

Rödl & Partner

NEWSLETTER LATVIA

SETTING ACCENTS

Issue:
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Trading online - what should be taken into account

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→ Trading online - what should be taken into account

The volume of online trading is growing considerably both in Latvia and on the globally. During the COVID - 19 crisis many traders switched to offering their products on online stores to enable customers to buy goods and services without leaving their homes. Both

consumers and businesses choose this type of services. Therefore we would like to provide a brief insight in major legal and tax aspects to be complied with in establishing and operating an online shop.

Content of the website of an e-shop

The content of an e-shop should comply with certain requirements of legislation which are mainly related to that it should be possible to identify a trader or a service provider. Pursuant to Section 4 of the Law on Information Society Services a trader shall provide the following information in a clear, direct and permanently accessible manner:

- the firm name (name) or given name and surname, legal address or declared place of residence and registration number (if there is such) of the service provider;
- the contact information of the service provider, including electronic-mail address, which ensures the possibility of quickly communicating in a direct manner;
- if a special permit (license) is necessary for commencing the relevant activity - information regarding the institution, which has issued the special permit (license);
- in relation to a regulated profession - information regarding the professional organization, the name corresponding to the profession or qualification and the state in which it has been granted, as well as a reference to the professional regulations applicable in the registration state and the way in which they may be accessed;
- if the relevant activity is taxable with value-added tax - the registration number in the State Revenue Service Register of Persons Taxable with the Value Added Tax.

The e-shop should contain clear and understandable information about a product, as well as figures which allow a buyer to gain realistic and comprehensive perception about a product and its main properties. This information and figures minimize the possibility that a buyer will be disappointed in the product he/ she bought and will use the right of withdrawal.

The price of a good should be stated in a clear manner and clearly legible, and it should provide information whether the price is inclusive of payable taxes and delivery costs of the good.

Concluding transactions online

E-shops are mainly targeted at private consumers, however, there are also cases when traders would like to allow both consumers and other merchants to use their e-shop. Laws and regulations contain different provisions depending on whether a transaction is concluded with a consumer or another merchant, in particular, regarding consumers there are strict provisions as to what information on the transaction should be available to the consumer prior to making a purchase and what conditions should be contained by the contract. In any case, the best solution would be to follow the stricter regulation applicable to private consumers because also buyers who are merchants will appreciate clear and comprehensive information about a product and its price and clear, understandable and fair terms of purchase.

Prior to making a purchase, a buyer should be able to learn about the procedure of placing an order, including the terms of a transaction, as well as to save the transaction terms. These should be clear and understandable, moreover, if a transaction is concluded with a private consumer. If terms in various languages are offered for concluding a transaction, a buyer should be able to select the language most suitable to him/ her.

The Consumer Rights Protection Law and Clause 5 of Cabinet Regulation No. 255 (20 May 2014) "Regulations Regarding Distance Contracts" define the minimum set of terms a contract with a consumer should contain. A seller shall provide the following information to a consumer:

- the main characteristics of the goods or services;

- the identity of the seller or service provider;
- the seller's or service provider's registered address and, if such means of communication exist, telephone number, fax number, and e-mail address, so that the consumer can quickly and efficiently contact the seller or service provider;
- the seller's or service provider's actual address if it is different from the registered address;
- the final price of the goods or services, inclusive of taxes and duties;
- delivery, postal expenses or other expenses, if applicable;
- terms of payment, delivery of the goods or performance of the service, the completion deadline;
- in the case of the right of withdrawal - information on the conditions for executing rights of withdrawal, deadlines and procedures, as well as the withdrawal form, information about when the right of withdrawal is not applicable;
- reminder regarding legal rights of the consumer if the goods or service does not comply with the contract terms;
- information on warranty, after-sales support and services;
- the term of the contract, for fixed-time contracts, or the termination conditions of the contract, for open-ended contracts and for contracts that are extended automatically;
- information about settling out-of-court complaints and about compensation options, and procedures to access them;
- and other information.

A buyer should also receive a confirmation that an order was placed and a contract was signed. Usually merchants send an electronic confirmation e-mail to the buyer's e-mail address.

Consumers are entitled to use the right of withdrawal during 14 days as from the date of delivery of a good. Therefore, information on the procedure of using the right of withdrawal and the form of withdrawal should be made available to the consumer. The above information may be included in the terms of the transaction, however, most often a separate section is created on the website to make this information easily accessible for the consumer.

A secure and efficient payment system should be connected to the e-shop, including reassuring that all the necessary plugs are integrated on the website and relevant configurations for use of payment cards are set up. When choosing the provider of payment services it should be verified that it is registered with the

Finance and Capital Market Commission and is authorized to provide services.

If cash transactions are provided, the seller should not only comply with the requirements regarding production of source documents, but also assess risks related to the nature of goods and the buyer within the context of the Law on the Prevention of Money Laundering and Terrorism and Proliferation Financing, in particular, if the value of a cash transaction exceeds EUR 10,000.

Copyright

If a domain name of an e-shop is registered, it should be verified that there is no infringement of registered trade mark or other rights.

The seller will be held liable for breaches of trade mark regulations if goods which infringe protected trademarks, for example, counterfeit goods are sold at the online shop. In compliance with the case law of the Court of Justice of the European Union (for example, case C - 567/18 Coty Germany) a trader may only be released from liability if the relevant goods were offered at the e-shop by a third party which can be identified by the trader and the trader was not aware of the infringement of trade marks. Thus, if a trader allows other entities to offer their goods for sale at the e-shop, it should be ensured that the trader can identify the entity who has offered the relevant goods.

If photos of goods from the Internet are used it should be assured that this does not result in an infringement of the copyright of the photo owner. It is possible that an authorization should be obtained and a remuneration should be paid for using the image for business purpose. Use of photos of unknown origin from the Internet is not recommended. If a photographer was hired for taking photos of goods, it is advisable to provide for the transfer of copyright to the trader in the contract with the photographer.

Data protection

Data protection is regulated by Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of such Data (hereinafter referred to as the General Data Protection Regulation). The matters relating to sending of commercial notices are regulated by Sections 8 and 9 of the Law on Information Society Services.

A trader may only request buyers to provide the data which are strictly necessary for

the relevant purpose, in particular, sale of goods or services on the Internet. Within the context of an e-shop, the buyer's data, like the name, surname, telephone number, e-mail address, residence address, bank account number or payment card data will be processed for the purpose of ensuring execution of a transaction with the buyer, i.e. the purpose of data processing will be performance of the contract. In addition to performance of contractual obligations, execution of legal obligations applicable to the seller, for example, regarding accounting and tax returns, also provides the basis for personal data processing. Prior to requesting personal data, the seller should provide information regarding the use of the buyer's data. This is usually done by means of the privacy policy and providing a special window where the buyer can confirm that he/ she has got acquainted with the privacy policy. The following is included in the policy:

- the data controller's identity (name, registration number) and contact data;
- if applicable, the contact data of the data protection expert;
- processing purposes, for which the personal data are intended, as well as the legal basis for processing (the legal basis for processing can be found in Article 6 of the General Data Protection Regulation);
- the legitimate interests of the controller or the third party;
- recipients or categories of recipients of personal data, for example, delivery contractors if different from the seller, or the payment service providers;
- in the relevant case, information that the controller plans to transfer the personal data to a third country;
- the time period for how long the personal data will be stored;
- rights of data subjects, i.e. data rectification, erasure, information requesting, withdrawal of consent, the right to submit a complaint;
- information if there is automated decision-making, including profiling.

Data should be stored securely and in such a way that prevents access by third parties who do not have the legal basis to process these data.

If a merchant would like to process data also for marketing purposes, for example, for sending commercial notices on new products to the buyer, the customer's consent should be obtained first for such a type of data processing. Pursuant to Section 9 of the the Law on Information Society Services, without a relevant

consent it is only allowed to send commercial communications to an e-mail address (however, not in the form of an SMS, for example) regarding the service provider's goods or services which are similar to purchased goods or services. In all cases a clear free of charge option should be provided (by submitting an application or sending an electronic notice) to the buyer to refuse further receipt of commercial communications.

Cookies are often used in practice for operation and improvement of an e-shop and ensuring better visitors' experience, for example, for a session maintenance and obtaining analytical data. The following considerations should be taken into account when cookies are used for ensuring the operation of an e-shop:

- visitors should be notified about them (a pop-up window);
- a separate cookies policy should be developed by specifying the manner of use of cookies;
- visitors should be allowed to consent to the use of cookies or to reject them;
- if a visitor does not consent to cookies, it should be ensured that no cookies are placed in the visitor's device, except if cookies are technically strictly necessary for visiting the website. Cookies which are needed from a technical point of view do not require a visitor's consent.

Food

If an e-shop delivering food to end customers is planned, it is necessary to register with the Food and Veterinary Service (FVS) before the trade may be started. Registration with the FVS is free of charge.

The food which is sold on the Internet should fully comply with all the food safety and distribution, including hygiene and traceability, regulations. In this regard the same standards as those of the trade at a standard shop are applicable to the trade at an e-shop. For example, if nutritional supplements are offered at an e-shop, it should be taken into account that in Latvia it is only allowed to sell nutritional supplements which are registered with the FVS register.

The website of an e-shop should provide the product information presented on the product's packaging or label, i.e. the information provided for by the Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers. Of course, when food products are delivered their validity term should be sufficient, considering that a consumer cannot reassure he/ she is buying a fresh product. The consumer may not use the right of withdrawal for

food products taking into account that food products generally have short shelf-life terms.

Taxation aspects

If business operations are performed at an e-shop, on any trading platform or by using social networks, such a electronic sales point should be registered with the State Revenue Service (SRS) as a structural unit.

There is an obligation to prepare a source document attesting the sale for any sale transaction, and it is important to provide documents attesting transportation of goods in transactions of delivery of goods.

Attention should be paid and relevant registration with the SRS should be done for used accounts or other means of payment (PayPal, Paysera. etc.).

Transaction source documents and the VAT applicable to a transaction may differ depending on the volume of a transaction, the process of a transaction and the status of the business partner. In the general situation, one is obliged to register for the VAT upon reaching the turnover threshold of EUR 40,000 during a period of 12 months, however, the procedure may be different when cross-border transactions are performed. For example, the laws and regulations on the VAT stipulate the obligation to register in another EU Member State in cases when the value of distance supply of goods (sale at an e-shop and delivery to a consumer in another EU Member State) reaches the threshold of EUR 35,000. Following registration with the VAT register of another country, the VAT of the relevant Member State will have to be applied to and paid for sales transactions performed in the relevant country.

When goods are sold to a VAT payer of another EU Member State, a zero percent rate may be applied to the sale if the following two conditions are simultaneously satisfied:

- the buyer has a valid VAT number of another Member State and
- the seller has at its disposal a particular set of documents proving dispatch of the goods to another country.

As regards source documents to be prepared for the performed transaction, it is important to distinguish cases when payment is done in cash or by a payment card and cases when the buyer makes an electronic payment, i.e. in case of an electronic payment the customer (both private individuals and legal entities) makes a payment of a prepared sale or advance invoice by a bank transfer. If a cash payment is made the seller is obliged to issue an ECR [electronic cash register] receipt for the performed purchase. If a buyer is a legal entity, it is necessary to additionally issue a VAT invoice or include all the details defined by the law in the ECR receipt. However, if a buyer is a private individual a VAT invoice should only be prepared on the person's request.

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