

KRS: The new regulation of internet commerce introduced amendments that will affect consumers favourably

Government Decree No. 45/2014 (II.26.) on the detailed rules of contracts concluded between consumers and business operations has introduced highly favourable changes for consumers to be applied in distance contracts (e.g. purchases made on the internet) – informed Origo the legal experts of Kovács Réti Szegheő Attorneys at Law. One of the significant amendments prescribes a fourteen-day period for the consumer to exercise his or her right of withdrawal without justification, replacing the formerly available eight business days. Nevertheless, consumers will have to keep observing the requirement of proper and intended use as set out in the Civil Code.

The new Government Decree came into effect on 14 June 2014 repealing Government Decree No. 17/1999 (II./5.) which, with certain exceptions, prescribed an eight-day period for rescinding the contract, commencing on the day on which the consumer acquires physical possession of the goods purchased online.

Right of withdrawal and liabilities of the consumer

The new regulation reinforces the right of consumers to withdraw from the contract without justification, by extending to fourteen days the timeframe available for the exercise of such right. By general rule, the timeframe available for the exercise of the right of withdrawal commences on the day the consumer acquires possession of the goods.

In practice, to exercise the right of withdrawal it is sufficient for the consumer to send his or her disclaimer to the company before the deadline, by which his or her claim will be recognized as enforceable. This does not apply to the seller i.e. the seller is not expected to receive the disclaimer within fourteen days for the consumers' exercise of right of withdrawal.

Although the statement of withdrawal (or disclaimer) may be made in any form provided that it is unequivocal, the new government decree includes a specifically formulated model withdrawal form annexed.

If the consumer decides to exercise his or her right of withdrawal from the contract, he or she will be bound to send back the goods or hand them over to the business operation at his or her own cost, without delay, but no later than 14 days from communicating the decision of withdrawal to the company; save for the case where the business operation has offered to arrange for the return of the goods itself.

The experts of Kovács Réti Szegheő Attorneys at Law have stressed that the costs borne by the consumer are limited to the direct cost of returning the goods, payable only in case the company has not offered to pay for the costs of return delivery itself.

Apart from the above general rule, the consumer will only be liable for such depreciation of the goods that is attributable to the use of the product exceeding the regular use to the extent necessary to establish the nature, characteristics and the functioning of the goods. This means that the consumer will not be liable for any diminished value of the goods if attributable to the regular use of the goods.



The provision regulating withdrawal

The provision of the decree regulating withdrawal is of a consumer protection nature, with the aim to balance the particular inherent risks of distance and off-premises sales. Whenever consumers purchase the goods in shops, they are given the opportunity to inspect them. Similarly, the intended purpose of the right of withdrawal is to enable consumers to test and try the product, and to get reimbursed in case it does not meet their expectations.

However, the new regulation may contribute to a growing number of cases of fraud and misuse on the consumers' side, since the longer time frame enables them to exercise their rights in fraudulent or abusive ways, by taking advantage of the possession of the goods for fourteen days for actually using the product as opposed to testing it with view to an eventual purchase.

The Civil Code prohibits the abuse of rights and while the verification of the abusive conduct may prove to be difficult in certain cases, purchases with fraudulent intentions, for example those made with the intention of using the product temporarily and sending it back to the business operator availing of the right of withdrawal, shall be considered an act of unlawful conduct on grounds of the above provision - as they would manifest the case of charge free utilisation of the product, which is contrary to the intended purposes of the regulation.

Rights and obligations of business operations

Whenever the purchaser decides to exercise his or her right of withdrawal, the business operation shall be liable, without delay but no later than fourteen days from the date of receiving notification thereof, to reimburse the entire amount of the purchase price, including the cost of performance.

The experts of Kovács Réti Szegheő Attorneys at Law underlined the importance of the fact that business operations may retain the above amount until the consumer returns the product to them, or alternatively proves with certainty that the return delivery had taken place.

Furthermore, business operations are bound to inform consumers of the deadline and other conditions for withdrawal, of the details regarding the cost-bearer of the return delivery and concerning a sample withdrawal form for submission. Besides the above, it is also the business operations' liability to inform consumers whenever they are not entitled to withdrawal for any reason, along with the conditions under which they may lose their entitlement to exercise this right

Exceptions from the right of withdrawal

The new decree specifies certain exceptions in respect of which it does not provide for the above mentioned right of withdrawal of consumers. Consumers for instance may not withdraw without justification from the contract in case of goods that are liable to



deteriorate or expire rapidly, which were made to the consumer's specifications or clearly personalised, further in case of supply of newspapers, periodicals or magazines and, introduced as a new category in case of the supply of sealed goods which are not suitable for return due to health protection or hygiene reasons and were unsealed after delivery.