



Legal update

January 2023

Weinhold Legal

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The information contained in this bulletin is presented to the best of our knowledge and belief at the time of going to press. However, specific information related to the topics listed in this bulletin should be consulted before any decisions are made.

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Fundamental changes for 2023

Overview of changes in Consumer protection law

Starting in January 2023, major changes in the area of consumer protection law have been introduced by the amendment to the Civil Code and the Consumer Protection Act, which we have already reported on in the last edition of [Legal Update](#). Due to the importance of the amendment, in this issue we will take a closer look at what the amendment contains and what specific changes are in place for businesses.

Conclusion of contracts

Where a business wishes to enter into a contract with a consumer over the phone, their consumer's consent will not be sufficient for this phone call. The amendment introduces the obligation to confirm the telephone offer to the consumer in textual form (by email, on paper) and the consumer also must accept the textual offer. It is therefore an opportunity for the consumer to familiarize himself with the specific terms of the contract. The moment the business receives the acceptance of the offer, the contract starts to take effect. If the consumer fails to do so, he will not be bound by the contract.

More protection is now also provided to the consumer during organized sales events or door-to-door selling. The previous regulation allowed for a withdrawal from the contract within 14 days of the conclusion of the contract, but now the deadline has been extended to 30 days.

Instructions and reviews

In the case of reviews, it will have to be clear to the consumer that the reviewer has bought/uses the product, meaning that false advertising is reduced. The entrepreneur must also inform how reviews are verified. Entrepreneurs are also no longer allowed to delete negative reviews or otherwise manipulate reviews.

The entrepreneur must provide the consumer with written instructions for use where this is necessary in view of the nature of the service or product. Paper instructions must only be provided at the consumer's request, unless this would be disproportionate to the circumstances (most often for digital products). In the remaining cases, the entrepreneur may also provide the instructions in digital form (on a website, on data carriers, etc.), but it is important that such provision enables the consumer to save the instructions - so it is not sufficient to simply present them online on a website. Therefore, in the words of the legislator, the textual form is maintained if the data are provided on a document or other durable medium which allows the addressee to save the data addressed to him so that they can be used for a sufficient period of time for their purpose and which allows their unaltered reproduction.

Extension of prohibited arrangements

Businesses should ensure that contractual arrangements with consumers do not contain any of the newly added abusive clauses. A demonstrative list of these provisions can be found in Section 1814 of the Civil Code. For example, the following provisions are newly included:

- which oblige the consumer to fulfil an obligation towards the entrepreneur even if the entrepreneur fails to fulfil the obligation towards the consumer;
- allowing the entrepreneur to determine whether the goods or services comply with the contract, or giving him the exclusive right to interpret any contractual term;
- imposing an unreasonable penalty on the consumer in the case of a breach of an obligation; or
- allowing the entrepreneur to assign the contract if this may lead to a deterioration of the consumer's position



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Liability for defects

Businesses were previously liable for defects that occurred within two years of purchase. Now, liability for defects will only apply to defects that were already present when the product was purchased. As it is more difficult to prove that the product was already defective at the time of purchase, the existing presumption that the product was already defective when it was taken over has been extended from 6 months to 1 year. It is the date of purchase that is relevant for liability for defects, not the date of the complaint. Goods purchased before this date are governed by the older rules.

When dealing with a complaint, the consumer will be able to choose between repair or replacement, but this does not apply if the chosen option would be impossible or disproportionately expensive for the entrepreneur. The entrepreneur may then choose the second option. The consumer can only withdraw from the contract if the entrepreneur refuses to repair the defect, the defect is repeated or the goods are unusable as a result.

Discount promotions

The entrepreneur must now base the discount on the highest price in the last 30 days. It is therefore not possible to calculate the price from the manufacturer's recommended selling price or the price when the product was launched on the market.

Modification of the rules for registration in the Commercial Register

Starting from 15 January, Act No. 304/2013 Coll., on the Public Registers of Legal Entities and Natural Persons and on the Registration of Trust Funds (Act on Public Registers) is also being amended.

Section 13 of the Public Registers Act, which defined the documents that must be submitted with the proposal, has undergone a fundamental change. **From now on, the eligibility to be a member of a body of a legal person is evidenced by an affidavit of the registered person.** Thus, it will not be necessary to provide proof of a trade authorization or other license or an extract from the Criminal Register.

Case law

Withdrawal from the contract and impossibility to return the item in its original condition

(Judgment of the Supreme Court of the Czech Republic Case No. 23 Cdo 2938/2020 of 29 September 2022)

The plaintiff sought payment of the purchase price for the return of a packaging machine. The plaintiff complained the defendant for defects in the functionality of the machine, but the repairs did not lead to a remedy. Therefore, based on expert reports, the plaintiff withdrew from the contract. She demanded payment of the full purchase price and compensation for damages.

The Court of First Instance upheld the plaintiff's claim, while the Court of Appeal partially dismissed and partially annulled the appeal. The plaintiff filed a cassation appeal against the appellate court's judgment.

In the cassation appeal, the Supreme Court addressed the application of Article 2110 of the Civil Code, which sets out the situations in which it is not possible to withdraw from a contract.

The Supreme Court then quotes its earlier judgment Case No. 23 Cdo 3600/2008 of 4 April 2009, which in the context of the previous

regulation - the Commercial Code - concluded that there is

"a division of the risk associated with possible defective performance equally between the seller and the buyer. The seller is protected in those cases where, for example, he would have to take over goods in an altered state, i.e., goods that are devalued, destroyed, goods that would have no further economic use for the seller. On the other hand, the buyer is protected by the exceptions set out in the third Section for those cases where the application of the principle that goods may be returned only in their original condition would lead to a disadvantage for the buyer and a reduction in the consequences of liability for defects.

Therefore, if the buyer himself has always exercised a proper level of care for the goods, has not neglected to protect the goods adequately against damage or destruction and, on the contrary, his conduct was conduct which, in relation to the defective goods, respected the nature of those goods, the purpose of their use and any practices which have developed in the relevant sector of the economy with regard to the treatment of those goods, it is not possible to pass on to him the consequences of the substantial defects which have occurred in the goods.

Thus, where there are substantial defects, it is not only goods in their original condition which may be returned, but also goods which, although not in their original state, have been altered by natural wear and tear or by the action of natural forces, by chance events or simply by the ageing of goods which have otherwise been properly cared for."

It has therefore been interpreted previously that it is possible to withdraw from the contract even if the goods have been altered, by which is meant normal use according to the intended use of the goods. The question remained whether the goods could continue to be used after the defect had been discovered.

Thus, the Supreme Court stated that

"If the plaintiff considers that Section 2110 f (d) of the Civil Code regulates, inter alia, situations where the use of the thing occurs even after the defect has been discovered and the use of the thing after the discovery of the defect is balanced by the buyer's obligation to return the benefit he received from the defective thing, this interpretation cannot be upheld in view of the above. Therefore, if the Court of Appeals concluded that none of the statutory exceptions set out in Section 2110 (a) to (d) of the Civil Code was met on the basis of the factual finding that the plaintiff used the packaging machine to continue to manufacture products for several years after the defect was discovered (and even after the defect was repeatedly discovered in 2016), then that conclusion stands as substantively correct."

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