

March 30, 2022

Due to the European legislator's wish to protect consumers even more in future, companies that offer products or services online to customers in B2C transactions will have to meet new requirements in 2022 and comply with a number of obligations. Below you'll find a short explanation of what to expect.

## Information obligations in e-commerce

From 28 May 2022, online providers must meet extensive information obligations. Sections 246a para. 1 of the Introductory Law to the German Civil Code (EGBGB) and Section 246d para. 1 EGBGB as well as para. 5b of the German Law against Unfair Competition (UWG) are of particular importance.

The most important information obligations in a nutshell are:

### Dynamic Pricing

Online providers who individually adjust prices to consumers on the basis of automated decision-making will soon be obliged to inform consumers thereof. This duty to inform concerns above all cases where the price of a product called up increases because the consumer visits the website several times.

### Customer reviews

Online providers must provide information on whether and how they ensure that published reviews actually originate from consumers. They will not be required to introduce verification mechanisms to ensure the authenticity of reviews; however they must then communicate this.

**Special information obligations exist in particular for operators of online marketplaces:**

### Ranking

If products from different sellers are ranked on an online marketplace, the operator of the online marketplace must clearly indicate to the consumer which ranking criteria are used and how they are weighted in relation to each other.

### Entrepreneur or consumer?

Operators of online marketplaces must obtain information from the respective sellers on their platform as to whether the seller claims to be an entrepreneur or a consumer and must indicate such information and other information to potential buyers.

**What happens if online providers fail to implement these information obligations correctly or in good time?**

The consequences can be severe: Online providers will not only face a claim for damages on the part of the

consumer, but also a fine. This fine may amount up to 4% of the company's annual turnover (new Section 246e EGBGB). We therefore advise to implement the new information obligations correctly and in good time. If you need help, we can assist with the correct implementation on your website and your consumer information.

## Termination button

From 01 July 2022, every website on which long-term contracts are concluded with consumers must contain a termination button (new Section 312k German Civil Code (BGB)). Similar to the privacy policy and the imprint, the termination button must be easily accessible and permanently integrated on the website. With this move, the legislator intends to make contract termination as simple as possible for consumers. The new regulation specifies in detail how the integrated termination form must look like.

### **What happens if online providers fail to implement the termination button correctly and in good time?**

If a termination button is missing on the website, consumers can terminate the contract at any time without observing a notice period. We therefore suggest integrating the termination button correctly and in good time. We are happy to assist with this.

## “Payment” with data

Since the beginning of 2022, contracts can be withdrawn where the consumer does not pay with money but with data in return for services or products provided by the entrepreneur according to Section 312 (1a) BGB. This right of withdrawal is not deemed to already exist if the data is absolutely essential for the entrepreneur to execute the contract and if such data is exclusively used for this purpose. Instead, the right of withdrawal primarily covers cases where entrepreneurs seemingly offer their contractual services or products online “free of charge” but collect in return information about the interests and market behavior of consumers in order to provide individualized advertising. In such cases, an instruction of withdrawal is now required - if this is missing, competitors can issue a warning. The legislator also requires the entrepreneur to ensure that the consumer's data is deleted after the receipt of the declaration of withdrawal.

## What else is new?

Contracts that are tacitly extended by one year in each case without giving consumers the option to terminate the contract have recently become a thing of the past: As of 1 March 2022, fixed-term B2C contracts can only be automatically extended for an indefinite period and must grant consumers a one month's notice period (Section 309 para. 9 BGB). This new rule is also applicable outside of e-commerce. It affects, among others, telecommunications contracts, electricity contracts and gym contracts, however rental and insurance contracts do not fall within the scope of the application of this rule. Hence, we advise to adapt the general terms and conditions accordingly.

## What does it mean for you?

The numerous new requirements for e-commerce must be put into practice. They apply in particular to entrepreneurs that offer their own products or services to consumers online or, as a marketplace, products and services of third parties. Due to the new regulations, it is important to update in particular the website (termination button) and adapt consumer information as well as the general terms and conditions.

If you have any questions or need assistance with the implementation of the new regulations, please do not hesitate

to contact us.

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