



KINSTELLAR

The Consumer Amendment

January 2023

On 6 January 2023, a so-called “major consumer-related amendment” to the Civil Code and the Consumer Protection Act will come into force. The amendment (the “Amendment”) significantly strengthens the position of consumers, responds to digital technologies and introduces a number of changes, in particular for businesses engaged in e-commerce.

The Amendment also introduces significant fines for non-compliance with the new rules (in millions of Czech Crowns; in some instances up to 4% of total annual turnover). In this context, adapting purchasing processes and preparing the relevant legal documents will be critical (for instance terms and conditions, complaints procedure policies and information displayed on websites).

Our specialists are standing by to assist with adapting documentation, setting up processes or interpreting the new rules. The following is a summary of key changes:



Order buttons

Consumers must now be explicitly informed during the order process when an order commits them to payment. In practice, **order buttons** within order forms **will need to be amended** and labelled with an easy-to-read “**order with obligation to pay**” or **other appropriate unambiguous wording**. If the relevant business entity fails to comply with this obligation, the consumer may claim the invalidity of the concluded contract. If the button remains in its original wording and the consumer does not claim the invalidity of a contract, the order is valid. However, in such a case, the business entity still risks being fined by the Czech Trade Inspection Authority (“CTIA”).



Discount sales

The Amendment also introduces rules on discount sales, both in brick-and-mortar shops and when selling goods or services online. It is designed to significantly reduce practices where traders artificially increase the price of goods before launching a discount promotion, in order to make the offered discount appear higher than it actually is.

When offering goods at a discount, **the lowest price at which the goods were sold in the last 30 days prior to the discount must now be listed**. If discounting goods consecutively, the lowest price must be based on the amount on which the discount was first calculated.

This disclosure obligation does not apply, for example, to perishable and short-life products, loyalty programmes or combined or tied conditional offers (e.g. 2+1 free promotions, 15% discounts on the purchase of three products, etc.).

Failure to comply with discount rules may result in a **fine of up to CZK 5 million**.



Rules for customer reviews

Where a seller publishes consumer reviews or recommendations on an e-shop's website or social media outlet, the seller must inform consumers in a transparent and comprehensible manner that the published consumer review comes from a customer who has actually used or purchased the given goods or services.

In other words, **posting consumer reviews** on an e-shop website will now require **setting up a process to verify that such reviews are actually from buyers who have purchased the given goods or services and to inform customers of such a process**. Several options are available for setting up such a process – for example allowing only users logged in through a user profile to submit a review, or clicking on a link sent to the customer via e-mail.

Publishing or distorting consumer reviews or recommendations **is deemed to be an unfair commercial practice** punishable by a **fine of up to CZK 5 million**. In such a case, the consumer also has the option to withdraw from the respective contract within 90 days of its conclusion or to demand a discount to the extent appropriate to the nature and seriousness of the unfair commercial practice.



Personalized pricing

Those businesses personalising consumer prices on websites based on automated decision-making (e.g. using cookies or order histories) **must inform users about the personalization of prices prior to the conclusion of a contract**. This obligation is justified in light of commercial practices of tracking and profiling consumers based on automatically stored behavioural data. It is also strongly recommended to verify whether this process is covered via data protection regulations (in particular, whether the personalization information is included in privacy policy).



Online marketplaces

The Amendment also introduces rules for online marketplaces, i.e. websites that enable consumers to remotely conclude contracts with other online traders or consumers (e.g. eBay, Amazon or Booking.com).

Providers of online marketplaces must, inter alia, **inform consumers in a transparent and comprehensible manner on the basis of which main parameters the offers of goods or services are ranked on the website** and on their relative proportion to other search parameters. This information **may not be “hidden” in the general terms and conditions, but must be visibly displayed directly next to the selection of products or services on the given website**. Furthermore, the online marketplace provider **must notify whether or not the third party offering the products or services is a business**. This information is deemed to be important for consumers in terms of the scope of the rights they can exercise towards a particular business entity. If the seller is not a business, many of the respective consumer rights do not apply.

The above obligations are considered to be essential and **their absence** is classified as an **unfair commercial practice** for which a **fine of up to CZK 5 million** may be imposed by the CTIA.



Written instructions

The previous regulation required the **“attachment” of written instructions to products**. This provision has often been the subject of interpretative disputes, particularly among multi-market operators who have questioned in practice whether it is really necessary in the modern digital age to attach a paper instruction to a product or whether it is sufficient to refer to the instructions in electronic form (e.g. by a link to a website).

This requirement has been abolished and it is **now sufficient to provide the consumer with instructions on a durable medium**. The seller is only obliged to provide instructions in a paper form if the consumer so requests this and if it is not disproportionate.



Change of conditions for testing goods purchased in e-shops

The 14-day contract withdrawal period for the purchase of goods through e-shops remains unchanged. Previously, however, customers could test the goods during this period and then unusable and degraded goods could still be returned to the seller. **Now the customers can test the goods, but only to familiarise themselves with their nature, features and functionality**. The goods must not be used repeatedly to avoid damage.



Updating Complaints Procedure Policies

The Amendment also fundamentally changes the rules for handling complaints. This means it is **necessary to update Complaints Procedure Policies and to reconfigure certain related processes**.

The statutory warranty under the new rules **ends** and the seller will now be able to decide whether to provide warranties to consumers.

According to the Amendment, a determination of whether the given goods were already defective at the time of their receipt by the customer will now be made. **If the defect becomes apparent within 1 year from the take-over of the goods by the customer (previously this period was 6 months)**, the presumption is that the goods were already defective at the time of the take over and **the seller is obliged to prove to the customer that the defect appeared later and did not exist when the consumer took over the goods** (difficult to prove in practice). If the seller fails to prove that the customer is at fault, the seller must repair the damaged goods or supply new ones.

If the defect in the goods manifests itself after this one-year period, but within 2 years of the take-over of the goods, the burden of proof shifts to the customer and the customer must prove that the defect was not their fault but was already present at the time of delivery. On the basis of such proof, the seller will then accept or reject the claim.

The means of handling complaints has also changed. The buyer will primarily be entitled to have a new item delivered without a defect or to have the item repaired, at their choice.

The buyer may claim a reasonable discount or may withdraw from the contract if:

- the seller has refused or failed to remedy the defect;
- the defect occurs repeatedly;
- the defect itself constitutes a material breach of contract;
- it is apparent from the seller's statement or from the circumstances that the defect will not be remedied within a reasonable time or without substantial difficulty for the buyer.

The seller must settle the complaint, including the rectification of the defect, and the consumer must be informed thereof within 30 days making the complaint, unless the seller agrees with the consumer on a longer period. If the seller fails to settle the complaint within such a period, the consumer has the right to withdraw from the contract or to demand a reasonable discount.



Strengthening information obligations

The Amendment **newly introduces additional information obligations that trader must provide to consumers before concluding a contract** (preferably in the terms and conditions or visibly on the website). These include, for example, the telephone number and registered office of the trader, information on after-sales service, information on the personalization of the price offered to the consumer on the basis of automated decision-making, whether the price has been personalized, etc.

In addition, the consumer's attention must be drawn to certain key information in a clear and prominent manner before an order is placed (e.g. the total price and delivery costs, the duration of the contract and the conditions for terminating the contract if the contract is concluded for indefinite period or if automatic renewal of the contract is agreed, etc.).

Failure to comply with such information obligations is punishable by a fine of up to CZK 5 million.



Stricter conditions for concluding contracts over the phone

A contract may now only be concluded over the phone after the consumer has received the text of the contract from the trader and has signed the offer made by the trader or has given their consent in electronic form. Accordingly, **telephone offers targeted in particular at the elderly and vulnerable consumer groups are likely to fall as a result of these new rules.**



New regulation of digital content and digital services

Digital content means data created and provided in a digital form. This includes, for example, audio or video files, computer programs, applications, digital games and e-books.

A digital service allows consumers to manage digital content (i.e. to store, save, modify or give access to). Typically, this includes video sharing services and social media.

The new rules will only apply to the provision of paid digital content or digital services (i.e. not only for money, but, for instance, the provision of a digital content service in return for a consumer's personal data on their activities on a given platform).

The Amendment sets out numerous new rules on the provision of digital content. The most important of these are, for example, as follows: the provider's obligation to make available to users the latest version of digital content available at the time of the conclusion of the contract, the provision of agreed and also necessary updates or rules on liability for defects in digital content.



For further information please contact



Petr Bratský
Managing Associate

petr.bratsky@kinstellar.com



Karla Rundtová
Partner

karla.rundtova@kinstellar.com

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