

What are YOUR RIGHTS?

What are your rights when buying goods and services across the European Union (EU)? Do your consumer rights differ when shopping cross-border? In this edition of our newsletter, we will be reminding consumers about the basic consumer rights when shopping cross-border, both when shopping from the high street as well as when shopping online. Consumers residing in one of the EU Member States are protected by the same consumer rights listed in the European Consumer Legislation. The Consumer Rights Directive ensures that the consumers have the same level of protection no matter where the trader is based within the EU.

Buying of goods and services

Goods and services must always be in conformity with the contract of sale and they should:

- Comply with the description given by the trader;
- Show the quality and performance which are present in identical goods and which the consumer can expect with the purpose for which they are bought;
- Be fit for the purpose for which similar goods of the same type are normally used. The consumer should always tell the trader why the goods are required, especially if the consumer requires a product with certain specifications.

What if goods are defective?

Goods bought within the EU Internal Market carry a 2 year legal warranty. Thus, if the product is found to be defective, the consumer may claim a free of charge remedy. The remedies available are: repair or replacement and if these two are not possible full or partial refund. The trader has the right to first choose to repair the product.



ONLINESHOPPING



Legal
warranty

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One must keep in mind, however, that these remedies are available for defects which could not be identified at the point of sale. In other words hidden defects. If the defect was created through misuse or wear and tear, the consumer would not be entitled to remedies free of charge.

Should the damage appear within the first 6 months, it would be considered that the damage was a manufacturing defect, unless the trader does not prove otherwise.

Returning of goods

A question that is commonly asked is whether one has the right to return the goods purchased, either because the consumer changed his mind or because a wrong buying decision was made. So when does this right apply?

It applies when buying through a distance contract, for instance when shopping online. In this case, the consumer has the 14 days cooling-off period, during which he can withdraw from the contract without having to give a reason for this decision and without incurring extra costs.

The 14 days cooling-off period begins when the consumer receives the product and in case of services, when the contract has been concluded.

Additionally, if the consumer is not informed about this right, the cancellation period would either be extended to 12 months or would begin when the consumer is informed about it.

In such cases, unless otherwise stated, the consumer should pay the postage to return the goods back to the trader.

Exceptions to the right of cancellation

However, this right of cancellation is not absolute and it has some exceptions. Below are some instances when the right of cancellation does not apply:

- The provision of services have already begun with the consumer's agreement;
- The goods cannot be returned because they were made according to the consumer's specifications or were personalised according to the consumer's request;
- The goods have been opened and cannot be returned due to health protection and hygiene reasons;
- The goods are liable to deteriorate or expire rapidly;
- The goods are audio/video tapes or computer software whose seals have been broken by the consumer; and
- The goods are magazines or newspapers;

Delivery of goods purchased

When purchasing goods through distance means of communication, the consumer should check whether there is a date of delivery written down. If no date is given, the products should be delivered to the consumer within 30 days.

However, if this date is not honoured, the consumer should then contact the trader and give a reasonable time during which the product should be delivered. Then, if the given date is still not honoured, the consumer will have the right to ask for the refund of the money paid.

Other important things you should be informed about:

Pre-ticked boxes which are required to be changed in order to avoid paying for additional products or services are illegal. Such boxes should not be ticked and the consumer should be given the chance to choose it himself if needed. If there is a dispute, the trader is required to prove that she had your consent for the additional payments made.

With regards to **fees and charges**, the consumer cannot be charged more than the trader is paying for using certain means of payments, such as a credit card or debit card. Similarly, if the consumer can reach the trader through a telephone helpline, the trader cannot charge him more than the basic telephone rate for the calls made.


The consumer should be clearly informed of the **price** of the product on display. Such price should include any additional expenses, such as taxes and postage fees.




ONLINE SHOPPING



Withdrawal within 14 days



ONLINE SHOPPING



All costs stated?

Consumer rights do not change during the **sale period**. However, if the consumer is informed that the product is on sale due to a defect and the consumer still agrees to buy it, then afterwards he cannot claim for compensation from the trader for the same defect.

Case Study



Martha decided to buy a concert ticket online to go and watch her favourite band play in England. A week after buying the ticket, she attempted to cancel her purchase when she realized that it would be impossible for her to attend, as she would be working in Italy that same day. However, the online trader refused to cancel the order and give her a refund of the money paid.

It is true that under EU laws, when a consumer buys a product online, he has the right to cancel the purchase and return the product within 14 days for a full refund. The 14-days cooling off period, however, do not apply to all purchases made. Other purchases which are not covered by this right include the purchasing of plane tickets, concert tickets, hotel bookings and car rental reservations. Therefore, when purchasing such services it is important that the consumer reads the terms and conditions of the trader as these are the rules that regulates the transaction and determine any possibilities for refunds and cancellations. Thus, in our case study, the trader had every right to refuse to reimburse the consumer.

Do you have a claim

WITH A TRADER SITUATED IN ONE OF THE EU MEMBER STATES?

ECC Malta can assist you in reaching to a solution of your claim with the trader. Consumers can turn to the ECC in order to file a complaint against a business based in another EU Member State.

The ultimate aim of the ECC is to help consumers reach an amicable solution with the trader concerned. If an amicable solution is not possible, the ECC will then guide the consumer, through the appropriate tools and mechanisms, to find an out of court settlement.

How can one lodge a complaint with ECC-Malta?

One can submit a complaint with the ECC either by contacting the

Centre with all the information and documents related with the case or else by submitting the complaint online.

The Centre will acknowledge the receipt of the complaint as soon as possible. The consumer will be informed whether the case will be

sent to the ECC where the trader is established when all the documents related with the case are received. Then these will be forwarded to the trader ECC, who will then decide whether the case will be handled for conciliation or not. Once a case is taken over by the trader ECC, the mediation procedure will commence and the trader will be contacted on the consumer's behalf with the aim of reaching an amicable solution. The consumer will be updated about his/her case as soon as feedback is received from the ECC where the trader is established.

Log into our website **www.eccnetmalta.gov.mt** for more information about the Network and for more information and advice.



SUCCESS STORY

Beware with whom you deal with on the internet!

A Maltese individual placed an advert on an online selling platform to sell his old sewing machine. He was then contacted via e-mail from a possible buyer. Being the first online transaction made by this person he was not aware of the risk that one can encounter when making such online transactions and the possible scams one can encounter. In this case the potential 'buyer' made this individual believe that in order to receive the payment for his sewing machine first he had to transfer an amount of money to the 'buyer's' account and in turn the 'buyer' would transfer back this amount plus the price agreed for the sewing machine. The individual, eager to sell his machine fell for this trap and did as instructed and sent the payment via a money transfer company.

To his surprise the person selling the machine has never received the promised payment. He has then contacted the fraud section of the money transfer company via their website however their reply was that the money had already been collected and nothing else can be done. Not knowing what else he can do, he contacted our centre for our advice. Realising that this was a scam, ECC Malta decided to enquire with our counterparts in Austria since the money transfer company was based in Austria. ECC Austria advised that the individual should file a claim with the money transfer company through their appropriate channels. Following this advice the money transfer company was contacted however he was informed that in order to apply for a refund the transaction had to be made between January 1, 2004 and January 19, 2017. We informed ECC Austria with their reply and consequently ECC Austria contacted the headquarters of this company highlighting this mishap. Fortunately following the intervention of the ECC, the company decided in favour of the Maltese individual and as a gesture of good will they refunded him the amount of 402.90 EUR representing the full amount he has paid.



CAUTION



Beware
of traps!

European Consumer Centre Malta

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