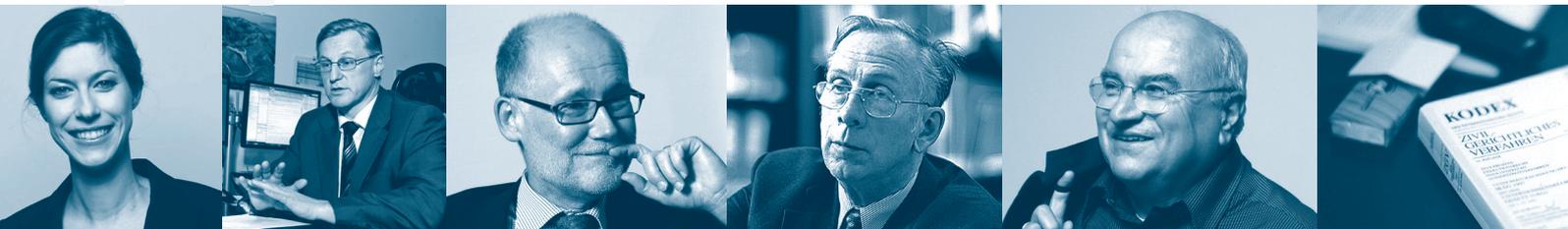


**Consumer
business
novelties**

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Consumer business novelties

The **Act Implementing the Consumer Rights Directive (VRUG)**, entered into force on **13 June 2014**, incorporates into Austrian national law the EU directive governing the rights of consumers (2011/83/EU) thereby fundamentally affecting all transactions involving consumers. The new regulations focus on contracts made within the scope of **distance selling** (e.g. by telephone or web) or negotiated **away from business premises** (e.g. by a craftsman working in a customer's home). Such contracts are now chiefly governed by the entirely new **Act Governing Distance and Off-Premises Transactions (FAGG)**.

The VRUG requires traders to adapt their ordering system and contract forms to the new regulations. Failure to do so may have drastic consequences: formal defects may cause the contract to become ineffective or even lead to performance without payment. Moreover, traders are faced with administrative fines and sanctions under the rules of fair trading.

Information is a must

Contracting with consumers is now subject to new pre-contractual information requirements, regardless of how and where (on or off business premises) the transaction comes about. Before the consumer is bound by a contract, the trader has to furnish all of the required information (including the main characteristics of the goods or services, the identity of the trader, the total price, terms and conditions, etc.). Where distance and off-premises transactions are concerned, the information requirements to be met before a contract comes about are extended: the trader needs to observe up to 19 rules; particularly the information to be given on the right to withdraw needs fully to comply with the stipulations of the FAGG. The strictest pre-contractual information requirements are preserved for website transactions: they require stating (at the latest) at the start of the ordering process whether delivery restrictions apply and which means of payment will be accepted.

No form – no go

The FAGG stipulates in great detail how traders have to comply with their information requirements. In the case of off-premises transactions, the consumer

must be informed primarily on paper; it is therefore advisable to provide customer service technicians with appropriate forms for the customers, while for distance transactions the information is to be furnished "in a way appropriate to the means of distance communication used" (e.g. by e-mail). Moreover, the consumer must receive a copy of the signed contract or confirmation of the contract entered into, in the form as provided by law.

Button solution to fight internet rip-off

When buying from a website, the consumer must expressly confirm that s/he is under an obligation to pay. A button or similar function activating the consumer's order must be labelled "order with obligation to pay" or with a corresponding unambiguous formulation. Words like "order" or "continue" are inadequate.

Phone calls made difficult

Special requirements apply to service contracts negotiated by telephone during a call initiated by the trader: the consumer is bound only when the trader supplies a confirmation of his/her offer on a durable medium (paper, USB stick, e-mail, etc.) and the consumer returns his/her written consent, also on a durable medium.



Additional works and services: to be confirmed

Traders typically offer further goods and services to the goods/services ordered by the customer, including insurance, more services or accessories. Such additions will be binding to customers only if and when they give their express consent. In the case of electronic contracting it should be noted that failure to untick a pre-ticked box on the website must not be taken as express consent on the part of the consumer.

Free hotline after the purchase

When a trader offers a telephone line to customers to answer questions in connection with contracts made by them (service number, customer hotline, etc.), such service must be free of charge. The only charge permitted is the mere connection fee payable by the consumer to the telephone operator.

Quick delivery obligatory

The trader must deliver the goods without any undue delay, in any case not later than 30 days after the contract was concluded. However, this maximum period applies only when no other performance period was agreed with the consumer. Agreeing such other period is advisable when the trader expects not to be able to observe the maximum legal period, e.g. because procurement or production of the goods is expected to take longer.

The customer reconsiders – new withdrawal right

The withdrawal right already applicable to doorstep and distance contracts is extended: where off-premises or distance transactions are involved, consumers now have fourteen (rather than seven) days to reconsider. If the trader has given the consumer wrong or

no information on his/her right to withdraw from the contract, the period is prolonged to one year and two weeks. Changes are particularly grave when it comes to service contracts (such as contracts for works by craftsmen): even when the trader has started work prior to the expiry of the withdrawal period at the consumer's express request, the consumer may, under the FAGG, still withdraw from the contract. It is only when the consumer also has been informed, exactly as stipulated in the FAGG, by the trader on the waiver of the withdrawal right and the works and services have been fully rendered that the consumer's right to withdraw no longer applies.

Traders (entrepreneurs) who enter into contracts with consumers need to act promptly: The law implementing the EU stipulations should have been in place by 13 December 2013, but the VRUG wasn't promulgated until 26 May 2014. It is a complex regulation that includes numerous exceptions (for example the pre-contractual information requirements do not apply to some types of business transactions such as certain health care services; the right to withdraw under the FAGG is excluded in some cases, etc.) and unsolved issues that require interpretation of the law. It is therefore necessary to examine in each individual case which adaptations may be necessary and how best to implement them within a company's distribution system.



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Tenth anniversary of P) News

This issue celebrates the tenth anniversary of our P) News.

In the past decade we reported how the merchant became an entrepreneur, joining the social web or even ending up in criminal court. We discussed stricter rules against corruption as much as ongoing changes in the cartel and data protection laws. P) News also looked into topical subjects such as labour law, the law on competition and landlord and tenant laws.

All issues of these past ten years can be found on our homepage at

www.preslmayr.at/en/p-news.html.