

Brussels, Monday, 22 May 2017

**Memorandum**

To  
For the attention of  
Y. ref:  
Topic

**Guidance note webshop**

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*To the best of our knowledge, this document is accurate and complies with the highest standards in terms of quality.*

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Last update date : May 2017

**GUIDANCE NOTE**

**1. INTRODUCTION**

This guidance note sets out the legal requirements with regard to the set-up of the web page on which the web shop is operated and the ordering process. In addition we have integrated recommendations based on best practices and our experience with clients and regulatory authorities in this respect. When setting-up your web shop, transparency and completeness of information are of the utmost importance to ensure compliance with the legal framework and to enhance consumer's trust. This means that you should use clear and legible fonts, make information easily accessible, structure your web shop and information sections in a logical way, etc.

You may also consider obtaining an e-commerce label from organisations such as UNIZO, BeCommerce, etc.

Finally, it is important to ensure that your internal business processes are aligned with the legal requirements as set out hereafter.

## **2. SET-UP WEB PAGE**

### **2.1 Contact information**

The following information must be accessible from each web page:

- your company name and legal form of the company
- your trade name if different from your company name
- the registered seat of your company
- your geographical address if different from the registered seat
- your contact details (telephone number, (fax number), e-mail)
- your company number
- your VAT number
- the mention RPR (*Dutch*)/RPM (*French*) and the seat of the court of the jurisdiction in which your company has its seat
- the codes of conduct to which your company has subscribed and information on how to consult these codes (if any)

It is recommended to provide this information in a section named 'contact' or 'colofon', 'About us' or other similar wording.

## 2.2 Prices

Prices should be indicated in a clear and accessible way and should mention whether VAT and delivery (or other) costs are included.

## 2.3 Product information

For each product you must mention its main characteristics.

For digital content, you must provide additional information on its functionalities, including the applicable technical protection measures, and on any relevant operability with hardware and software that you are aware of.

## 2.4 General terms and conditions

Every web shop should have an appropriate set of terms and conditions.

These terms and conditions must be accessible from each web page and must be provided in a printable and downloadable format (html, word or PDF).

In addition, you should refer to the general terms and conditions on your invoice or order confirmation and indicate that these terms and conditions are part of the agreement between you and the consumer.

## 2.5 Right of withdrawal

The withdrawal form set out in Annex I to this guidance note must be made available on the website. It is recommended to provide a separate 'right of withdrawal' section repeating the information on the right of withdrawal as set out in the general terms and conditions, and containing the withdrawal form (preferably a printable and downloadable version). This section should be accessible from each web page. For more information on the principles of the right of withdrawal, see section 3.

## 2.6 Privacy / Cookie policy

As the operation of a web shop entails the processing of personal data and the use of cookies, you must have a Privacy / Cookie Policy.

This Privacy / Cookie policy must be accessible from each web page.

Depending on the type of cookies you use, you must provide an appropriate cookie tool (banner, ... with appropriate text) to ensure consent of the website user.

## 2.7 Language

To avoid enforceability issues with the privacy/cookie policy and terms and conditions, these documents should be provided in French and Dutch if you are targeting the full Belgian market.

## 3. SET-UP ORDERING PROCESS

### 3.1 Ordering process

The ordering process should consist of different steps (eg. 'your data', 'delivery method', 'payment method', 'overview'). It is recommended that the final step - i.e. the step before the order is actually placed - consists of a general overview of the order.

The ordering process should provide means to correct input errors (eg. automatic alert if large quantities are ordered; means for consumers to correct the order during the ordering process, notification of mandatory information has not been filled out,...). Preferably, the consumer must be able to correct its order at all times but at least on the overview page.

At the latest at the beginning of the ordering process, you should indicate whether any delivery restrictions apply and which means of payment are accepted. In addition, it is recommended to mention this information on the home page and to ensure that it is accessible from each web page. If placing an order entails activating a button, this button must be labelled with the words "order with obligation to pay" or a corresponding unambiguous formulation such as "order and pay", "buy and pay", ...

Once the order has been placed, you must send the consumer an order confirmation via e-mail, containing an overview of the order. Preferably the order confirmation contains a PDF of the applicable general terms and conditions. If this is not possible, please seek further legal advice to ensure compliance with the applicable legal provisions.

### 3.2 Acceptance of terms and conditions

At the end of the ordering process, you should provide a tick box with appropriate language for acceptance of the general terms and conditions by the consumer in order to make the general terms and conditions enforceable. We recommend to use the following (or similar) language with the tick box: "*I have read the general terms and conditions and accept them.*"

### 3.3 Direct marketing

In principle you need an opt-in to send direct marketing communications. However, you are allowed to send direct marketing communications to existing customers to promote similar products or services without having an opt-in ("legal exception"). To the extent that you would like to send direct marketing communications that do not fall within the legal exception, it is recommended to provide a separate tick box with appropriate language to obtain an opt-in.

#### **4. RIGHT OF WITHDRAWAL - MAIN PRINCIPLES**

##### **4.1 What is it?**

When ordering goods/services online, the vendor and the purchaser conclude a so-called distance contract. Under the applicable legislation, consumers have 14 days ("the withdrawal period") to change their minds and to withdraw from the contract.

The withdrawal period starts:

- in the case of service contracts, the day of the conclusion of the contract;
- in the case of sales contracts, the day on which the consumer or a third party other than the carrier and indicated by the consumer acquires physical possession of the goods or:
  - in the case of multiple goods ordered by the consumer in one order and delivered separately, the day on which the consumer or a third party other than the carrier and indicated by the consumer acquires physical possession of the last good;
  - in the case of delivery of a good consisting of multiple lots or pieces, the day on which the consumer or a third party other than the carrier and indicated by the consumer acquires physical possession of the last lot or piece;
  - in the case of contracts for regular delivery of goods during defined period of time, the day on which the consumer or a third party other than the carrier and indicated by the consumer acquires physical possession of the first good.

##### **4.2 How to exercise the right of withdrawal?**

If the consumer wishes to withdraw from the contract, s/he has to inform you in writing before the expiry of the withdrawal period. For this purpose the consumer may (but is not obliged to!) use the model form (see above) or any other means.

##### **4.3 What are the consequences of the right of withdrawal?**

The effect of such withdrawal is the termination of the contract between you and the consumer. Once the contract is terminated, the consumer and yourself have a number of obligations as set out hereafter.

*Your obligations:*

You must reimburse all payments received from the consumer including, if applicable, the costs of delivery at the latest 14 days after the day on which you were informed of the consumer's decision to withdraw from the contract.

If you have not offered to collect the goods yourself, with regard to sales contracts, you may withhold reimbursement until you have received the goods back from the consumer (see below).

You must reimburse the consumer using the same means of payment as the consumer used for the initial transaction unless the consumer has expressly agreed otherwise and provided that the consumer does not incur any fees as a result of this reimbursement.

*The consumer's obligations:*

The consumer must send back to goods at the latest 14 days after the day on which he communicated its decision to withdraw from the contract. This deadline is met if the consumer sends back the goods before the 14-day period has expired.

The consumer bears the expenses of returning the goods unless you have agreed to bear them.

#### **4.4 Is there a right of withdrawal for all goods/services?**

The consumer does not have a right of withdrawal as regards the following:

- service contracts after the service has been fully performed if the performance has begun with the consumer's prior express consent, and with the acknowledgement that he will lose his right of withdrawal once the contract has been fully performed by the trader;
- 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;
- the supply of goods made to the consumer's specifications or clearly personalised;
- the supply of goods which are liable to deteriorate or expire rapidly;
- the supply of sealed goods which are not suitable for return due to health protection or hygiene reasons and were unsealed after delivery;
- the supply of goods which are, after delivery, according to their nature, inseparably mixed with other items;
- the supply of alcoholic beverages, the price of which has been agreed upon at the time of the conclusion of the sales contract, the delivery of which 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;

- contracts where the consumer has specifically requested a visit from the trader for the purpose of carrying out urgent repairs or maintenance. If, on the occasion of such visit, the trader provides services in addition to those specifically requested by the consumer or goods other than replacement parts necessarily used in carrying out the maintenance or in making the repairs, the right of withdrawal shall apply to those additional services or goods;
- the supply of sealed audio or sealed video recordings or sealed computer software which were unsealed after delivery;
- the supply of a newspaper, periodical or magazine with the exception of subscription contracts for the supply of such publications;
- contracts concluded at a public auction;
- 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;
- 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 his acknowledgment that he thereby loses his right of withdrawal.