

LEGAL BRIEF #2: WHAT IS EUROPEAN CONSUMER LAW?

Ever since the 1970s, the European Union has been developing consumer policies. Their aim is to rebalance the asymmetric market powers between traders and consumers. For instance, if consumers buy cars that don't work, these laws make it easy for them to get their cars repaired, get new cars, or get their money back.

The goals of consumer protection rules

Think about the last time you bought a coffee. You ordered, paid for your coffee and picked it up. Did you try to negotiate the price? Could you ask for other coffee brands than those offered by the café? The answer to these questions is most likely no. As a customer you had no idea of the production cost of that coffee, where it was sourced from or whether it used fresh ingredients. You either take the deal or leave it, in the hope that other coffee shops can accommodate your preferences in better ways if you're not satisfied. This example shows how consumers do not have enough negotiating power to change the business realities around their needs and preferences. They lack most of the information that professional traders normally gain as professional traders. There is a power imbalance between business owners and consumers, which is also there when you advertise or sell things to your audience. That's why EU law demands that you give your consumers adequate protection. If you include paid product reviews, collaborate with a brand or sell your own merchandise then these laws apply to you. European consumer protection now gives a wide range of rights. Basically - every business or individual acting as a 'trader' towards European consumers must know and offer consumers these rights in order to comply with the law.

Relevance for the influencer industry

In the eyes of European law, when someone (whether a person or a company) has commercial activities that occur on a regular basis and for profit, consumer protection applies. When you monetize your content, whether you advertise goods and products on your social media channels or sell them on your personal websites, you are considered a trader by the law. The most famous kind of consumer protection is the requirement to label your sponsored posts. But EU consumer protection goes way beyond this. As an influencer with European consumers in your audience, you need to be aware of these rules and prepare accordingly. Although to this date there is no explicit law for influencers at European level, that does not mean that influencer marketing and content monetization in general are not covered by any law. To the contrary, there is a rich collection of mandatory legal rules at European level, which apply to you.

Some of the most important European consumer protection laws

But what exactly are these rules? Here's a brief overview of some of the most important ones you need to remember:

1. The [Unfair Contract Terms Directive](#). When you sell a product to a consumer, you will state terms and conditions related to that sale - for example when and how

customers can return a product, or under what conditions you will accept that return. These terms and conditions make up a standard contract. When using standard contracts with consumers, traders must generally make sure that they do not abuse consumers through saying that they can take-it-or-leave-it. This is the core principle behind the [Unfair Contract Terms Directive](#), adopted in 1993. For instance, you can't force a consumer to travel to another country if they want to sue you. Another example is that if you sell make-up using drop shipping, meaning through third-party intermediaries, you can't use standard terms that absolve your responsibility if consumers get health problems as a result of using your products. Sometimes dropshipping platforms from countries outside the EU might offer unacceptable standard terms that offer a much lower level of consumer protection than the EU offers. It is your responsibility to ensure that standard terms meet the requirements of the [Unfair Contract Terms Directive](#).

2. **The [Unfair Commercial Practices Directive](#)** is another example of how important fairness towards consumers is in European consumer policy. This Directive aims to combat a broad range of business practices such as including untruthful information in consumer communications or aggressive marketing techniques to influence consumer choices. This means you should not make false claims about the effects a product might have. To take a few quick examples, you cannot claim you lost 5 kilos by using a weight loss product if that never happened. The same goes for using beauty filters and then saying that your perfect skin is the result of a skincare product.
3. **The [Consumer Rights Directive](#)**, which outlines the information that consumers need to be given before they buy goods, services or digital content. This also applies to their right to cancel online purchases, wherever they shop in the EU. Even if you sell merchandise through a third party seller like a 'drop shipping company', you have a responsibility to know this information, and to make this information available.
4. **The [Digital Content Directive](#)**. It focuses on consumer protection in the context of digital content and digital services. Both of these concepts have very broad definitions and include the most relevant activities taking place on online platforms nowadays. This law is particularly relevant for you if you provide your followers with digital courses, e-books, apps or any other things that can be considered digital content. For instance, if you tell your followers you will charge them for an online course where you offer 6 online calls to offer coaching or teach them skills, and you end up only offering 3, consumers can ask for a price reduction. Similarly, if the videos do not have the expected quality, consumers can ask for their money back.
5. **The [Consumer Sales Directive](#)**. This Directive was updated in 2019 and it has similar requirements, but this time for goods and not for digital content and you may need to be aware of its content if you sell goods to your followers. Oftentimes, if you do not know a lot of details or have little control over the manufacturing processes of the goods you offer, there may be problems with their quality. In these cases, if these products lack the qualities that you tell consumers about when they purchase them, they may be entitled to ask for new items, a reduction of the price or for their money back.
6. **The [Digital Services Act](#)** was adopted in 2022 as one of the most important reforms in platform liability globally. While it is not considered a consumer protection law as such, the DSA has very important provisions meant to create more consumer safety on online platforms. This includes new transparency duties which traders have to consider when offering products and services to consumers on online platforms. If you

sell goods to your followers, you might have to register with the social media platforms that you use as a result of this law.

This overview may seem complicated - especially if you are operating your business alone, or if you are just starting your business. However it is important that you protect yourself and your customers by ensuring that your activities are consistent with EU consumer law.