



▶ **Module 2**
Right of Withdrawal

FEBRUARY 2023



Funded by
the European Union

consumerlawready.eu

DISCLAIMER:

The information and views set out in this publication are those of the author(s) and do not necessarily reflect the official opinion of the Commission. The Commission does not guarantee the accuracy of the data included in this publication. Neither the Commission nor any person acting on the Commission's behalf may be held responsible for the use which may be made of the information contained therein.

This document is not legally binding, and it is not a formal interpretation of EU or national law, nor can it provide comprehensive or complete legal advice. It does not intend to replace professional legal advice on particular issues.

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

FEBRUARY 2023

Table of Contents

Introduction	5
When does a consumer have a right of withdrawal?	8
What is a distance selling consumer contract?	8
What is an off-premises consumer contract?	8
What are the specific consumer rights for these two types of contracts?	10
What are the exceptions to the right of withdrawal?	10
Do I need to inform consumers about their right of withdrawal?	12
What is the model withdrawal form?	12
How to calculate the time period for the withdrawal?	13
Can the right of withdrawal be excluded?	14
What are the consequences if you fail to inform the consumers about their right of withdrawal?	14
In what manner can the consumer withdraw from the contract?	15
Has the consumer the right to use the product before withdrawal?	15
Who needs to prove the diminution in value of the product?	15
Consequences of the withdrawal	16
What are the sanctions for the trader's failure to comply with the rules on the right of withdrawal?	17
What happens with cross-border sales?	18
Specific treatment of sales that you direct to consumers residing in other Member States	18
Under which conditions can you be regarded as targeting consumers in another Member States?	19
What does this mean for you in practice?	19
When you have a dispute in such a cross border contract, what court is competent?	19
Checklist for the traders:	22

“I like to shop clothes online and am happy to be able to send them back within 14 days if they don’t fit”

Consumer

“Whether we like it or not, we have to respect the 14 days right of withdrawal. It’s the law!”

Trader

“I have 14 days to inspect thoroughly the product I bought online; it’s more than enough to take a good decision. Sending the product back is very easy.”

Consumer

Introduction

Dear entrepreneur,

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

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

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

EU consumer law consists of different pieces of legislation adopted by the European Union over the last 25 years and transposed by each EU Member State in their respective national law. In 2017, the European Commission has concluded an evaluation to check whether the rules are still fit for purpose. The result was overall positive¹. The main finding was that the existing rules need to be better enforced by authorities and better known by businesses and consumers. The Consumer Law Ready project aims to enhance the knowledge of traders, in particular of SMEs, regarding consumer rights and their corresponding legal duties.

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

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

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

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

The Module 2 of the Handbook deals with the right of withdrawal from distance and off-premises contracts. It describes what the right of withdrawal is and how it is applied in the EU Member States, and gives you tips to make it easier for you to comply with the law.

This Module presents the right of withdrawal established by the EU Directive 2011/83/EU on consumer rights (the "Consumer Rights Directive" – CRD), according to which consumers have a right of withdrawal from contracts concluded at a distance and consumer contracts concluded outside of your business premises. For more in-depth information about the provisions of the Consumer Rights Directive, please consult Module 1 or the [Guidance document of DG Justice of the European Commission](#) that is available in all official languages of the EU².

The Consumer Rights Directive has been amended by the [Directive \(EU\) 2019/2161](#) of 27 November 2019 on better enforcement and modernisation of EU consumer protection rules. EU Member States must transpose the changes into their national legal system before 28 November 2021 and apply the new rules as of 28 May 2022. This module also covers the main amendments to the CRD in relation to the right of withdrawal that may have an impact on you. These changes are presented in this module in separate boxes with the title "New rules as of 28 May 2022".

Besides those horizontal requirements, other, mainly sector-specific, information requirements might apply – independently or combined with the CRD information requirements - depending on the contract type (e.g. consumer credit, package travel, etc.). In case of conflict between sector-specific rules and the general rules, the sector-specific rules apply. The [Consumer Law Database](#)³ and the [Your Europe Business Portal](#)⁴ can help you gather the relevant information or you can contact your local business organisation.

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

FEBRUARY 2023

² See https://ec.europa.eu/info/law/law-topic/consumers/consumer-contract-law/consumer-rights-directive_en

³ See https://e-justice.europa.eu/content_consumer_law_database-591-en.do

⁴ See <http://europa.eu/youreurope/business/>

Module 2

What is the right of withdrawal?

The right of withdrawal allows the consumer to cancel, **without any justification**, the consumer contract within 14 days after s/he received the good, or after s/he concluded the contract for services or digital content which is not supplied on a tangible medium.

A consumer contract is any contract that the trader concludes with a consumer, irrespectively of whether it has for its object the supply of goods, services and/or digital content.

For instance, a contract concluded online with the consumer regarding the online sale of a book⁵.

When does a consumer have a right of withdrawal?

Under the "Consumer Rights Directive" – CRD, consumers have **a right of withdrawal from consumer contracts concluded at a distance and consumer contracts concluded outside your business premises**. In these two types of contracts, this right is granted because it is considered that the consumer's "weakness" in these particular cases is more important than in other contracts. In the case of distance contracts, the consumer has no possibility to materially ascertain the product's features, and in the case of off-premises contracts, the consumer may find himself in a situation where he/she is more vulnerable to pressure.

The right of withdrawal exists irrespective of whether the contract is for the supply of goods, provision of services or provision of digital content which is not supplied on a tangible medium.

What is a distance selling consumer contract?

Distance selling contracts are consumer contracts in which there is no simultaneous presence of the trader and the consumer. Instead, they are exclusively using one or more means of distance communication up to and including the time at which the contract is concluded. Some of the examples of the distance contracts include agreements concluded by mail order, online, telephone or fax.

The distance contract also includes situations where the consumer visits the business premises merely for the purpose of gathering information about the goods or services and subsequently negotiates and concludes the contract at a distance. For example, the situation when the consumer goes to the shop and checks several handbags, then goes home and orders one of the handbags via phone can be considered as a distance contract. On the contrary, a contract which is negotiated at the business premises of the trader, but which is finally concluded by means of distance communication will not be considered a distance contract.

Neither should a contract initiated by means of distance communication (e.g. an email), but finally concluded at the business premises of the trader be considered as a distance contract. Similarly, the distance contract does not cover reservations made by the consumer through a means of distance communications, as it would be the case with the consumer phoning to request a reservation in a restaurant.

What is an off-premises consumer contract?

Contracts negotiated outside of business premises are the contracts concluded in the simultaneous

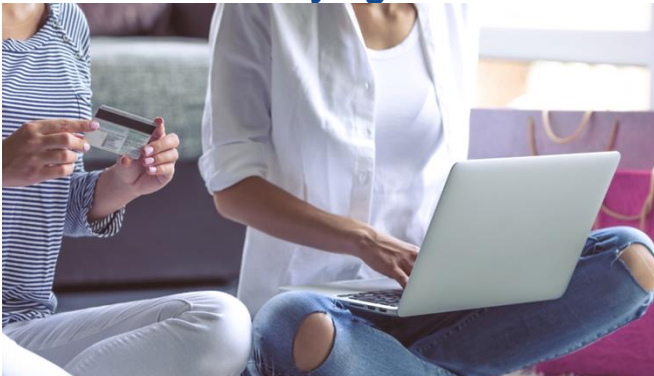
⁵ See Module 1 on pre-contractual duty of information.

physical presence of the consumer and yourself/your representatives, but in a place which is not your business premises. Business premises include the premises in whatever form (e.g. shops, lorries, stalls, etc.) which serve as a permanent or usual place of business for the trader. The business premises also include the premises which the trader uses on a seasonal basis (e.g. ice cream shop at the beach during the summer).

Typically, contracts negotiated outside of business premises are contracts concluded at the consumer's home, consumer's workplace or during an excursion organised by the trader.

Below you will find examples of distance and off-premises contracts, where the consumer has a right of withdrawal (unless an exception applies):

1. a consumer buying a dress online



2. a consumer ordering a book through regular mail



3. a consumer buying a vacuum cleaner at her doorstep



4. a consumer signing in for the gym services at his workplace



5. a consumer buying a pillow and a duvet at an excursion organised by a trader (e.g. in a restaurant or shop)



What are the specific consumer rights for these two types of contracts?

Whether the contract is concluded at a distance or outside business premises, the consumer has a period of fourteen **calendar** days to reconsider the decision on whether to maintain the contract concluded with the trader.

During this period, the consumer can withdraw from the contract. He/she does not need to provide any explanation or justification of this decision. Moreover, the consumer must not incur any costs other than for sending back the good or for a diminished value in case of mishandling the product, as further explained below.

The right of withdrawal is fully harmonised in the EU. This means that the same rules apply in all Member States in this regard. Regardless of whether you offer your products or services to consumers from other Member States, the duration of the right of withdrawal period will be the same and you do not have to investigate whether there are differences between the levels of protection.

What are the exceptions to the right of withdrawal?

In certain cases, the consumer will not have the right to withdraw from the contract. The right of withdrawal will not exist in case of the following contracts:

a) for the provisions of services after the service has been fully performed, provided that the performance has begun with the consumer's prior express consent, and with the acknowledgement that s/he will lose his right of withdrawal once the contract has been fully performed by the trader;
Example: a consumer who has concluded online a contract with the gym on provision of three classes

of personal training which s/he starts using the next day and finishes before the end of the 14 days, consenting that s/he will lose his right of withdrawal once these three classes have been provided.

- b) for the supply of goods or services for which the price is dependent on fluctuations in the financial market which cannot be controlled by the trader, and which may occur within the withdrawal period;
Example: the goods whose price depend on the value of a foreign currency.
- c) for the supply of goods made to the consumer's specifications or clearly personalised;
Example: a tailor-made suit
- d) for the supply of goods which are liable to deteriorate or expire rapidly;
Example: any perishable goods, such as fresh vegetables
- e) for the supply of sealed goods which are not suitable for return due to health protection or hygiene reasons and were unsealed after delivery;
Example: needles for medical usage; certain cosmetic products such as lipsticks;
- f) for the supply of goods which are, after delivery, according to their nature, inseparably mixed with other items;
Example: sand that is mixed with some other substance
- g) for the supply of alcoholic beverages, whose price has been agreed at the time of the conclusion of the sales contract, whose delivery can only take place after 30 days and the actual value of which is dependent on fluctuations in the market which cannot be controlled by the trader;
Example: vin en primeur

- h) where the consumer has specifically requested a visit from the trader for the purpose of carrying out urgent repairs or maintenance. If, during the visit, the trader provides services that are additional to those specifically requested by the consumer (i.e. repair or maintenance), the right of withdrawal will apply to those additional services or goods. Similarly, if during the visit the trader supplies goods other than the replacement parts necessary to carry out the repair or maintenance, the right of withdrawal shall apply to these goods.
Example: a requested roof repair following damages (e.g. after a storm). If, in addition to the roof repair, the consumer decides to buy some bricks from the same trader the withdrawal period will in principle apply to these bricks. Similarly, if the consumer decides to introduce an additional layer of isolation to the roof, the right of withdrawal would in principle apply to this service
- i) for the supply of sealed audio or video recordings, or sealed computer software, which were unsealed after delivery;
Example: a DVD sold in plastic wrap that was opened
- j) for the supply of a newspaper, periodical, or magazine with the exception of subscription contracts for the supply of such publications;
Example: daily newspapers
- k) concluded at a public auction;
Example: public auction of paintings. Please note that this does not apply to auction platforms such as e-bay
- l) for the provision of accommodation other than for residential purpose, transport of goods, car rental

services, catering or services related to leisure activities if the contract provides for a specific date or period of performance;

Example: reservation of a hotel room for a specific weekend

- m) for the supply of digital content which is not supplied on a tangible medium if the performance has begun with the consumer's prior express consent and the acknowledgement that s/he thereby loses the right of withdrawal.

Example: downloading an application for the mobile phone if downloading started and the consumer acknowledged losing his right to withdrawal⁶.

If you want to be sure that the consumer agrees in accordance with the law that s/he will not have a right of withdrawal, you may ask him to give his consent in the following form: "I hereby consent to immediate performance of the contract and acknowledge that I will lose my right of withdrawal from the contract once the download or streaming of the digital content has begun."

As explained in Module 1, for some specific types of contracts, the Consumer Rights Directive does not apply (for example, contracts for healthcare and financial services, acquisitions of immovable property). In these cases, the right of withdrawal would only exist under the provisions of other pieces of applicable sector specific legislation (ex. Directive 2008/48/EC on consumer credit).

Consumer Rights Act 2022

The cancellation period expires on the expiry of the period of 30 days, - derogate from several exceptions to the right of withdrawal⁷ (i.e. the consumer will have a

⁶ See point a): consumer needs to give his/her prior express consent and acknowledge that he/she will lose the right of withdrawal once the contract has been fully performed by the trader.

⁷ These regulatory options left to the Member States will concern points (a), (b), (c) and (e) of Article 16 CRD. For more details and examples, please refer to the section "What are the exceptions to the right of withdrawal?" of this Module.

right of withdrawal in some cases where she/he did not have it before) ...

...for **contracts** concluded in the context of:

- 1) Unsolicited visit by a trader to the consumer's home
- 2) Excursions organised by a trader with the aim or effect of promoting or selling products to the consumer.

These options aim to allow Member States to offer additional protection to consumers regarding these specific sales channels.

Do not forget that you shall inform consumers before the conclusion of the contract about the existence of the right of withdrawal and the duration of the withdrawal period (see Module 1). Therefore, if you are selling through these types of sales channels, do not forget to check if in the Member State(s) in which you operate, the withdrawal period is 14 or 30 days.

Example: Under the Consumer Rights Act 2022, you are selling tailor-made costumes to a consumer at their home without prior invitation in a Member State that applies these options, your consumer has the right to withdraw from the sale within 30 days from the delivery date.

Do I need to inform consumers about their right of withdrawal?

Yes, you do. Where such right exists, in order to make the right of withdrawal effective, the trader has the obligation to inform the consumer about the existence and modalities of their right to withdraw from the contract⁸. The information to be provided to the consumer regarding the right of withdrawal must include:

- the conditions
- time limit

⁸ See Module 1 on the pre-contractual information requirements.

- procedures for exercising their right of withdrawal
- the fact that the consumer bears the cost of returning
- the fact that if the consumer withdraws after having requested the start of services, s/he has to pay the proportionate costs of service used up until that moment
- if applicable: the fact that the consumer has no right of withdrawal (see exceptions above) or the circumstances under which s/he loses this right
- model withdrawal form (see below or in Annex 1).

The trader may grant the consumer rights that go beyond what is legally required, e.g. a longer time limit, but in any case, s/he must ensure that the consumer receives at least all the information about the right of withdrawal that is legally required.

Both for distance and off-premises contracts, the trader has to give the consumer a model form to withdraw from the contract on a **durable medium** (paper, disc...).

In case of an online contract, this could be, for example, an email that contains a form. An Internet website cannot be considered as providing information on a durable medium as the Internet website is not a constant, but a changeable medium. It is therefore not enough if the trader only directs the consumer to a particular webpage.

What is the model withdrawal form?

An EU-wide model withdrawal form is provided in the law itself⁹. This model withdrawal form, also available in Annex 1, must be provided to the consumer:

- Model withdrawal form (complete and return this form only if you wish to withdraw from the contract)
- To [here the trader's name, geographical address and e-mail address are to be inserted by the trader]:

⁹ Cf. Annex IB of the Consumer Rights Directive

- I/We (*) hereby give notice that I/We (*) withdraw from my/our (*) contract of sale of the following goods (*)/for the provision of the following service (*),
- Ordered on (*)/received on (*),
- Name of consumer(s),
- Address of consumer(s),
- Signature of consumer(s) (only if this form is notified on paper),
- Date

It is very important to inform the consumer in a clear and comprehensible manner about the right of withdrawal and to provide him with the model form. It allows consumers to exercise this right effectively and avoids negative consequences for you (incl. possible penalties) for failure to do so (see question on the consequences of failing to inform consumers about the right of withdrawal).

Be aware that in addition to email and other forms of communication, you can give the option to the consumer to electronically fill in and submit either the model withdrawal form or any equivalent statement on the company's website. In these cases, you have to communicate to the consumer an acknowledgement of receipt of such a withdrawal on a durable medium without delay.

How to calculate the time period for the withdrawal?

The withdrawal period is fourteen **calendar** days in all Member States. In case of a sales contracts, the fourteen days period starts from the moment when the consumer acquires physical possession of the goods (or the last good/piece in case of multiple goods or good consisting of multiple lots or pieces ordered). For example, in case of an online purchase of a dress, the

consumer has the right to withdraw from the contract within 14 days as of the receipt of that dress and then has up to 14 days after informing the trader of the withdrawal to send back the dress.

In case of **service** contracts and the contract for online **digital content**, the time period starts at the moment of the conclusion of the contract. For example, in case of a consumer who has enrolled for language classes online, the consumer has the right to withdraw from that contract within 14 days from the conclusion of that contract. In case of **mixed purpose** contracts, the start of the time period will depend on the main purpose of the particular contract, i.e. whether it is prevalently a sales contract or a services contract, and accordingly, the applicable rule for the sales or the services contract will apply. For example, in the case of the distance purchase of a car radio which includes a relatively simple installation, the period will start at the moment when the radio is delivered whereas in case of concluding an online contract on the organisation of a seminar which also includes distribution of the pens and papers to the participants, the start of withdrawal period will occur at the moment of the conclusion of such a contract as it is primarily a services contract.

Sundays and public holidays are included in the 14 days. However, if the end of the 14 days falls on a Sunday or public holiday, the withdrawal period expires at the end of the following working day.

For example, if the 14-day withdrawal period for a consumer residing in France ends on Monday 14 July, the withdrawal period should be extended to Tuesday 15 July, as 14 July is a public holiday (National Day) in France.

A consumer has exercised the withdrawal right timely if s/he has sent the communication with which s/he withdraws from the contract within the prescribed period of fourteen calendar days. The consumer has to prove

that the withdrawal decision has been made within the fourteen calendar days. If the consumer withdraws from the contract, s/he has another 14 days to send the good back.

NB: Under the Consumer Rights Act 2022, in some cases Member States will have the possibility to extend the withdrawal period to 30 days (see box on page 11).

Consumer Rights Act 2022

Remember that some Member States may extend the duration of the right of withdrawal period from 14 to 30 days for contracts concluded in the context of unsolicited visits by a trader to a consumer's home or excursions organised by a trader, in Ireland the right of withdrawal period is 30 days. (See box on page 11).

Can the right of withdrawal be excluded?

The right of withdrawal is guaranteed by law. It can never be excluded or limited.

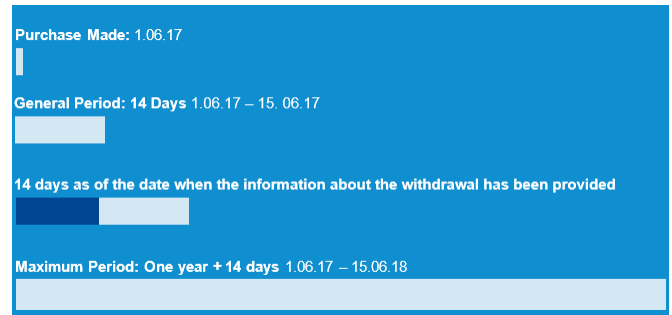
Any exclusion or limitation of the right of withdrawal would be contrary to the law and likely to be classified as a breach of the rules on unfair contract terms and on unfair commercial practices¹⁰.

Please remember that there are some statutory exclusions of the right of withdrawal in certain cases which have been explained before.

¹⁰ See Module 4 on Unfair Commercial Practices and unfair contract terms.

What are the consequences if you fail to inform the consumers about their right of withdrawal?

Informing the consumer of the right of withdrawal before concluding a consumer contract is very important¹¹.



If you fail to inform the consumer about his/her right of withdrawal, the time period during which he/she can terminate the contract extends by 12 months! That means that a consumer who has not been correctly informed about his/her right of withdrawal has up to 12 months and 14 calendar days to cancel the contract in question.

In case you have forgotten to provide information about the right of withdrawal before conclusion of the contract, you are advised to inform the consumer as soon as possible about his/her right (and in any case within 12 months) in which case s/he has 14 calendar days from the date of this information.

Consumer Rights Act 2022

Remember that some Member States may extend the duration of the right of withdrawal period from 14 to 30 days for contracts concluded in the context of unsolicited visits by a trader to a consumer's home or excursions organised by a trader, in Ireland the right of withdrawal period is 30 days. (See box p.11).

¹¹ See module 1 on pre-contractual information requirements.

In what manner can the consumer withdraw from the contract?

The consumers can choose the way in which they decide to inform you about their decision to withdraw from the contract. The statement setting out the decision to withdraw from the contract must, however, be straightforward. Simply returning the goods without any statement as to the withdrawal from the contract would not be enough. Consumers may use the model withdrawal form that you as trader has provided them before the conclusion of the contract, but they are not obliged to. As the burden of proof for having withdrawn from the contract within the 14 calendar days period is on the consumer, it is in their own interest to use a durable medium. If the trader offers the option to the consumer to inform about the withdrawal statement electronically through its website, and the consumer uses this option, the trader must send a confirmation (on a durable medium) to the consumer.

The trader cannot refuse the exercise of the right of withdrawal during the prescribed time period.

The consumer is not obliged to give any reason for the withdrawal of the contract and does not have to pay any cost apart from the costs of returning the goods if the trader informed him that s/he has to bear that cost.

Has the consumer the right to use the product before withdrawal?

In case they want to make use of their right of withdrawal, consumers are not allowed to use the product. However, they can inspect and test the goods to an extent which is necessary to establish the nature, characteristics, and the functioning of the acquired

goods. This means in practice that the consumer can only handle and inspect the product in the same manner they would do it in a traditional shop. For example, the consumer could try on a new suit in a shop without removing the tags. However, he/she would not be entitled to configure software on his/her laptop¹².

If the consumer handled or used the goods to an extent that is more than necessary to establish the nature, characteristics and functioning of the goods, the consumer does not lose the right of withdrawal, but will have to compensate the trader for any diminished value of the goods.

For example, the consumer is not entitled to buy a dress on the Internet to wear for one occasion (e.g. a wedding reception) and then withdraw from the contract and return the dress. In that case, the trader can charge the consumer for the diminished value.

Who needs to prove the diminution in value of the product?

In case the consumer withdraws from a contract after having used the product, the burden of proof that the value of the good is diminished lies on the trader.


For this reason, if you have activities that include off-premises or distance selling contracts, we recommend that you have a system in place allowing you to check whether the goods were mishandled or used by the consumer.

Setting up a mechanism to verify whether a particular product has been used will help in case of a dispute with a consumer. You may in specific cases, for instance, use a specifically designed tool or procedure to check that. However, you will have to bear the cost for such verification.

¹² You can find more practical examples on p.47 of the Guidance document related to the Consumer Rights Directive:

http://ec.europa.eu/justice/consumer-marketing/files/crd_guidance_en.pdf

Please note that in cases where the trader has failed to inform about the right of withdrawal and the period is extended by up to 12 months, the consumer may withdraw from the contract after a considerable time, during which s/he has been effectively using the good without bearing any liability for the resulting wear and tear.

EU law does not regulate the enforcement of a consumer's liability for the diminished value of the goods. General contract and procedural laws of Member States apply, and, for example, traders may be allowed to reduce the amount to be refunded. 

Consequences of the withdrawal

When a consumer informs you of his/her withdrawal, he/she is released from any obligations included in the contract.

The consumer bears the costs of returning the goods except if it was agreed that the trader would bear the costs. However, the trader needs to inform the consumer clearly and before conclusion of the contract about the fact that the consumer should pay the costs of returning the good. If the trader fails to do so, the trader will have to bear the cost of returning the goods.

If the consumer decides to withdraw from a contract, you must reimburse him/her including all payments that you have received. The reimbursement needs to be done through the same means of payment as the one used to buy the product. (e.g. no reimbursement through vouchers is allowed). For instance, if the consumer decides to return the book, she/he bought from you online using a credit card, you need to give him back the full price of the book including all the taxes as well as

delivery costs on the account connected to the credit card used for the payment.

The trader needs to reimburse the entire amount s/he has received from the consumer within 14 calendar days starting from the day on which s/he has been informed of the consumer's decision to withdraw from the contract.

The reimbursement can however be withheld until either:

- the trader receives the goods; or
- the trader receives proof that the goods have been sent back, whichever is the earliest.

Consumer Rights Act 2022

Under the Consumer Rights Act 2022, consumers have a right of withdrawal also when they did not pay money for digital content and/or digital service but provide personal data (unless this data is necessary to provide the digital content).

1) Obligations for traders

- Please bear in mind that you are required to comply with the provisions of the General Data Protection Regulation ("GDPR")¹³,
- You shall refrain from using any content, other than personal data, which was provided or created by the consumer when using the digital content or digital service you supplied,
- *Where applicable*, you shall, at the consumer's request, make available to him/her any content, other than personal data, which was provided or created by the consumer when using the digital content or digital service you supplied,

¹³ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement

of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance)

- The consumer shall be entitled to retrieve that digital content free of charge, without hindrance from you, within a reasonable time and in a commonly used and machine-readable format.

- If the consumer decides to withdraw from the contract, you may prevent any further use of the digital content or digital service by the consumer, in particular by making the digital content or digital service inaccessible to the consumer or disabling the user account of the consumer.

2) Obligations for consumers.

- If the consumer decides to withdraw from the contract, he/she shall refrain from using the digital content or digital service and from making it available to third parties

Four main rules can be summarised below:


1. The consumer has the right to withdraw from a contract within 14 calendar days as of the delivery of the goods or the conclusion of a contract for services (with the exception of digital content not provided on tangible medium: if the performance has begun (i.e. the consumer started downloading content) and the consumer has a) given its prior consent and b) acknowledged that s/he is to lose the right of withdrawal;
2. the consumer's right to withdraw extends for up to one year in case the trader fails to inform the consumer about the existence of the right of withdrawal;

¹⁴ For instance, in ITALY Art. 27 of the consumer code sets out the minimum fine of €5,000 and a maximum financial penalty of €5,000,000. These amounts apply both to infringements in respect of either the Unfair Commercial Practices Directive, Consumers Rights Directive, or both in parallel. In the event of repeated non-compliance, the Authority may order the trader to suspend trading for a period which shall not be more than thirty days. In FRANCE, the revised 2016

3. the trader needs to fully reimburse the consumer within 14 calendar days starting from the day when the trader has been informed about the withdrawal, but the trader can withhold reimbursement until s/he receives the goods back or receives a proof that the consumer has sent the goods back, whichever is the earliest;
4. the consumer needs to return the product within 14 calendar days as of the day when the consumer notified the trader about the decision to withdraw.

What are the sanctions for the trader's failure to comply with the rules on the right of withdrawal?

As already stated above, if you fail to provide the consumer with the information on the right of withdrawal, this right is extended for an additional period of time of up to one year.

Moreover, the trader's failure to comply with any of the rules related to the right of violates the national rules transposing the Consumer Rights Directive for which Member States have to put in place deterrent penalties¹⁴. 

Consumer Rights Act 2022

More effective penalties for cross-border infringements

French Consumer Code sets a fine of up to EUR 3,000 (natural persons) or EUR 15,000 (legal persons). In Cyprus, breaches of the Consumer Rights Directive are punishable by up to 5 % of the annual turnover or up to EUR 200 000. In Latvia by up to 10 % of the annual turnover with a cap of EUR 100 000 and in the Netherlands by up to 1 % of the annual turnover or up to EUR 900 000. See also the table with penalties in Module 1 ANNEX 2


The updated CRD will better equip national consumer protection authorities to deal with infringements affecting many consumers across the EU. Currently, when a trader breaches consumer protection rules, penalties vary considerably from country to country and are often very low, even for very serious infringements. The new rules will provide national authorities the power to impose effective, proportionate, and dissuasive sanctions in a coordinated way when working together on cross-border infringements that affect consumers in several EU Member States.

In such cases, national authorities will have the power to impose a fine of up to 4% of the trader's turnover, or up to €2 million where turnover information is not available. Member States are free to maintain or introduce higher maximum fines.

Please also note that the rights defined by CRD would be possible to enforced by consumers also in collective proceedings as of 25 June 2023 in line with the new Directive (EU) 2020/182815 on Representative actions for the protection of the collective interests of consumers ('RAD')¹⁶.

What happens with cross-border sales?

The provisions on the right of withdrawal are fully harmonised in the EU. This means that there are no differences between Member States and your rights and obligations are the same across the EU. The only differences may lie, as mentioned above, in sanctions applied differently by Member States.

In order to know which national legislation applies when it comes to sanctions, please read the below. It is also important to pay attention to the paragraph devoted to competent courts, which may be of interest in case of a dispute on the right of withdrawal. 

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

Under EU law¹⁷, if you direct your business activities to consumers in EU countries different from your own, it is usually the law of the country in which the consumer lives that applies to your contract with the foreign consumer. If you have both chosen a different law, that choice cannot deprive your foreign consumer of the protection granted by the mandatory provisions of the country of residence.

Therefore, if, for example, your website is directed at consumers in another Member State, you need to check for example if that Member State imposes language requirements for pre-contractual information¹⁸ (for more information see Module 1). If that is the case, you must provide the consumer with pre-contractual information in the language required by that Member State. More generally, whenever you advertise or offer your goods or services in other Member States, you must respect the standard of consumer law protection of the countries you target.

¹⁵ Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC.

¹⁶ See Module 5.

¹⁷ Notably the so called "Rome I" Regulation 593/2008.

¹⁸ Under article 6(7) of the Consumer Rights Directive, Member States had the regulatory choice to maintain or introduce in their national

legislation language requirements regarding the contractual information for distance and off-premises contracts, to ensure that the consumer easily understands such information. According to the [European Commission's study](#) on the application of the Consumer Rights Directive, 15 EU Member States have introduced language requirements in their national legislation (p.29-32).

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

The Court of Justice of the European Union has laid down a number of non-exhaustive criteria for establishing whether your commercial or professional activities are 'directed' at a specific Member State. Such criteria entail, for example, the use of languages or currencies other than those generally used in the Member State of your company's place of establishment, the mention of telephone numbers with an international code, the use of a top-level domain name other than that of the Member State in which your company is established¹⁹.

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

What does this mean for you in practice?

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

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

1. EU legislation harmonises, an important part of consumer protection rules. This means, that, in principle, the same rules apply in all EU countries.
2. Even if, on some elements, there are differences left between Member States, this does not mean that you are not allowed to have your contracts with

consumers designed under your own legislation: as explained above, you can agree with the consumer that another law should be applicable, in which case you only have to respect the mandatory consumer law of the Member State where the consumer lives.

3. In practice, the mandatory consumer legislation of another Member State will only be relevant if its rules are more protective than those of your legal system or the law you have agreed upon with the consumer. This might be the case where, for example, the legal guarantee period of the consumer's law is longer than the one under your own law.
4. Through the Consumer Law Ready training modules, you will be able to know in advance which additional requirements may apply in which other Member State to which you're considering directing your business activities.
5. The question of the applicable law will often be relevant only if there is a disagreement with the consumer. Many misunderstandings can be solved amicably or by using your in-house complaint service.

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

If, with your offers, you direct your activities to consumers in another EU country and you have a dispute with a consumer from another EU country, be aware that the competent court to decide over such a dispute will always be, that of the country in which the consumer lives. You cannot sue the consumer before a court of another country and if you stipulate such an option in your terms and conditions, you would risk a severe fine. The consumer, by contrast, has the option to sue you before your home court as well. For cross border cases, in order to make it a bit easier to solve

¹⁹ For more information, see joined cases C 585/08 and C 144/09 Peter Pammer and Hotel Alpenhof GesmbH the Court

disputes, the EU has set up an ODR platform that makes it possible to liaise between ADR systems in different Member States²⁰.

Example: if you are a French trader based in Northern France selling your products to Belgian consumers in

Belgium, you cannot establish in your terms and conditions that, in case of a dispute, the only competent courts to solve the dispute are the courts in Northern France.

²⁰ See Module 5 of this handbook.

Annex

Checklist for the traders:

In order to be on the safe side, always check:

1. whether the consumer's right of withdrawal exists for the type of consumer contract you are concluding;
2. that you have informed the consumer timely and clearly of his/her right of withdrawal;
3. that you have informed the consumer timely and clearly that in case of the decision to withdraw from the contract, the consumer needs to bear the costs of returning the product back to the trader;
4. that you have provided the consumer with the model withdrawal form;
5. that, if the consumer chooses to withdraw from a contract, you respect all the obligations, in particular those related to the full refund of consumer.

ANNEX 1 – Model withdrawal form as laid down in Annex IB of the Consumer Rights Directive

(Complete and return this form only if you wish to withdraw from the contract) -

- To [*here the trader's name, geographical address and, where available, e-mail address are to be inserted by the trader*]:
- I/We (*) hereby give notice that I/We (*) withdraw from my/our (*) contract of sale of the following goods (*)/for the provision of the following service (*),
- Ordered on (*)/received on (*),
- Name of consumer(s),
- Address of consumer(s),
- Signature of consumer(s) (*only if this form is notified on paper*),
- [Date]

Consumer Law → **READY**

Consumer Law Ready Training for European SMEs

2023

consumerlawready.eu



Funded by
the European Union