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March 2014

## The new EU consumer directive – extended rights of withdrawal and other news

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*On 13 June this year new consumer legislation will come into force in Sweden. It is based on an EU Directive (2011/83/EU) and mainly concerns e-commerce and other distance selling, but other consumer contracts are also covered by the changes. In this article we describe the main changes in the new legislation.*

The new EU directive contains several important changes compared to the current regulations. In Sweden, the introduction of the directive is by way of new provisions in existing law, such as the Distance and Doorstep Sales Act (which changes name to "Act on Distance Contracts and Off-Premises Contracts"), the Marketing Act and the Consumer Sales Act. The EU directive is a full harmonisation directive, which means in principle that the Swedish Parliament lacked the opportunity to modify or exclude the new provisions and the law laid down in the directive. Presumably, the background is the ever increasing and cross-border e-commerce, where it is reasonable to assume that strong harmonised consumer protection constitutes a necessity to maintain the freedom of movement and an effective consumer market within the EU.

We describe here eight of the main changes in the new legislation.

- (1) **Extended rights of withdrawal.** Currently a 14 day right of withdrawal operates between businesses and consumer, but only under distance and doorstep sales agreements. Under the new act these rights are extended to include contracts entered into "off-premises". "Business premises" means a fixed or mobile premise which the business uses, either permanently or seasonally, as its customary place of business. According to the preparatory works, assessment of this will be based on the regularity of activity conducted by the business in the premises in question. This means that, for example, that kiosks, vending trucks and fixed market stalls may be business premises, but outlets whereby a business sells, for a few days only, sells their products or provides their services (e.g., in a mall or pop-up store) are not typically regarded as business premises in the legal sense. The idea behind this arrangement is that the consumer should have the right to cancel the contract of sale where the point of sale entails an element of surprise for the
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consumer (see Govt. Bill 2013/14: 15 p.73) and the consumer himself has not sought out the venue for a purchase. Consumers who enter into contracts in, for example, a public place such as streets, shopping malls, beaches, sports facilities and public transport can thus be entitled to withdrawal from the contract, provided that the agreement is not made in "business premises".

- (2) **New regulations for electronic contracts on the Internet.** Some new regulations become relevant to distance contracts entered into on a website. For example, a consumer is then only required to pay for a product if such payment obligation is made clear before the order is placed and the consumer has expressly undertaken to pay for the product. For example, if there is a button or similar object available to the consumer that must be clicked to order a product, specific information on the payment obligation must be provided in direct proximity to the button (see Govt. Bill 2013/14: 15 p 86-87). This provision is incorporated into the new chapter 2, section 9 of the Act on Distance Contracts and Off-Premises Contracts.

Another new special regulation for contracts on the Internet is that if the business on its website offers consumers the opportunity to cancel the contract electronically, the business must acknowledge receipt of such a withdrawal notice. This provision is inserted into the new chapter 2, section 10 of the Act on Distance Contracts and Off-Premises Contracts

- (3) **Extension of information requirements.** The new act imposes new, more comprehensive, standards on the information that the trader must provide to the consumer before any distance contract or off-premises agreement is entered into. Also, all information must be provided before the contract is concluded. In addition to this, the business must inform the consumer of the hardware and software, if any, that is required to use any so-called digital content. This is a new concept that refers to data that are produced and delivered in digital form, such as computer software, mobile apps, games and music (see Govt. Bill 2013/14: 15 p.43). This provision is incorporated in the new chapter 2, section 2, paragraph 17 of the Act on Distance Contracts and Off-Premises Contracts.
- (4) **Agreements entered into in business premises.** New information requirements are also introduced to agreements entered into in business premises. The new requirements essentially mean that the business must provide information about their contact details, the product's main characteristics, price and payment terms and conditions, warranties, contract term, etc. before a contract is entered into with the consumer. The provision
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is incorporated in the new section 22 a of the Marketing Act. To the extent, for example, the duration of the agreement is lacking (e.g. instantaneous services), such information may be omitted. Nor does the information obligation apply if the information is evident from the context, e.g. if the business's name and address is visible in the premises or on the product.

Exemptions from disclosure requirements in contracts in business premises have also been made for "everyday contracts" that are "performed immediately". By "everyday contracts" the legislature means the purchase, for example, of groceries and regular clothes purchases. Larger purchases such as televisions, alarm devices, tablets or furniture, are not perceived as everyday (Govt. Bill 2013/14: 15 p 103). There may be some practical issues of classification in this area. The agreement being "fulfilled immediately" means that the item is paid for at once and that the consumer takes the item with them at the time of the purchase. The new disclosure requirements have been blamed for causing unnecessary administrative costs for businesses (see the Swedish Trade Federation response to Govt. Bill 2013/14: 15).

- (5) **Information text becomes contractual content.** Furthermore, a clarification that the statutory information that must be provided before the conclusion of the contract constitutes part of the content of the contract unless the parties have expressly agreed otherwise. This provision may be important in practice because it means that the person who claims that a contract deviates from the information provided has an explicit burden of proof to show that is the case.
  - (6) **Additional costs due to lack of information.** In the case where no, or insufficient information, has been provided to the consumer a business risks facing sanctions under the Marketing Act. In addition, a new provision is introduced if the business has not informed the consumer about the so-called costs for shipping, postage or other additional costs in distance contracts or off-premises agreements. In such cases, the consumer will not be obliged to pay for such additional costs. The provision is introduced into the new chapter 2, section 7 of the Act on Distance Contracts and Off-Premises Contracts.
  - (7) **Guiding template document.** A slightly different approach in the new legislation is that it also contains some template documents that may, but need not, be used to apply the law. A first example of this is an information text regarding the rights of the consumers, which is presented in the Annex I A of the Directive, which a business can use as the basis for its information text. The example is not binding, the business can choose to draft their own information text on withdrawal rights, as long as the information meets
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the statutory requirements. Another example of template document is a standard form that the consumer can use when he or she exercises his right of withdrawal. The standard form is set out in Annex I B of the Directive. As for the information text, the template is not binding; instead the consumer can also choose to draft a withdrawal notification themselves.

- (8) **Changes in the Consumer Sales Act.** Unless otherwise provided in the agreement, an item of purchase is to be delivered within a "reasonable time" of the purchase (see section 5 of the Consumer Sales Act). The new act states that the goods, unless otherwise provided in the agreement, shall be delivered "without delay" and within 30 days of the agreement being entered into. If the business requires longer delivery time than 30 days, it must be expressly agreed with the consumer. In addition, consumers are given an express right to rescind a contract if the consumer, prior to the conclusion of the agreement, informed the business that supply of the goods on the stated day is of crucial importance and business fails to deliver on this day, or if the business explained that it does not intend to deliver the goods. The clarification is introduced into section 13 of the Consumer Sales Act.



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