunaratnam@laytons.com
Tel: +44 20 7842 8000



LIBRALEX

20.

USA

Matthew E. Moloshok, Esq.

Hellring Lindeman Goldstein & Siegal LLP

What are the laws covering e-commerce?

- Federal statutes and regulations that pertain to contract formation.
- Federal statutes that pertain to parties who gather personal information about consumers, e.g.:
 - The Children's Online Privacy Protection Act
 - Health Insurance Portability and Accountability Act
 - Graham-Leach-Bliley Act ("GLBA")
 - Fair Credit Reporting Act ("FCRA")
 - For FCRA purposes, only a natural person is a "consumer"; companies are not.
- Data Breach Laws
- Other Laws Of Particular Interest in the Electronic Space

What information does an online seller have to provide before concluding a contract online?

To be truthful and not misleading, prior to concluding the contract online, an online seller must truthfully disclose:

- name of the seller
- full terms of the contract
- price or fees the buyer must pay
- any additional charges for which the buyer will be responsible (for example, shipping, sales taxes, insurance if applicable and any charges in connection with returns)
- any cancellation and returns policies
- an accurate description of the product or service
- quantity of the product ordered (or in the case of a service, any duration of the service contract)
- terms of any written warranty, and
- any other material term and condition of the transaction

Most of the foregoing requirements are derived from enforcement actions and case law developed through such actions; the requirement to provide the terms of the written warranty is set out in the Magnuson-Moss Warranty Act. This is discussed under the head "What is important to know with regard to aftersales issues?" and in the FTC (Federal Trade Commission) regulation governing "Pre-Sale Availability of Written Warranty Terms," 6 C.F.R. Part 702, also discussed in that response.

The federal Truth in Lending Act and Regulation Z thereunder require disclosure of an "annual percentage rate" for loans and retail instalment sales (15 USC Art. 1601; 12 CFR Part 226).

Which rules apply when contracts are concluded in Web shops?

Neither the United States nor any of its individual states has, to date, adopted any different rules for Web shops than for any other kind of commercial transactions conducted online.

What is important to know with regard to after sales issues?

Delivery

The FTC has long had a rule, now applicable to Internet and online transactions, which provides that a merchant must have a reasonable basis to claim it will ship orders within a stated time; perhaps more importantly, if the merchant does not state a different delivery period, the merchant must have a reasonable basis for stating or implying that it can ship within 30 days (Mail, Internet, or Telephone Order Merchandise Rule, 16 CFR Part 435).

Warranties

Except with limited exceptions (for example, regarding compliance with vehicle emission standards), federal law does not require the provision of warranties, service contracts or guarantees. However, the Magnuson-Moss Warranty Act, 15 USC Art. 2301 et seq. and related regulations by the FTC, 16 CFR Part 700 impose obligations on parties who offer written warranties, guarantees or service contracts in connection with the sale of a consumer product costing more than \$10. It also requires particular conspicuous disclosures if a party seeks to disclaim implied warranties or to limit consumer remedies. Written warranties must be designated as being either "Full (duration) Warranty" or "Limited Warranty".

To be a "full warranty", the warrantor must satisfy federal "minimum standards". Those:

- require the warrantor to remedy the consumer product within a reasonable time and without charge, in the case of a defect, malfunction or failure to conform with the warranty

- prohibit limitation of the duration of any implied warranty
- prohibit exclusion or limitation of consequential damages for breach of any written or implied warranty, and
- if the product cannot be fixed after a reasonable number of attempts, the consumer must be given the choice of a refund or replacement without charge

A full warranty extends to any owner of the product, not just the first purchaser. Any warranty that does not meet these standards must be conspicuously designated as a “limited warranty” and each limitation or exclusion clearly spelled out.

All warranties, guarantees, service contracts and disclaimers must meet “plain language” requirements, spelled out in the FTC regulations. Generally, the warranty cannot be conditioned on the consumer using any article or service identified by brand, trade or corporate name (unless provided free of charge) (15 USC Art. 2302(c)). Under the FTC regulations, warrantors cannot require that the consumer return a registration card or the like; although it can encourage consumers to do so in order to prove date of purchase (16 CFR Art. 700.7). The warrantor cannot provide that its own decisions are “final” in respect to warranty enforcement (Id.700.8).

Returns and exchanges:

With the exception of the extent that Magnuson-Moss requires that a merchant adequately disclose and comply with its promises on returns and exchanges, there is no specific federal law on this subject. However, any failure to comply with a return or exchange policy – even if not directly covered by Magnuson-Moss – can be considered an “unfair or deceptive” practice in violation of the Federal Trade Commission Act.

Which rules apply with regard to the online seller’s website design?

There are no federal laws or regulations that specifically address Web designs. Of course, a website cannot copy the content of another person’s or company’s website, or the “look and feel” of that website, without potentially violating the Copyright Act and laws against unfair competition. This includes not only the material appearing on the website, but also the code and other metadata used to create the website. Also, the website (including the domain name linked to a website) cannot use the trademark, trade dress or trade name previously adopted by another person or company without violating the Lanham Act (the Trademark Act). To the extent that the content of the website contains advertising, the advertising must comply with the unfair trade and deceptive trade laws and regulations discussed under “What are the legal risks of online advertising?” For example, website designers may be subject to liability based on the content of the website if it is misleading or untruthful.

The FTC has issued a set of guidelines for website owners to follow regarding privacy policies, which suggest that the policy be written in easy-to-understand English. It should also set forth the kind of information the website operator collects, in addition to how data is collected, how the information is protected and with whom it is shared.

What are the legal risks of online advertising?

There are several federal laws and regulations that relate to the advertising of a seller’s products and services. These laws and regulations generally do not differentiate between online or e-commerce sales and sales made through any other medium. These laws and regulations for the most part deal with the truthfulness of the advertisements and whether or not they are misleading or deceptive.

FDA

Prescription drug advertising and labelling is regulated by the Food and Drug Administration (FDA) under the authority of the Food, Drug and Cosmetic Act, 21 U.S.C. Art. 301 et. seq. That Act, among other things, prohibits misbranded and adulterated foods and drugs.

FTC

The FTC prohibits deceptive and unfair acts or practices. An advertisement, whether or not online, is deceptive if it likely will mislead consumers and affect consumers' behaviour or decisions about the product or service.

Sellers are responsible for the claims they make about their products and services. In addition, third parties such as advertising agencies and website designers may be liable for disseminating deceptive representations if they participate in the preparation or distribution of the advertising or know about the deceptive claims. For example, a website designer is responsible for reviewing the information used in advertising to substantiate a claim and may not simply rely on an advertiser's assurance that the claim is substantiated.

Pursuant to FTC regulations, disclaimers and disclosures must be clear and conspicuous such that consumers will be able to notice, read, hear and understand the information. The disclosures must be made before a consumer makes a purchase or incurs a financial obligation. A disclaimer alone is not enough to remedy a false or misleading claim. These same consumer protection laws and regulations regarding disclosures that apply to commercial activities in other media apply online.

Advertising directed to children raises special issues. There are specific guidelines published by the Children's Advertising Review Unit (CARU) of the Council of Better Business Bureaus.

Electronic Commerce International Guidelines

The United States has signed on to guidelines, along with 28 other countries, working together as members of the Organization for Economic Cooperation and Development,

which set out principles for voluntary "codes of conduct" for businesses involved in electronic international commerce. The guidelines track the FTC rules, including:

- using fair business, advertising and marketing practices
- providing clear and easily accessible information about the seller and the goods or services it offers
- disclosing full information about the terms, conditions and costs of the transaction
- ensuring that consumers know they are making a commitment to buy before closing the deal
- providing an easy-to-use and secure method for online payments, and
- protecting consumer privacy and addressing consumer complaints

Consumer Review Fairness Act

This Act protects a person's ability to share honest opinions about a business's products, services or conduct in any forum, including social media. The Act makes it illegal for a company to use a contract provision that bars or restricts the ability of a person who is party to the contract to review a company's goods, services or conduct. It also imposes a penalty on someone who gives a review or requires individuals to give up their intellectual property rights in the content of their review. This includes any online transaction.

The CAN-SPAM Act

This Act sets the rules for commercial email, establishes requirements for commercial messages, gives recipients the right to have advertisers stop emailing them and provides tough penalties for violations. This covers all commercial messages defined as being "any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service". The Act prohibits false or misleading header information and deceptive subject lines. It also requires the sender to identify the message as an advertisement and to identify the sender's physical postal address. The sender of the email, including any advertiser, must tell recipients how to opt out of receiving future emails and must honour opt-out requests promptly.

Are there any national particularities on ADR/ODR?

Industries in the United States have increasingly chosen to incorporate arbitration provisions in their contracts. Commonly, the clauses prohibit consumers joining class actions or maintaining arbitration on a class basis. A series of rulings by the Supreme Court of the United States has enforced those provisions. Where a contract is “in commerce”, the Federal Arbitration Act supersedes any state law limitations or prohibitions against arbitration.

Do the aforementioned rules also apply to e-commerce in B2B?

B2B e-commerce generally follows the same rules as outlined here. However, B2B transactions will generally have to consider rules “between merchants” under the Uniform Commercial Code (UCC) and the United Nations Convention on the International Sale of Goods (CISG); for example, as to what constitutes the terms of the contract under a “battle of the forms”. Again, the rules on this issue are no different than they would be in a traditional transaction conducted through emails or otherwise. Nonetheless, the rate and volume of transactions that can occur through electronic means increases the risk of ambiguity as to which terms apply. “Best practices” in respect to parties who have ongoing electronic dealings directs entering into an electronic data interchange (EDI) agreement. See, for example, Electronic Messaging Services Task Force, American Bar Association, “The Commercial Use of Electronic Data Interchange — a Report and Model Trading Partner Agreement (1990), reprinted at 45 Bus. Lawyer 1645 (1990).

What do online traders need to know about law enforcement in e-commerce?

E-commerce has been and will remain an extremely active area of enforcement interest for United States federal agencies. The FTC in particular has been extremely active in the enforcement of privacy and data security cases, often in combination with foreign regulators and state attorney generals. The FTC and CFPB have also actively pursued enforcement actions against fraudulent activity conducted online. The US Department of Justice has prosecuted businesses and their executives for attempting to fix prices for online merchandise, including as recently as 7 August 7 2017, securing a guilty plea from a company and an executive that sold promotional goods online (available at: <https://www.justice.gov/opa/pr/e-commerce-company-and-top-executive-agree-plead-guilty-price-fixing-conspiracy-customized>).

The agencies have numerous ongoing investigations in the area of e-commerce. The FTC is an active participant in the International Consumer Protection and Enforcement Network (ICPEN) available at: <https://www.icpen.org/> [accessed 08.03.18], which has a number of cross-border cases and initiatives.

Matthew E. Moloshok, Esq.

HELLRING LINDEMAN GOLDSTEIN & SIEGAL LLP
One Gateway Center
Newark, New Jersey 07102-5386
USA

mmoloshok@hlgsllaw.com | Tel: +1.973.621.9020

E-Commerce company and top executive agree to plead guilty to price-fixing conspiracy for customized promotional products

Conspiracy Was Conducted Through Social Media and Encrypted Messaging Applications

An e-commerce company and its top executive have agreed to plead guilty to conspiring to fix prices for customized promotional products sold online to customers in the United States. Zaappaaz Inc. (d/b/a WB Promotions Inc., Wrist-Band.com and Customlanyard.net) and its president Azim Makanojiya agreed to plead guilty to a one-count criminal violation of the Sherman Act.

Acting Assistant Attorney General Andrew Finch of the Department of Justice's Antitrust Division, Acting U.S. Attorney Abe Martinez and Special Agent in Charge Perrye K. Turner of the FBI's Houston Field Division made the announcement.

According to the felony charges filed today in the U.S. District Court for the Southern District of Texas in Houston, the conspirators attended meetings and communicated in person and online. The investigation has revealed that the conspirators used social media platforms and encrypted messaging applications, such as Facebook, Skype and Whatsapp, to reach and implement their illegal agreements. Specifically, the defendants and their co-conspirators agreed, from as early as 2014 until June 2016, to fix the prices of customized promotional products sold online, including wristbands and lanyards. In addition to agreeing to plead guilty, Zaappaaz has agreed to pay a \$1.9 million criminal fine.

"As today's charges show, criminals cannot evade detection by conspiring online and using encrypted messaging," said Acting Assistant Attorney General Andrew Finch. "In addition, today's charges are a clear sign of the Division's commitment to uncovering and prosecuting collusion that affects internet sales. American consumers have the right to a marketplace

free of unlawful collusion, whether they are shopping at retail stores or online."

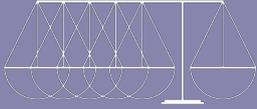
"Schemes like the defendants' cause financial harm to consumers who purchase goods and services and to businesses who sell goods and services in compliance with the laws of the United States," said Acting U.S. Attorney Abe Martinez. "The United States will continue to investigate and prosecute individuals and businesses who seek to gain an illegal advantage."

"The FBI stands ready to protect consumers from unscrupulous business practices," said Special Agent in Charge Perrye K. Turner. "Antitrust laws help protect the competitive process for the benefit of all consumers."

Makanojiya is charged with price fixing in violation of the Sherman Act which carries a maximum sentence of 10 years in federal prison and a maximum fine of \$1 million for individuals. The maximum fine for an individual may be increased to twice the gain derived from the crime or twice the loss suffered by the victims of the crime if either of those amounts is greater than the statutory maximum fine.

Both defendants have agreed to cooperate with the Antitrust Division's ongoing investigation. The plea agreements are subject to court approval.

This prosecution arose from an ongoing federal antitrust investigation into price fixing in the online promotional products industry, which is being conducted by the Antitrust Division's Washington Criminal I Section with the assistance of the FBI's Houston Field Office. Anyone with information on price fixing or other anticompetitive conduct in the customized promotional products industry should contact the Antitrust Division's Citizen Complaint Center at 888-647-3258 or visit www.justice.gov/atr/contact/newcase.html.



LIBRALEX

21.

Canada

Arnaud A. Franticelli

Mercier Leduc

What are the laws covering e-commerce?

In Canada, Internet activities are regulated by federal and provincial legislation as well as by various common law principles. Here are the laws applicable to e-commerce in the province of Quebec:

- **Consumer Protection Act**, CQLR c P-40.1
- **An Act to Establish a Legal Framework for Information Technology**, CQLR c C-1.1
- **Civil Code of Québec**, CQLR c CCQ-1991
- **An Act respecting the Protection of Personal Information in the Private Sector**, CQLR c P-39.1
- **Personal Information Protection and Electronic Documents Act**, SC 2000, c 5 (PIPEDA)
- **An Act to Promote the Efficiency and Adaptability of the Canadian Economy by Regulating Certain Activities that Discourage Reliance on Electronic Means of Carrying out Commercial Activities, and to Amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act**, SC 2010, c 23

As is the case for the Consumer Protection Act in Quebec, e-commerce legislation in other provinces is mostly based on the Internet Sales Contract Harmonization Template. Therefore it is fair to say, subject to further verification in each province's legislation and case law, that the main rules of law discussed in this document should also be applicable in other provinces.

What information does an online seller have to provide before concluding a contract online?

Following section 54.4 of the Consumer Protection Act, before a distance contract is entered into, the merchant must disclose the following information to the consumer:

- merchant's names, address, telephone number, fax number and technological address
- detailed description of goods or services
- itemised list of prices of the goods or services, including associated costs charged to the consumer
- description of any possible additional charges payable to a third party, such as customs duties and brokerage fees
- total amount to be paid by the consumer under the contract and, if applicable, the amount of instalments, the rate applicable to the use of an incidental good or service and the terms of payment
- if not Canadian dollars, currency in which amounts owing under the contract are payable
- date on which, or the time within which, the merchant's principal obligation must be performed
- if applicable, the mode of delivery, the name of the carrier and the place of delivery
- applicable cancellation, rescission, return, exchange and refund conditions, if any, and
- any other applicable restrictions or conditions

The merchant must present such information in a certain form prescribed by the **Consumer Protection Act**.

Before the contract is entered into, the merchant must also provide the consumer with the express opportunity to accept or decline the proposal and to correct any errors.

Which rules apply when contracts are concluded in Web shops?

Mainly, the rules are:

1. Such contract is deemed to be entered into at the address of the consumer.
2. Consumers must be provided, within 15 days after the contract is entered into, with a written copy of the contract in a format that may be easily saved and printed (an electronic copy is sufficient), and which indicates:
 - the consumer's name and address
 - the date the contract is entered into, and
 - the information the merchant disclosed to the consumer before the contract was entered into (see "What information does an online seller have to provide before concluding a contract online?")
3. No merchant may collect or offer to collect a partial or full payment from the consumer before performing the merchant's principal obligation, unless the consumer requests a chargeback of the payment.

What is important to know with regard to after sales issues?

The consumer is entitled to cancel the contract within 7 days or more after receiving a copy if the merchant did not comply with the obligations stated earlier.

In addition to those cases, the contract may be cancelled by the consumer at any time before performance of the merchant's principal obligation if:

1. the merchant's principal obligation is not performed
 - a. within 30 days after the date specified in the contract or the later date agreed on in writing by the consumer and the merchant, or
 - b. Within 30 days after the contract is entered into in the case of a contract that does not specify a date or time limit for the merchant's principal obligation to be performed, or if
2. the contract is either for transportation, lodging or restaurant services or for tickets to an event and the merchant does not provide the consumer, by the date specified in the contract or the later date agreed on in writing by the consumer and the merchant, with documents enabling the consumer to receive the services or attend the event.

Upon cancellation of the contract, the merchant must refund all sums paid by the consumer. The consumer must also restore the goods that were the object of the contract to the merchant in the same state in which they were received. The merchant shall assume the reasonable costs of restitution.

If the merchant defaults on the obligation to make such refund and the consumer has paid by credit card, the consumer may request the card issuer to charge back all amounts paid under the contract.

The business practices, rules and sanctions also apply to such sales. Therefore, false or misleading advertising or representations concerning goods or services entitle the consumer to recourse against the merchant. It also places greater emphasis on premiums than on the goods or services offered, in addition to placing restrictions on offering additional warranties.

Which rules apply with regard to the online seller's website design?

Terms and conditions

It is strongly recommended that the seller obtain the express consent of the consumer in regard to the terms and conditions explicitly mentioned in a transaction. It is recommended that the seller give the consumer the opportunity to secure good knowledge of the GT&Cs before confirmation of the purchase.

Privacy policy

The obligations contained in the various laws mentioned under "What are the laws governing e-commerce?" overlap in several respects. In summary, they provide that organisations must obtain an individual's consent when they collect, use or disclose the individual's personal information. The individual has a right to access their own personal information and to challenge its accuracy. Personal information can only be used for the purposes for which it was collected. Individuals should also be assured that their information will be protected by appropriate safeguards.

Therefore, in order to abide by the laws and as a matter of transparency, it is strongly recommended to establish a privacy policy detailing what personal information is collected, for what purposes it will be used, how it will be processed once it is collected and what measures are taken to ensure its confidentiality. It is also recommended to provide the contact information of a person who will be responsible for answering customer questions and managing their requests.

In addition, a privacy policy should disclose details regarding the installation and use of cookies on a website.

What are the legal risks of online advertising?

False or misleading representations

Under its criminal regime, the **Competition Act** prohibits knowingly or recklessly making, or permitting the making of, a representation to the public, in any form whatsoever, that is false or misleading in a material respect.

The Consumer Protection Act also contains several restrictions regarding advertising, such as prohibiting false or misleading advertising, or representations concerning goods or services. In addition, it places greater emphasis on premiums than on the goods or services offered. More technical restrictions affect promotions, bonuses and competitions, in addition to payment of taxes, advertising for children and all-inclusive packages.

Anti-spam legislation

The new law generally prohibits the:

- sending of commercial electronic messages without the recipient's consent
- alteration of transmission data in an electronic message
- installation of computer programs without the express consent of the owner of the computer system
- use of false or misleading representations online in the promotion of products or services
- collection of personal information through accessing a computer system in violation of federal law (for example, the Criminal Code of Canada), and
- collection of electronic addresses through the use of computer programs

Are there any national particularities on ADR/ODR?

Quebec Code of Civil Procedure:

To prevent a potential dispute or to resolve an existing one, the parties concerned, by mutual agreement, may opt for a private dispute prevention and resolution process.

The main private dispute prevention and resolution processes are negotiation between the parties, as well as mediation and arbitration, in which the parties call on a third person to assist them or to decide. The parties may also resort to any other process that suits them and that they deem appropriate, whether or not it borrows from negotiation, mediation or arbitration.

Parties must consider private prevention and resolution processes before referring their dispute to the courts.

Exceptions to the rule of Quebec law

Following exceptions developed by Quebec rules respecting private international law and case law of Canadian courts, the rule of Quebec law may not always be applied. In short, Quebec law will apply to a website if a special offer was made to residents of the province or in the presence of a "real and substantive connection" with Quebec. Courts will examine several factors in determining the existence of such connection.

Do the aforementioned rules also apply to e-commerce in B2B?

The rules on consumer protection (**Consumer Protection Act**) only apply to contracts for goods or services entered into between a consumer and a merchant in the course of their business. Therefore, most of the aforementioned rules do not apply in a B2B context.

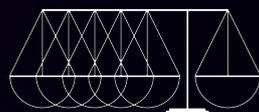
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Arnaud A. Franticelli

MERCIER LEDUC LLP
164 Notre-Dame East H2Y1C2
Montreal
Canada

afranticelli@mercierleduc.com | Tel: +1 514 954 2000



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