

New Consumer Protection Laws in Germany

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Changes in consumer protection law

On June 14, 2013, the German Federal Parliament passed the Act on the Implementation of the EU Consumer Rights Directive and on the Amendment of the Law on Housing (*Gesetz zur Umsetzung der Verbraucherrechtlinie und zur Änderung des Gesetzes zur Regelung der Wohnungsvermittlung*). The law shall enter into force on June 13, 2014 after a transitional period of one year. The adoption of the new law became necessary in order to achieve the full harmonization which the EU Consumer Rights Directive was aiming at, in particular for e-commerce. The law modifies *inter alia* Sections 312 et seq. German Civil Code (*Bürgerliches Gesetzbuch*; "**BGB**") (provisions concerning contracts negotiated away from business premises, distance contracts and contracts in electronic commerce), Sections 355 et seq. BGB (right of withdrawal) and Articles 246 et seq. Introductory Law to the German Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuch*; "**EGBGB**") (consumer information obligations).

Most important changes

Below is a selection of the most important changes in German consumer protection law:

- **Three types of contracts.** The provisions in Sections 312 et seq. BGB (new version) apply to three types of contracts: distance contracts, contracts negotiated away from business premises (previously "doorstep selling") and – and this is new – consumer contracts in general. The latter however are only subject to certain information obligations, but not to the statutory right of withdrawal.
- **Paid services.** The new law clarifies that the scope of application of the consumer protection provisions in Sections 312 et seq. BGB (new version) is limited to contracts on paid services of the entrepreneur – a very welcome clarification.
- **Right of withdrawal.** Significant changes were made with regards to the provisions on the right of withdrawal. These changes include in particular:
 - The **model instructions on withdrawal** in Annex 1 of Article 246a Section 1 (2) Sentence 2 EGBGB have been adapted.
 - In the future, a consumer must exercise his/her right of withdrawal through an **explicit declaration** to the entrepreneur, i.e. merely sending back the goods shall no longer be sufficient. For this purpose, the entrepreneur must provide the consumer with a form which the consumer can complete and send back to the entrepreneur. The consumer may also exercise his/her

right of withdrawal by other means, for example through a web form provided by the entrepreneur.

- In the future, there will be a Europe-wide **uniform** withdrawal period of **14 days**. The commencement of the withdrawal period no longer depends on the proper fulfillment of all consumer protection information obligations, but only on the proper instruction about the right of withdrawal. In the case of purchases of **digital contents** that are not stored on a physical data carrier (e.g. download of music, movies, games or apps) the withdrawal period already commences upon conclusion of the contract.
- In the case of purchases of **digital contents** that are not stored on a physical data carrier, the right of withdrawal shall also expire if the entrepreneur has already started executing the contract after the consumer (i) has given his/her explicit consent to the entrepreneur beginning to execute the contract before the end of the withdrawal period and (ii) has confirmed that he/she is aware that he/she will lose his/her right of withdrawal because of his/her consent as soon as the entrepreneur begins executing the contract.
- There is no more "**eternal right of withdrawal**". Even if the entrepreneur did not properly instruct the consumer about his/her right of withdrawal, the right of withdrawal shall expire at the latest upon expiry of 12 months and 14 days after all criteria for the commencement of the withdrawal period are met.
- All goods or payments must now be returned within **14 days** after the consumer exercised his/her right of withdrawal; until then the according provisions only stipulated the entrepreneur's obligation to return all received payments within 30 days. The new law also clarifies that the entrepreneur has a **right of retention** until he receives the goods or services or until the consumer proves that he/she has deposited the goods in the mail.
- The entrepreneur must reimburse the **regular delivery costs** if the consumer exercises his/her right of withdrawal. The consumer must bear the **return shipment costs**, provided that he/she was properly informed thereof.
- The consumer shall only be obligated to pay **compensation for a loss of value** if the loss of value is due to the consumer handling the relevant product in a way that was not necessary for the examination of the product's quality, its features or its functioning – the law no longer provides for compensation for uses made (*gezogene Nutzungen*). The law also explicitly states that the consumer is not obligated to pay compensation for a loss of value if he/she withdraws from a contract on the purchase of **digital contents** that are not stored on a physical data carrier.
- **Costs of transportation.** The consumer shall only have to bear costs of transportation if he/she was properly informed thereof before declaring his/her contractual statement.

- **Customer hotlines.** Calls to customer hotlines which the consumer can contact for questions or statements regarding the contract may not create additional costs exceeding the basic fare.
- **Information obligations.** Reduced information obligations shall apply if a distance contract is concluded via means of telecommunication with restricted display possibilities (e.g. mobile websites or apps for smartphones). In this case, it is sufficient to inform about the essential characteristics of the goods or services, the identity of the entrepreneur, the total price, the existence of a right of withdrawal, the contract duration and the termination conditions.

Companies' need for implementation

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The changes in German consumer protection law will enter into force on June 13, 2014. Until then, entrepreneurs must ensure in particular that they properly provide consumers with the information required by the law.

Entrepreneurs must check if they comply with the pre-contractual and post-contractual information obligations – not only with regard to distance contracts and contracts negotiated away from business premises, but also with regard to consumer contracts that are concluded in stationary trade. Entrepreneurs must also once again amend their model instructions on withdrawal. This also applies to instruction with regard to consumer loan agreements and consumer leasing agreements.

If entrepreneurs fail to comply with their pre-contractual and/or post-contractual information obligations, including model instructions on withdrawal, or fail to comply with them properly, they face risks of warning letters for unfair business practices and possibly compensation claims of consumers.

Please contact us for further information.

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