

E-commerce, Distance Selling and Off-Premises Sales within the European Union

These provisions apply only to sales to the final consumer (“business to consumer” – B2C), and not to sales to other businesses (“business to business” – B2B).

In recent years, commercial transactions and the online sale of products and services have grown significantly in scale and importance. For this reason, European Union legislation has introduced general rules governing such intra-EU transactions, in order to protect all parties involved — sellers, buyers and intermediaries — against fraud and deception, which can occur very easily in the virtual environment. We therefore already have a new category of offences that may cause serious financial and economic harm in the absence of clear and modern regulatory rules. European legislation must keep pace with the rapid development of information technology, which increasingly dominates our economic, financial and private lives.

Accordingly, I will present some of the rules proposed and/or implemented by the **EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION**.

E-commerce and off-premises sales offer many advantages, but they also entail compliance with certain obligations arising from EU rules.

The transactions covered by these EU rules are those in which the consumer entering into a contract for the purchase of products/services **is not physically present at the seller’s business premises**. This refers to contracts concluded via the Internet, by telephone (with or without human interaction), e-mail, fax or standardised mail, as well as contracts concluded **outside the premises of the company or trader**.

The rules on e-commerce, distance selling and off-premises sales do not apply to transactions concluded in the following areas:

- social and healthcare services;
- gambling;
- financial, insurance and investment products;
- the sale and rental of residential property;
- package travel services, services involving timeshare rights and certain holiday-related services that are subject to specific rules;
- passenger transport (except for certain specific provisions);
- contracts concluded by certain holders of public office, such as notaries;
- the regular delivery of food and beverages to customers’ homes or workplaces;
- products sold through vending machines;
- in some EU countries, the rules concerning off-premises sales do not apply where the value of the contract is less than **EUR 50**.

The rules also concern **means of distance communication** used as part of a system for the distance sale of goods or provision of services, where the supplier and the consumer are not simultaneously present. The continuous development of such means of communication requires the definition of principles that remain valid even for means whose use is not yet widespread. Therefore, distance contracts are contracts in which the offer, negotiation and conclusion take place at a distance.

A single contract involving successive transactions or separate transactions of the same nature carried out over time may be subject to different legal treatment in different Member States. However, it is important that the relevant Directive be applied consistently in all Member States. Such successive or separate transactions of the same nature carried out over time may be regarded as forming a whole, irrespective of whether the transaction or series of transactions is covered by a single contract or by several successive contracts.

For example, the opening of a bank account, the acquisition of a credit card or the conclusion of a portfolio management agreement may be regarded as an **“initial service contract”**, while the deposit or withdrawal of funds from a bank account, payment by credit card, or transactions carried out under a portfolio management agreement may be regarded as **“transactions”**. The addition of new elements to an initial service contract, such as the possibility of using an electronic payment instrument together with an existing bank account, does not constitute a “transaction” but rather an additional contract. The subscription to new units in the same collective investment fund is considered to be one of the **“successive transactions of the same nature.”**

Services provided occasionally, outside a dedicated commercial structure established for the conclusion of distance contracts, are excluded.

Durable media include, in particular, **floppy disks, CD-ROMs, DVDs and the hard drives of consumers’ personal computers on which electronic mail is stored**. However, they do not include Internet websites where such websites do not meet the criteria set out in the definition of a durable medium.

The use of means of distance communication should not result in any unauthorised restriction of the information provided to the customer. EU Directives lay down the conditions necessary to ensure that information is provided to consumers at an appropriate level, both **before and after the conclusion of the contract**. Before concluding the contract, the consumer should receive the necessary pre-contractual information in order to make an adequate assessment of the financial service being offered and thus make an informed decision. The provider should specify the period during which its offer remains unchanged.

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The **right of withdrawal does not apply where the consumer has expressly requested performance of the contract**, and the provider must inform the consumer accordingly.

Consumers should be protected against **unsolicited services**. Consumers should be exempt from any obligation in respect of unsolicited services, and their failure to respond should not be interpreted as constituting meaningful consent on their part. However, if the legislation of a Member State permits tacit renewal, consumers will be required to pay for such services.

Article adapted from EU legislation by insolvency practitioner Laura, protected by copyright.