SIGNATURE



The DGCCRF summarizes the obligations of online sellers

The DGCCRF (Directorate General for Competition, Consumer Affairs and Fraud Control) recently published several guidance notes intended to remind online sellers of their obligations. These notes contain summaries detailing the measures that must be taken by online sellers at every step of a sale, from the signing of the sales contract to its potential termination.

Signing the contract and information obligations prior to the sale

The DGCCRF reiterates that any person performing electronic commerce must make available to consumers, before signing any contract for the supply of goods or provision of services, the information provided for by Article 19 of the Law of 21 June 2004 on trust in the digital economy.

This Article provides that the people ensuring the provision of a good or a service remotely or electronically must enable the addressees to easily access some information, including: the surname and first names of the natural person providing the good or the service or its corporate name if it is a legal entity, their address and phone number as well as their email address, their registration number with the Registry for Trade and Commerce or the Trade Registry and their share capital.

Obligations that are specific to selling online

The DGCCRF outlines that in the specific scope of online selling, these information obligations are completed by those of Articles L. 221-5 and R. 221-2 of the French Consumer Code. The information must be provided to consumers in a legible and understandable way prior to the signing of the contract and notably include:

- The information mentioning whether consumers have the right to withdraw, how they can use it as well as an example of a withdrawal form (annex to Article R. 221-1 of the French Consumer Code). Consumers are also informed if they do not have the right to withdraw (the case arising) as well as the circumstances in which consumers that have it can lose it,
- Who bears the return costs, should there be a withdrawal, as well as the return cost notably when the good cannot normally be sent back by post.

The DGCCRF adds that electronic offers issued by professionals must also comply with the information obligations provided for by Article 1127-1 of the French Civil Code. This information concerns:

- The steps to take to sign the contract electronically.
- The technical means enabling consumers to identify the mistakes made and to correct them before the contract is signed.
- The languages available for the signing of the contract.
- The terms and conditions according to which the author of the offer can archive the contract, the case arising.
- The terms and conditions for electronically consulting the professional and commercial rules with which the author intends to comply, the case arising.

To sign the contract with a consumer, professionals must lastly remind them of the terms of the order (notably the price and essential characteristics). They must also enable the consumer to confirm the order by way of a button unequivocally informing them of their obligation to pay for the order.

Delivery and its risks (delays, absences, non-conformities)

The DGCCRF also recently published a note concerning professionals' obligations during the delivery of an order. It highlights that professionals must inform purchasers, even before the contract is signed, of the applicable delivery time or time required to provide the service. The professionals must then deliver the good or provide the service ordered within the period mentioned.

If consumers are not informed of any period before the sale, professionals have a maximum of thirty days from the signing of the contract to deliver the good or provide the service.



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Furthermore, given that sellers have an obligation to effectively deliver the product, they are obliged to deliver products subject to the risk of the contract being terminated by the consumer. To do so, the consumer must first enjoin the professional to deliver the good or provide the service within an additional reasonable period. If the professional does not comply within this period, the consumer can inform the professional of the termination of the contract by registered mail or electronic mail. The termination is effective from the moment the letter is received by the professional. The consumer can, however, avoid the prior injunction phase if the delay results from the professional's refusal to deliver the good or to provide the service, or when the delivery date is an essential condition of the contract for them.

In the event of a termination of the contract by the consumer due to the professional's breach of the obligation to deliver, the latter must reimburse the consumer within fourteen days following the date of the termination of the contract.

The DGCCRF further specifies that consumers must check their orders when they receive them and, if the goods delivered do not comply with the orders, they must refuse them, write express reservations on the delivery slip and inform the seller.

Furthermore, sellers must guarantee the conformity of the products for two years following their delivery. Should a product be sent back due to its non-conformity, the return costs are borne by the seller, which constitutes the difference between this procedure and the legal right to withdraw.

The withdrawal period

The DGCCRF also recently focused on the rules relating to consumers' right to withdraw from remote orders. Articles L. 221-18 to L. 221-28 of the French Consumer Code provide that a consumer can, within fourteen days from the day after a good is received for sales of goods or from the day after the contract is signed for the provision of services, have the contract cancelled by way of a withdrawal.

Professionals must inform consumers of their right to withdraw prior to the signing of the contract, otherwise the withdrawal period is extended by twelve months from the end of the initial period.

To withdraw, consumers must inform the professional by sending the withdrawal form of Article R. 221-1 of the French Consumer Code before the period to do so expires. If the professional allows it, this form can also be filled in online on the professional's website. The consumer does not have to justify their decision.

As a withdrawal cancels the contract, the DGCCRF specifies that its main effects are the following:

- the professional must reimburse the entire amount received within fourteen days from the date on which they were informed of the consumer's wish to withdraw. The reimbursement must be made using the same payment method as the one used by the consumer and can be delayed until the goods are received,
- the consumer returns or sends back the delivered good within fourteen days from the date on which they informed the professional of their wish to withdraw. The costs for sending the good back are borne by the consumer, unless the professional accepts to bear them or failed to inform the consumer before the contract was signed that the costs would be borne by them.

It ought to be noted that if the regulations relating to the right to withdraw are not complied with, professionals risk a fine of no more than 15,000 Euros if they are a natural person and 75,000 Euros if it is a legal entity.

The termination of an online contract

The DGCCRF also recently focused on the law on Emergency Measures for the Protection of Purchasing Power ("MUPPA" Law) of 16 August 2022. The DGCCRF explains that this Law introduced measures generalising the possibility to terminate online contracts for consumers with regard to professionals offering to sign contracts online, while not modifying the legal or contractual conditions for terminating the contract (notice period, termination indemnity, etc.).

Since 1st July 2023, professionals must make available to consumers on their website a free and constantly accessible direct feature enabling the professionals' customers to terminate their contract. The wording "terminate your contract", or similar wording, must be mentioned in a legible way. This feature must also exist for contracts signed offline provided that on the day when the consumer wishes to terminate the contract signed offline, the professional offers the possibility to sign contracts online.

To implement this feature, professionals identify the consumer and the contract that must be terminated and then send the consumer a summary of the information concerning them for the latter to be able to check and modify such information. With the summary, the professional makes available to the consumer a termination feature including the option of a "termination notification" or something similar. The professional must ensure the option is legible and sufficiently clear, thus enabling the consumer to understand that they are terminating the contract and not merely requesting its termination. The DGCCRF has already announced that it will be particularly attentive regarding this point.

Lastly, the professional must confirm receipt of the termination request on a durable medium and informing the consumer of the date on which the contract shall end, and the effects of the termination.



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Conclusion: Beware of penalties

With the aim of protecting consumers, there are many obligations imposed on professionals enabling contracts to be signed online. The purpose of the DGCCRF's recent publications is to remind them of these obligations and warn them about the penalties they could face, should they not comply with them.

In addition to specific penalties related to non-compliance with the provisions relating to the withdrawal period or even the lack of the possibility given to the consumer to terminate the contract online, non-compliance with the provisions relating to signing contracts online can constitute misleading commercial practices.

For example, listing for sale products at a given price and then refusing to present consumers with the article that was the subject-matter of the advertisement (due to its unavailability for example) can characterise a misleading commercial practice. Yet, misleading commercial practices expose companies to a fine that can reach 1.5 million Euros. This amount can be increased to 10% of the average yearly turnover, calculated based on the last three yearly turnovers that are known on the date of the facts, or 50% of the expenses incurred for creating the advertisement or the practice that constitutes the infraction.

Professionals also risk reports made by consumers on the DGCCRF's platform Signal Conso or even compensation claims.

However, the DGCCRF reminds consumers that they should be careful when signing contracts online. It issues these recommendations in the scope of product and service advertisements done by influencers, but they apply to any contract signed online. It recommends checking the professional's identity, the reputation of the website, the product or the service, favouring French and European websites and ensuring that the payment is secured.



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