LEGAL BRIEF #8: INFLUENCERS AS SELLERS - INFORMATION DUTIES AND CONSUMER CONTRACTS

When you are a trader and you sell goods or services directly to consumers, you need to know about what information you must share with your audience, so they can decide whether to purchase those goods or services from you. It is important to understand what kind of information you need to give consumers when you sell products or services to them - such as your merchandise but also online courses, e-books or apps.

As we mentioned in some of our earlier materials, when you start engaging in commercial activities, you gain a lot of information about your industry, such as manufacturing prices or conditions, shipping prices and more. Consumers normally do not have the same level of knowledge about goods and products as professionals (like yourself). This imbalance is even worse when consumers buy things off the Internet, without the chance to inspect or ask more questions about specific details. To improve this situation, the <u>Consumer Rights Directive</u> has set out, since 2011, clear rules relating to what information traders need to share with consumers. They apply in particular to contracts concluded online, or outside of business premises (for instance when someone sells something to you in your own home).

Article 6 of this law outlines a long list of so-called 'information duties':

- a) 'the main characteristics of the goods or services, to the extent appropriate to the medium and to the goods or services;
- b) the identity of the trader, such as his trading name;
- c) the geographical address at which the trader is established and the trader's telephone number, fax number and e-mail address, where available, to enable the consumer to contact the trader quickly and communicate with him efficiently and, where applicable, the geographical address and identity of the trader on whose behalf he is acting;
- d) if different from the address provided in accordance with point (c), the geographical address of the place of business of the trader, and, where applicable, that of the trader on whose behalf he is acting, where the consumer can address any complaints;
- e) the total price of the goods or services inclusive of taxes, or 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 or, where those charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable. In the case of a contract of indeterminate duration or a contract containing a subscription, the total price shall include the total costs per billing period. Where such contracts are charged at a fixed rate, the total price shall also mean the total monthly costs. Where the total costs cannot be reasonably calculated in advance, the manner in which the price is to be calculated shall be provided;
- f) the 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;
- g) the arrangements for payment, delivery, performance, the time by which the trader undertakes to deliver the goods or to perform the services and, where applicable, the trader's complaint handling policy;



- h) where a right of withdrawal exists, the conditions, time limit and procedures for exercising that right in accordance with Article 11(1), as well as the model withdrawal form set out in Annex I(B);
- *i)* where applicable, that the consumer will have to bear the cost of returning the goods in case of withdrawal and, for distance contracts, if the goods, by their nature, cannot normally be returned by post, the cost of returning the goods;
- *j)* that, if the consumer exercises the right of withdrawal after having made a request in accordance with Article 7(3) or Article 8(8), the consumer shall be liable to pay the trader reasonable costs in accordance with Article 14(3);
- k) where a right of withdrawal is not provided for in accordance with Article 16, the information that the consumer will not benefit from a right of withdrawal or, where applicable, the circumstances under which the consumer loses his right of withdrawal;
- *I)* a reminder of the existence of a legal guarantee of conformity for goods;
- *m)* where applicable, the existence and the conditions of after sale customer assistance, after-sales services and commercial guarantees;
- n) the existence of relevant codes of conduct, as defined in point (f) of Article 2 of Directive 2005/29/EC, and how copies of them can be obtained, where applicable;
- o) the 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;
- *p)* where applicable, the minimum duration of the consumer's obligations under the contract;
- q) where applicable, the existence and the conditions of deposits or other financial guarantees to be paid or provided by the consumer at the request of the trader;
- *r*) where applicable, the functionality, including applicable technical protection measures, of digital content;
- s) where applicable, any relevant interoperability of digital content with hardware and software that the trader is aware of or can reasonably be expected to have been aware of;
- t) where applicable, the possibility of having recourse to an out-of-court complaint and redress mechanism, to which the trader is subject, and the methods for having access to it.'

These are obligations to share specific information with consumers in a clear and understandable manner. The list of this information is very long, but below we discuss some **specific examples** from Article 6, to help you understand what information this is and how you're expected to share it.

- You need to indicate the main features of the goods or services. For instance, if you sell hoodies, you need to share some basic descriptions of the material they are made of. If you sell coaching lessons, you need to explain what this coaching actually consists of.
- 2. You also need to share your geographical address. If you don't have a business registration, and you still operate from your own home, this may be a big problem. Consumers need to know where to find you as a trader, but obviously if that place is your home, this may bring issues related to privacy. In this case, you should consider the alternatives you have in the country where you reside, such as hiring a business address as a freelancer. At the end of the day, you need to share an address with your consumers on your socials and website, telling them where they can find your business in case they have issues they need you to solve.



3. At the same time, **you also need to tell your consumers about their rights**, such as the right of sending back whatever they have ordered within 14 days. This doesn't have anything to do with products not working well. This right of return, which we often call a 'withdrawal right', means your buyers can change their minds about the purchase within 14 days after they received their goods or access to a service.

These are examples of the information you need to provide to your consumers.

A more recent European law, called the Digital Services Act, has imposed additional information duties on traders who make contracts with consumers via digital platforms. For instance, if you are selling your merchandise on social media platforms as a trader, this obligation will apply to you as well. These new obligations are meant to create more transparency in selling on social media and other platforms like marketplaces. Very often, consumers are lured by scam traders who operate short-lived stints. According to the <u>United States Federal Trade Commission</u>, more than 95,000 people reported about \$770 million in losses to fraud initiated on social media platforms in 2021. We have similar things going on in the European Union. In 2022, after 19 countries worked together via <u>Europol's European Cybercrime Centre</u>, 59 scammers operating in online shopping fraud were arrested. To reduce these risks, traders will have to register with social media platforms.

Article 30 of the <u>Digital Services Act</u> comes with new obligations to facilitate the so-called 'traceability of traders', by asking traders to provide even more information to platforms. To make sure people don't get scammed on social media or other online platforms, we need to understand who they buy things from, and whether those sellers are legit. What does that mean for you? If you're selling things to consumers on a social media platform, you'll have to share:

- a) 'the name, address, telephone number and email address of the trader;
- b) a copy of the identification document of the trader or any other electronic identification as defined by Article 3 of Regulation (EU) No 910/2014 of the European Parliament and of the Council (40);
- c) the payment account details of the trader;
- d) where the trader is registered in a trade register or similar public register, the trade register in which the trader is registered and its registration number or equivalent means of identification in that register;
- e) a self-certification by the trader committing to only offer products or services that comply with the applicable rules of Union law.'

This is because platforms (including social media platforms), will be expected to be more active in mapping who is part of the commercial ecosystem and remove any bad faith players. This is particularly important as social media platforms make more social commerce features available, which allow consumers to purchase products directly from their apps.

The transparency requirement is also meant to prevent the sale of unsafe products. The updated General Product Safety Regulation requires all producers to only place safe products on the internal market. Depending on the nature of the product, safety is considered according to further industry standards covered by special laws. To make sure that you are not advertising or selling unsafe products, you can always check <u>Safety Gate</u>, the EU's centralised tool that national authorities can use to quickly alert the European Commission – and each other – about any and all non-food products that pose a risk to the safety and well-being of European consumers.

