



K
T

Publication

E-Commerce B2C in Sweden: Stricter Rules in the Distance Contracts Act

19 July, 2019

Distance Contracts Act

When a consumer buys goods or services over the internet or the telephone, the Distance Contracts Act (the **Act**) applies. The

Act provides, among other things, a 14-day right of withdrawal for the consumer. After the EU commission reviewed the Swedish implementation of an EU directive, it proposed stricter rules and modifications to Swedish law, effective January 1, 2020. As such, traders, who sell services or goods B2C over the internet or the telephone, should review their routines, their general terms and conditions, and the information they provide to the consumer.

The model withdrawal form must be provided to the consumer

The Act currently requires a consumer to be informed of the conditions, the time period, and the procedure for exercising the right of withdrawal before the agreement is concluded. Under the new proposal, traders must now provide the model form to the consumer in an “appropriate manner,” rather than just “inform” the consumer of the form’s existence and where to obtain it.

Here is a form with information about the right of withdrawal that a trader must fill in and provide to a consumer to fulfill the traders information obligation. Here is a form that a consumer can use to withdraw from an agreement.

The withdrawal period starts only when the consumer has received the model form



When purchasing services, the Act states that a consumer has a 14-

day right of withdrawal from the time the agreement is concluded. When purchasing goods, the Act gives the consumer a 14-day right of withdrawal from the time the consumer physically takes possession of the goods.

While the current Act states that the withdrawal period does not begin until the consumer has received information about right of withdrawal, the new proposal stipulates that the consumer must receive the model form before the withdrawal period can start. Like the current Act, the proposal allows the withdrawal period to run for a maximum period of one year after the withdrawal period would have ended if the consumer had received the information and the form in the correct manner and at the right time.

The consumer’s obligation to pay after using the right of withdrawal

Today, a consumer may become liable to compensate the trader if the value of goods, delivered during the withdrawal period, has decreased. For services, the consumer is only liable to pay for the portion of the service provided if the consumer expressly requested that the service is provided during the withdrawal period.

Under the stricter proposed rule for services, traders must now ensure that the consumer’s request is documented on a durable medium. Thus, in order for traders to keep their right to charge for a portion of the service provided during the withdrawal period, the request must be properly documented.

Right of withdrawal and digital content

The Distance Contracts Act applies to digital content as well. For digital content, such as various forms of content that can be downloaded, a consumer must have expressly agreed to that the service is provided and agreed to forfeit the withdrawal period to give the trader the right to charge for content provided during the withdrawal period if the consumer uses the right of withdrawal.

The proposal modifies the rule by requiring the consumer to expressly agree that the performance of the service begins during the withdrawal period and by acknowledging that there is no right of withdrawal for the trader to have the right to require payment for the service performed during the withdrawal period if the consumer chooses to use the right of withdrawal. If the consumer does not *both* expressly agree and acknowledge the loss of the withdrawal right in this manner, the consumer retains the right of withdrawal. Consequently, a trader should take great care when drafting the terms and conditions, for the consumer to lose the withdrawal right.

The trader is responsible for the goods during the transport

Currently, the consumer assumes responsibility (the risk) for the goods, when the goods have been delivered to the consumer. The goods are deemed to have been delivered when they come into the consumer's possession. When the goods are transported, the transition of the risk depends on who – the consumer or the trader – is responsible for the transport. If the trader has undertaken to transport the goods to the consumer, the goods are deemed to have been delivered when handed over to the consumer. If the consumer arranges the transport, the goods are considered to have been delivered when they are given to the consumer's carrier.

The new proposal stipulates that if the trader offers transport and the consumer chooses to use it, the trader continues to be responsible for the goods during the transport. In other words, the trader will carry the risk if the goods are damaged during the transport.

References

Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights

Ds 2019:3

The Distance and Off-Premises Contracts Act (SFS 2005:59)