

BILAG 2 - QUESTIONNAIRE - GERMANY AND THE NETHERLANDS

Dette questionnaire indeholder en række forskellige temaer samt de svar og spørgsmål, som har dannet grundlag for e-handelsguiden. Questionnairets kolonne nummer to indeholder spørgsmålene, og kolonne nummer tre indeholder svaret på spørgsmålet i forhold til, hvad der gælder i Danmark. Herefter følger de enkelte landes svar i kolonne nummer fire og fem. De enkelte landes besvarelser skal holdes op imod de danske svar. Hvis der af de enkelte landes besvarelser fremgår "Same applies" gælder der det samme, som fremgår af det danske svar.

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			<p>The answers for Germany have been provided by Fieldfisher (Germany), Hamburg, LLP (www.fieldfisher.com), Dr. Felix Wittern, Partner.</p> 	<p>The answers for The Netherlands have been provided by Fieldfisher N. V., Netherlands (www.fieldfisher.com), Ady van Nieuwenhuizen, Partner.</p> 
1	Trademarks and business identifiers			
1.1	<p>Can a trademark right, or a similar right, be established through use?</p>	<p>According to the Danish Trademarks Act (implementing parts of Directive 2004/48/EF on the enforcement of intellectual property rights and Directive 2015/2436/EU on how to approximate the laws of the Member States relating to trademarks), a trademark right can be established by commencement of use, if the use is continuously.</p> <p>In addition, a proprietary right to other business identifiers (i.e. signs which do not necessarily enjoy trademark protection), protected under the Danish Marketing Practices Act (implementing, amongst others, Directive 2005/29/EC on unfair business-to-consumer commercial practices), can also be established through the commencement of continued use.</p>	<p>Yes, in general, it is possible to establish a trademark right through mere use, but this does not apply to any trademark. According to the German Trade Mark Act (<i>Markenrechtsgesetz</i>), a trademark is established by use in so far as the sign has acquired general acceptance in trade. It is necessary that the sign in trade is known in such a way that the relevant trade circles may be able to distinguish the marked goods or services from identical or similar goods or services of other companies. This usually needs to be determined on a case-by-case basis.</p> <p>As similar to trademarks, business identifiers constitute an exclusive right. By definition, these are established through use: Business identifiers are signs used in trade as a name, company name or special designation of a business operation or a company. This also includes business signs and other signs intended to distinguish one business operation from another. Similar to trademarks which are established by use, the key criterion here is that the affected trade circles need to regard a specific business identifier as a sign of the respective business operation. This needs also to be determined on a case-by-case basis.</p>	<p>Under the Benelux Convention on Intellectual Property (trademarks and designs) (hereafter: "BVIE"), the establishment of a trademark is dependent exclusively on registration thereof. A trademark cannot be established through use. In general, unregistered but used trademarks are without rights.</p> <p>However, the use of a trademark is not entirely without meaning. An earlier use of a trademark may, under certain circumstances, make the application of a trademark by another party, an application filed in bad faith. In that case, the registration of that deposit does not give rise to rights and is exposed to annulment (art. 2.4. f. BVIE).</p>
2	Domain names			
2.1	<p>Does the registrant of a national top-level domain in your</p>	<p>By application, any natural person or legal entity can be registered as an owner of a .dk- domain name.</p>	<p>It is possible for any natural person or legal entity to register a national</p>	<p>Same applies. The Dutch Ministry of Economic Affairs and Climate cooperates on a national level with the Internet Domain Registration</p>

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	country need to be established, have a branch or an address (or the like) in your country?	The natural person or legal entity does not have to be established, have a branch or an address (or the like) in Denmark.	<p>top-level domain without having a branch or an address in Germany.</p> <p>However, the organization, which manages the top-level domains in Germany, DENIC eG, requires in its domain terms and conditions from prospect domain holders without an address in Germany to name an authorized representative domiciled in Germany for receiving the service of official or court documents. The representative shall have the same rights as an authorized representative for receiving in a court procedure in terms the German Civil Procedure Code (sec. 3(4) DENIC Domain Terms and Conditions), which basically means that sending a document to the representative will have the same legal effect like sending it to the domain owner.</p>	Netherlands Foundation (SIDN). All owners of an .nl domain name with an address outside of the Netherlands automatically use the SIDN address as their domicile address. SIDN is the administrator of all the .nl domain names.
3	Language requirements on the website			
3.1	<p>Are there any general language requirements for websites marketing and selling products and/or services online to consumers and/or businesses?</p> <p>If yes, please elaborate.</p>	There are no general language requirements for websites marketing and/or selling products and services online to consumers or businesses in Denmark.	<p>Same applies.</p> <p>However, this does not apply to privacy policies. These will need to be provided in German if the trader approaches German customers. German supervisory authorities take the standpoint that the privacy policy would otherwise not be "eligible" and "easily accessible" within the means of the GDPR.</p>	Same applies for the Netherlands.
4	Information requirements about the trader on the website			
4.1	<p>Is there any information about the trader that the trader is obligated to provide on the website when selling products and/or services to consumers and/or businesses?</p> <p>If yes, please elaborate.</p>	<p>According to the Danish e-commerce Act (implementing Directive 2000/31/EC on electronic commerce), a trader selling products and/or services online to consumers and/or businesses must provide the following information on the website:</p> <ol style="list-style-type: none"> the name of the trader as registered in a trade register (in Denmark; The Central Business Register); the geographic address of the trader; the email address of the trader, the postal address of the trader if it deviates from the geographic address, and other contact information 	<p>A trader selling products and/or services online must provide the following information on the website according to telecommunication media law and trade law:</p> <ol style="list-style-type: none"> the name of the trader as registered in a commercial register and the company's legal form (if applicable); complete name (first name and surname) of the company's owner or its authorized representative(s); complete geographic address (P.O. box address would not be sufficient); telephone number; email address, not just a contact form; commercial register details; 	<p>Under Dutch law, a trader selling products and/or services online to consumers and/or businesses must provide the following information on the website:</p> <ol style="list-style-type: none"> its identity and address of establishment; data that enable rapid contact, and direct and effective communication with the trader, including the electronic mail address; to the extent that the trader is registered in a commercial register or a comparable public register: the registry where he is registered and his registration number, or comparable means of identification in that registry;

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		<p>which enables contact with the trader;</p> <p>4. the Central Business Register number of the trader (in Denmark; CVR-number);</p> <p>5. applicable authorization schemes, including the relevant supervisory authority; and</p> <p>6. as concerns regulated professions, any professional body or similar institutions with which the trader is registered, the trader's professional title and the Member State in which it is granted, and a reference to applicable professional rules^{002E}</p>	<p>7. VAT identification number (if available);</p> <p>8. additional information (e.g. supervisory authority or chamber) in the case of certain regulated professions.</p> <p>The trader may not name the undertaking a "company" or "managing director" in the case of a one-man business.</p>	<p>4. to the extent that an activity is subject to a system of licences: the data regarding the competent supervisory authority;</p> <p>5. to the extent that he exercises a regulated profession:</p> <ul style="list-style-type: none"> the professional association or organization at which he is registered; the professional title and the Member State of the European Union or other State which is a party to the European Economic Area Agreement, where that title has been conferred; a reference to the professional rules that apply in the Netherlands and the manner of access thereto; <p>6. to the extent that he is engaged in an activity subject to VAT: the VAT identification number as referred to in Article 2. (1) (.) of the Wet op de Omzetbelasting 1968 (Value Added Tax Act 1968).</p>
4.2	If yes, how should such information be provided?	The information must be easily and permanently accessible and provided collectively. The information can for example be available gathered on the front page of the website, or through a link on the front page of the website to the contact information of the trader found elsewhere on the website.	The information must be easily, directly and permanently accessible and provided collectively on a sub-page named "imprint" or similar. According to court decisions, easily accessible means that the imprint is accessible with no more than two clicks from any part of the website.	Same applies for the Netherlands.
5	Pre-contractual information			
5.1	<p>Is there any general pre-contractual information that must be provided on the e-commerce website to both consumers and businesses?</p> <p>If yes, please elaborate.</p>	<p>Yes, according to the Danish e-commerce Act, a trader selling products and/or services to consumers online (and/or businesses, unless otherwise agreed) must provide the following information before an order is placed:</p> <ol style="list-style-type: none"> the different technical steps to follow to conclude the agreement; whether or not the concluded agreement will be stored by the trader and whether it will be accessible; the languages offered for concluding the agreement; the technical means for identifying and correcting errors; any relevant codes of conduct and information on how those 	<p>Yes, according to the German Civil Code (Bürgerliches Gesetzbuch), the same information requirements apply in Germany.</p> <p>Additionally, rules of the German Unfair Competition Act prohibit misleading market behavior both in a business-to-business scenario and a business-to-consumer scenario. This legislation also includes rules on how certain information about the offered products and/or services need to be provided. It is forbidden to provide false statements or other information suited to deception regarding, for instance, the main characteristics of the goods or services (such as availability, nature, execution, benefits, risks, composition, accessories, method or date of manufacture,</p>	<p>Yes, see 4.1 and additionally:</p> <ol style="list-style-type: none"> inform consumers how orders are placed; inform consumers how and when they can pay; provide an overview of the order and the most important conditions; do not pre-check additional options in advance; clearly state that ordering means paying; inform customers whether you are saving orders, and how.

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		<p>codes can be consulted electronically.</p> <p>The above-mentioned information must be given clearly, comprehensibly and unambiguously.</p>	<p>delivery or provision, fitness for purpose, uses, quantity, specification, after-sale customer assistance, complaint handling, geographical or commercial origin, the results to be expected from their use, or the results or material features of tests carried out on the goods or services) or the price or the manner in which the price is calculated.</p>	
5.2	<p>Is there any other pre-contractual information which must be provided to consumers?</p> <p>If yes, please elaborate.</p>	<p>According to the Danish Consumer Contracts Act (implementing Directive 2011/83/EU on consumer rights), the trader must provide the following information to a consumer prior to conclusion of the agreement (we have included the main information requirements within the scope of the questionnaire):</p> <ol style="list-style-type: none"> 1. the main characteristics of the goods and services; 2. the identity and address of the trader, and, if relevant, the trader's telephone number and email address; 3. the identity and address of another trader which the trader acts on behalf of, if relevant; 4. the total price of the goods and services, inclusive of taxes, or where the nature of the goods or services is such that the price cannot reasonably be calculated in advance, the method of calculating the price; 5. any costs that the consumer must pay to use means of distance communications, if different from the regular fee; 6. the payment conditions, the conditions for the fulfilment of the agreement, information of when the trader expects to deliver the purchased goods or services; 7. the trader's complaint handling procedure if this deviates from what could be expected by the consumer; 8. that the remedies for defective performance contained in the Danish Sale of Goods Act may apply; 9. the existence of and the conditions for after-sales customer assistance, after-sales services and commercial guarantees, if applicable; 	<p>Same applies.</p> <p>(Implementations of the European directives on consumer rights are part of German Civil Code, <i>Bürgerliches Gesetzbuch</i>, and the Introductory Act to the Civil Code, <i>Einführungsgesetz zum Bürgerlichen Gesetzbuch</i>)</p>	<p>Before the consumer is bound by a distance or off-premises contract, or a corresponding offer, the trader shall provide the consumer with the following information in a clear and comprehensible manner, insofar as it is not already apparent from the context:</p> <ol style="list-style-type: none"> 1. the main features of the goods or services, to the extent appropriate to the medium and to the goods or services; 2. the identity of the trader, such as his trading name; 3. the geographical address at which the trader is established and his telephone number, fax number and email address, where available, and, where applicable, the geographical address and identity of the trader on whose behalf he is acting; 4. if different from the address provided in conformity with point (3), the geographical address of the place of business of the trader, and, where applicable, that of the trader on whose behalf he is acting, where the consumer can address any complaints; 5. the total price of the goods or services inclusive of taxes, or where the nature of the goods or services is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated, as well as, where applicable, all additional freight, delivery or postal charges and any other costs or, where those charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable. In the case of a contract of indeterminate duration or a contract containing a subscription, the total price

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	<p>10. the relevant codes of conduct, and where to find these;</p> <p>11. the existence of and conditions for deposits or other financial guarantees to be paid or provided by the consumer, if relevant;</p> <p>12. the functionality and applicable technical measures of digital content, if applicable; and</p> <p>13. the compatibility of digital content with hardware and software, if relevant.</p> <p>Where applicable, the trader shall also provide information about the possibility of having recourse to a complaint and redress mechanism and the methods for having access to it. According to Regulation No 524/2013 on online dispute resolution for consumer disputes, the trader shall also inform the consumer of the ODR complaint platform, including a link to the platform, and the e-commerce trader's email address.</p> <p>Further, on websites where online purchases can be made, the trader must inform the consumer of any delivery limitations and means of payments to be used.</p> <p>The trader is also obligated to provide information on the right of withdrawal (see the question below).</p> <p>There are a number of exceptions to the information requirements which are not included in the questionnaire, for example agreements for the supply of foodstuffs, beverages or other goods intended for current consumption in the household which are supplied by a trader on frequent and regular rounds to the consumer's home, residence or workplace, or agreements for gambling for which money is paid to participate.</p>		<p>shall include the total costs per billing period. Where such contracts are charged at a fixed rate, the total price shall also mean the total monthly costs. Where the total costs cannot be reasonably calculated in advance, the manner in which the price is to be calculated shall be provided;</p> <p>6. the cost of using the means of distance communication for the conclusion of the contract where that cost is calculated other than at the basic rate;</p> <p>7. the arrangements for payment, delivery, performance, the time by which the trader undertakes to deliver the goods or to perform the services and, where applicable, the trader's complaint handling policy;</p> <p>8. where a right to cancel the contract exists, the conditions, time limit and procedures for exercising that right, as well as the model cancellation form set out in Annex I(B) to the Directive;</p> <p>9. where applicable, that the consumer will have to bear the cost of returning the goods in the case of cancellation of the contract and, for distance contracts, if the goods, by their nature, cannot normally be returned by post, the cost of returning the goods;</p> <p>10. that if the consumer exercises his right to cancel the contract after having made a request, the consumer shall be liable to pay the trader reasonable costs;</p> <p>11. where no provision is made for a right to cancel, the information that the consumer does not have a right to cancel or, where applicable, the circumstances under which the consumer loses his right to cancel;</p> <p>12. a reminder of the existence of a statutory guarantee that the goods delivered are in conformity with the contractual requirements;</p> <p>13. where applicable, the existence and the conditions of after-sale customer assistance, after-sales services and commercial guarantees;</p>

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				<ol style="list-style-type: none"> 14. where applicable, the existence of relevant codes of conduct, and how copies of them can be obtained; 15. the duration of the contract, where applicable, or, if the contract is of indeterminate duration or is to be extended automatically, the conditions for terminating the contract; 16. where applicable, the minimum duration of the consumer's obligations under the contract; 17. where applicable, the existence and the conditions of deposits or other financial guarantees to be paid or provided by the consumer at the request of the trader; 18. where applicable, the functionality, including applicable technical protection measures, of digital content; 19. where applicable, any relevant interoperability of digital content with hardware and software that the trader is aware of or can reasonably be expected to have been aware of; 20. where applicable, the possibility of having recourse to an out-of-court complaint and redress mechanism, to which the trader is subject, and the methods for having access to it.
5.3	How should the above-mentioned information requirements be fulfilled?	<p>The trader must provide the above-mentioned information prior to conclusion of the agreement in a clear and comprehensible manner.</p> <p>The above-mentioned information becomes an integral part of the agreement.</p> <p>The information must be in Danish, when the marketing of the goods and services has been in Danish.</p> <p>Most traders provide the information on the trader's website and in the trader's terms and conditions, which the trader then sends to the consumer within reasonable time after conclusion of the agreement.</p>	<p>Information regarding the price must be provided before the customer enters the ordering procedure; information on existing supply restrictions and payment conditions must be provided when entering the ordering process at the latest; and everything else prior to the conclusion of the agreement at the latest. The last order page with the order button must contain the main characteristics of the goods and services, all information about the prize and how it is calculated, the total price, and the duration of the contract or the minimum duration of an obligation on the consumer (if applicable).</p> <p>The trader must provide the above-mentioned information in a clear and comprehensible manner, which requires that these need to be provided in a language that can be assumed understandable by the relevant group of customers. For instance, providing the information</p>	<p>The trader must provide the above-mentioned information prior to conclusion of the agreement in a clear and comprehensible manner.</p> <p>The above-mentioned information becomes an integral part of the agreement.</p> <p>The information must be provided in clear and comprehensible language, although it is not necessary to have it in Dutch.</p> <p>Most traders provide the information on the trader's website and in the trader's terms and conditions, which the trader then sends to the consumer within reasonable time after conclusion of the agreement.</p>

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			<p>in English will only be allowed if the targeted group of customers has sufficient English skills. Consistency is also important, e.g. providing the terms and conditions in English but the description of the goods and services in Germany will also not be "clear and comprehensible" to that effect.</p> <p>All information and the terms and conditions need to be provided on a durable medium at the latest with the delivery of the products and/or services. For the sake of simplification, however, it is advisable to send this together with the notice on the right to withdrawal when the contract is concluded.</p> <p>The information becomes integral part of the agreement, and non-compliance with the information requirements may lead to claims for damages by the customer.</p>	
6	Information about prices, fees and VAT			
6.1	What information requirements regarding prices apply in relation to sale to both consumers and/or businesses?	When a price is shown on a website, it must be provided in a clear and unambiguous manner, including whether the price includes taxes and delivery costs.	Same applies. (Please also compare answer to question no. 5.1.) However, net prices can only be provided if the offer is directed exclusively at business customers. In this case, it is particularly important that the group of customers is clearly limited to businesses.	Same applies.
6.2	In regard to sale to consumers, when is the trader obligated to provide information on the total price of the goods and/or services?	<p>In regard to consumers, the trader must in a clear and comprehensible manner inform the consumer of the total price of the goods and/or services before an online agreement is concluded.</p> <p>Additionally, according to the Danish Consumer Ombudsman, who amongst others monitors compliance with the Consumer Contracts Act, the trader shall provide information of the total price the first time the consumer is informed of the price. Where the nature of the goods or services is such that the price cannot reasonably be calculated in advance, the method of calculating the price must be informed.</p> <p>Further, the trader shall also inform the consumer of the total price directly before the consumer places his order. See more under</p>	Same applies.	<p>In regard to consumers, the trader must in a clear and comprehensible manner inform the consumer of the total price of the goods and/or services, with additional costs, before an online agreement is concluded:</p> <ul style="list-style-type: none"> including all costs that customers must incur to pay and get delivered; explain how you calculate costs that are not fixed in advance; state all prices including VAT and state that all your prices include VAT. <p>For subscriptions and delivery contracts:</p> <ul style="list-style-type: none"> how many consumers pay for how long; the subscription or contract costs per week, month, quarter or year.

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		the questions regarding check-out below.		Please see question 5.2 point 5 for more information.
6.3	Which costs are to be included in the total price of the goods and/or services in relation to online sale to consumers?	<p>In regard to online consumer agreements, the total price of the goods and services includes all fees, expenses, VAT and all other costs that the consumer must pay.</p> <p>Costs which cannot be referred to the individual goods are not to be included in the total price, e.g. delivery costs. However, the consumer must receive information about these costs in direct connection with the information on the total price.</p>	<p>Basically, the same applies. According to the German Price Indication Regulation (<i>Preisangabenverordnung</i>), the trader must always indicate total prices to the consumer, i.e. prices which have to be paid including tax and other price components, e.g. information on delivery costs, payment costs or costs for packaging.</p> <p>It is therefore possible to include the delivery costs into the total price. If the delivery costs are <i>not</i> included into the total price, this needs to be indicated that the consumer has to pay them additionally.</p>	<p>Same applies.</p> <p>Costs which cannot be referred to the individual goods are not to be included in the total price, e.g. delivery costs. However, the consumer must receive information about these costs in direct connection with the information on the total price.</p>
7	Terms and conditions			
7.1	Is the trader required to provide the trader's terms and conditions to the customer?	Yes, if a trader has a set of terms and conditions, the trader must make the terms and conditions available in a way that allows them to be stored and reproduced. This applies in relation to sale to both consumers and businesses.	Same applies. Additionally, a link to the terms and conditions must be provided on each and every page of the website.	Yes, if a trader has a set of terms and conditions, he has to make them available through a link. The trader must make the terms and conditions available in such a manner that these can be stored by the buyer and will be accessible so that the buyer may make himself aware of them later.
7.2	Are there any language requirements for the trader's terms and conditions in online consumer agreements?	<p>According to the Danish Consumer Contracts Act, mandatory pre-contractual information, which are included in the trader's terms and conditions, must be provided in Danish if the marketing of the purchased goods and/or services has been in Danish.</p> <p>However, the e-commerce trader and the consumer may actively agree that the terms and conditions are provided in another language.</p> <p>Further, the information must be given in a clear and comprehensible manner.</p>	<p>The terms and conditions usually have to be available in German. This is due to the transparency principle of German law on terms and conditions, which requires that these need to be provided in a language which is understandable for the relevant group of customers.</p> <p>However, the terms and conditions may be provided in a different language that the trader has agreed with the customer. It would therefore also be possible to offer products and/or services for Danish speaking people in Germany by using Danish terms and conditions. However, the offered service would need to be delivered in Danish in this case.</p> <p>The information must also be given in a clear and comprehensible manner.</p>	There are no language requirements. The information must be given in a clear and comprehensible manner. For the Netherlands, the English language is acceptable, however, bilingual information would be recommended.
7.3	Must a consumer actively accept the	Yes, the consumer must actively accept the terms and conditions. According to the Danish Consumer	No, it would be sufficient if the consumer was given the opportunity to notice the content of the	Same applies.

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	terms and conditions?	Ombudsman, pre-checked boxes are not permissible.	terms and conditions in a reasonable manner. This can be done by means of a link above the order button. However, for evidence purposes it is advisable to record a confirmation of receipt, e.g. by means of a checkbox that is not ticked beforehand.	
7.4	Is the trader required to send the terms and conditions to the consumer after conclusion of an online agreement?	Yes, the trader must send the terms and conditions to the consumer on a durable medium when the terms and conditions include the mandatory information mentioned in the Consumer Contracts Act, which must be sent to the consumer following conclusion of the agreement.	Same applies in Germany according to consumer protection rules in the Civil Code.	Same applies.
8	Information requirements immediately before acceptance of the agreement (check-out)			
8.1	What information is the trader obligated to provide to the consumer immediately before the online agreement is concluded?	<p>In regard to consumers, if an agreement to be concluded online places an obligation on the consumer to pay, the trader shall, in a clear and prominent manner, inform the consumer of the obligation to pay directly before the consumer places the order, and provide the consumer with the following information:</p> <ol style="list-style-type: none"> the main characteristics of the goods and services (in practice: which goods or services the consumer has chosen), and the total price. <p>If the trader uses an "order confirmation button" on the website the button must have written "Order with payment obligation", "Buy now" or the like on it.</p> <p>According to the Danish Consumer Ombudsman, no additional text must be inserted between the above-mentioned information and an "order confirmation button" on the trader's website.</p>	<p>The check-out page needs to meet the following criteria. It is important that the information that has to be provided according to the following no. 1 to 4 must be placed highlighted and in a prominent manner on the check-out page:</p> <ol style="list-style-type: none"> List of the main characteristics of the goods or service; information on the minimum term of the contract, if applicable; information on the total price of the goods or service, including all related price elements and all taxes paid via the trader or, if no accurate price can be indicated, its basis of calculation to enable the consumer to verify the price; information on any additional delivery and shipping costs and an indication of any other taxes or costs which may not be paid or invoiced by the trader; <p>Apart from that, the following requirements need to be met:</p> <ol style="list-style-type: none"> providing technical means for identifying and correcting errors; indication that the email address is going to be used for marketing purposes, insofar as this is permissible without express consent (per below); reference to the right of withdrawal; 	<p>Same applies for the Netherlands.</p> <p>Before a contract is concluded by electronic means, the provider of information society services shall supply the other party information clearly, comprehensibly and unambiguously at least in respect of:</p> <ol style="list-style-type: none"> the manner in which the contract will be concluded and, in particular, the acts required therefore; whether or not the contract once concluded is filed and if so, in which manner it will be accessible to the other party; the manner in which the other party may apprise himself of undesired acts, and the manner in which he can remedy these before the contract is concluded; the languages in which the contract can be entered into; the codes of conduct to which he subscribes and the manner in which these codes of conduct may be consulted electronically by the other party.

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			<p>8. a link to the terms and conditions (which need to be storable and printable);</p> <p>9. a reference to the binding nature once the order has been submitted;</p> <p>10. unambiguous labelling of the order button with nothing but "<i>zahlungspflichtig bestellen</i>" or similar.</p>	
8.2	What are the consequences if the above-mentioned information requirements are not fulfilled?	The agreement is not binding upon the consumer if the consumer has not received the above-mentioned information as required.	<p>The agreement will not be binding if the trader has not made clear the binding effect of the order to the consumer and the order button had not been labelled as described above.</p> <p>Apart from that, non-compliance may also entail warning notices by competitors or by a consumer protection organization. Warning notices are a special instrument of the German unfair competition law. If the trader receives a lawful warning notice, the trader would have to pay the costs (i.e. the lawyer's fee who has drafted the notice) and also may have to submit a cease-and-desist declaration to the entity submitting the warning notice.</p>	Same applies.
9	Binding agreement			
9.1	Under which conditions is an online consumer agreement considered binding?	<p>In regard to consumers, when a consumer activates an order confirmation button or the like on an e-commerce website, it is considered an accept of the trader's offer, which means that an online agreement has been concluded between the trader and the consumer.</p> <p>The trader's order confirmation does therefore not constitute the conclusion of the agreement, unless the trader in a clear and explicit manner during the order flow has informed the consumer hereof.</p>	<p>From the customer's perspective, clicking the order confirmation button on the last page of the ordering process makes the agreement binding. However, the order will not be considered binding for the customer, if the trader has not informed the customer about the legal effect in a clear and explicit manner that the order will lead to a payment obligation, e.g. by not labelling the button with "<i>zahlungspflichtig bestellen</i>" (English: "your order leads to payment obligation").</p> <p>From the trader's perspective, in most cases, the agreement will become binding if the trader accepts the order by sending the confirmation mail or by delivery of the goods at the latest. However, the offer of the product or service of the website may already be binding if the trader indicates that, e.g. by stating the number of available goods and labelling the order button with "buy now" or by a provision in the terms and conditions.</p>	<p>In regard to consumers, when a consumer activates an order confirmation button the agreement is considered binding.</p> <p>The order confirmation button must for instance contain the text "Order with payment obligation" or "Order and pay". A button with only the text "Order" is in any case not allowed.</p>

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			<p>Thus, the trader has the ability to influence the time when the agreement has to be considered binding for her or him to a certain degree by the design of the order process and the terms and conditions. In practice, there are basically three different options to conclude an agreement in ecommerce:</p> <ol style="list-style-type: none"> 1. <i>The offer on the website is not supposed to be binding, and the customer submits a binding purchase offer with the order:</i> The trader does not automatically accept this purchase offer with the order confirmation mail, but manually by a second mail or with the delivery of the product. Both would have to be done by the trader within a short period of time. The advantage of this option is: Before accepting, the trader can check the creditworthiness of the customer or the availability of the product. In this option, the trader must state a specific timeframe, in which he will accept the agreement. This may arguably be a maximum of 2 days for most products. (If no time limit is stated in the contract conclusion clause, a competitor may file a warning message, per above). 2. <i>The offer on the website is not supposed to be binding, and the customer submits a binding purchase offer with his or her order:</i> That purchase offer can also be automatically accepted with the first confirmation e-mail ("order confirmation") by the trader. 3. <i>The offer on the website is supposed to be a binding offer which is then accepted by the customer's order:</i> By sending an order confirmation mail, the trader confirms the already concluded agreement and the receipt of the order. 	
10	Payments			
10.1	When is it permissible to charge the payment in an	According to the Danish Consumer Ombudsman, the trader may normally charge the payment when the purchased goods have been shipped or when the performance	The trader may charge the payment as soon as the agreement has become binding.	In the Netherlands, the trader may charge the payment when the consumer "bought" the products (as soon as the "order" and "payment" buttons have been clicked).

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	online consumer agreement?	of the purchased services has begun.		
10.2	Under which conditions is it permissible to charge a prepayment in an online consumer agreement?	<p>According to the Danish Consumer Ombudsman, the trader and the consumer must explicitly agree on any prepayments before the prepayment is charged.</p> <p>Further, the trader may only charge prepayments if the trader has an objective and fair reason for charging the prepayment. For example, this could be the supply of goods made according to the consumer's specifications, and situations where it is customary due to industry practices.</p>	<p>It is permissible to charge a prepayment in online consumer agreements, if the trader has informed the consumer properly about this payment method as part of the general information requirements (per above) and it has been agreed in the terms and conditions.</p> <p>However, it would be good practice to offer at least one other payment method besides prepayment.</p>	Same applies for the Netherlands.
11	Information requirements after entering into an agreement (order confirmation)			
11.1	<p>Is the trader obligated to confirm an online agreement after conclusion of the agreement?</p> <p>If yes, please specify when and how to fulfil this obligation.</p>	<p>According to the Danish e-commerce Act, the trader shall provide the consumer (and a business, unless otherwise agreed) with a confirmation of an online agreement without undue delay after concluding the agreement.</p> <p>In regard to consumers the confirmation shall be on a durable medium, for example an email, a text message or a letter. A link to a website is not considered a durable medium.</p> <p>The confirmation for the consumer shall include the mandatory pre-contractual information, which are often done by sending the trader's terms and conditions containing this information.</p>	<p>Firstly, an email just confirming the receipt needs to be sent immediately after the order has been submitted by the consumer.</p> <p>Secondly, a confirmation of the online agreement needs to be sent to the consumer which also contains the mandatory pre-contractual information, especially the notice on the right to withdrawal, the terms and conditions and information about the delivery time. The confirmation shall be on a durable medium, for example an email, a text message or a letter.</p> <p>In practice, the second step is done by an email, whereby the trader in most cases also accepts the agreement (per above). Additionally, a printed version of the notice on the right to withdrawal, pre-contractual customer information, and terms and conditions should in any case also be sent again with the delivery of the product.</p>	<p>Same applies.</p> <p>However, under Dutch law, the mandatory information cannot only be put in the general terms and conditions that you send with the order.</p> <p>Additionally, if under Dutch law a cooling-off period is applicable, make sure to also enclose the obligatory termination form and explain what it costs to return the order.</p>
12	Right of withdrawal			
12.1	Is a consumer entitled to a right of withdrawal within 14 days when purchasing goods and/or services online?	Yes, according to the Danish Consumer Contracts Act, the consumer is entitled to withdraw from an online consumer agreement within a period of 14 days starting from the day the consumer, or a third party chosen by the consumer, receives the purchased goods or from the day of concluding an agreement regarding a purchased service.	Same applies, the European rules on the right of withdrawal have been implemented in the Civil Code.	Same applies.

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		There are a number of exceptions to the right of withdrawal which are not included in the questionnaire, for example the supply of goods that are made to the consumer's specifications or are clearly personalized or the supply of sealed goods which are not suitable for return for health protection or hygiene reasons and which were unsealed after delivery.		
12.2	What are the information requirements regarding the right of withdrawal?	<p>The trader shall provide the following information to the consumer before conclusion of the agreement on the website and/or in the terms and conditions available on the website which must be accepted by the consumer before conclusion of the agreement, and after conclusion of the agreement on a durable medium, for example in the order confirmation or the terms and conditions:</p> <ol style="list-style-type: none"> 1. information on whether the consumer is entitled to withdraw from the agreement, and if applicable the conditions, deadline and procedures for exercising the right of withdrawal; 2. information that the consumer has no right to withdraw from the agreement, if applicable; 3. information on the circumstances under which the consumer loses the right to withdraw, if applicable; 4. information that the consumer will have to pay the costs of returning the goods in case of withdrawal, if applicable; and 5. information on the amount to be paid by the consumer in the event of withdrawal from an online agreement regarding services, when the performance of the service has begun with the express consent of the consumer before the end of the withdrawal period. <p>Further, the e-commerce trader must provide the Model Withdrawal Form on a durable medium.</p>	Same applies.	Same applies.
12.3	What are the consequences if the consumer does not re-	If the consumer does not receive the required information about the right of withdrawal, the withdrawal period does not begin until the day	Same applies.	Same applies.

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	ceive the necessary information about the right of withdrawal?	the consumer receives the information on a durable medium. However, the withdrawal period ends no later than 12 months after the 14-day period, but in any event no later than 14 days after the day where the consumer receives the information.		
12.4	What are the main obligations on the trader and the consumer when the consumer withdraws from an online agreement?	<p>When the consumer withdraws from an online agreement, the trader shall reimburse all payments received from the consumer, including the standard costs of delivery, without undue delay and no later than 14 days from the day of the withdrawal.</p> <p>The consumer must return the goods to the trader without undue delay and no later than 14 after the withdrawal, and the consumer shall pay the costs of returning the goods. However, the consumer shall not pay the costs of returning the goods if the trader has undertaken to pay the costs, or if the trader has not informed the consumer of the costs for returning the goods.</p> <p>If the consumer withdraws from an agreement regarding a service, the trader may require the consumer to pay for the part of the purchased service which has been performed before the withdrawal, if the performance of the service has begun with the express consent of the consumer, and if the trader proves that the consumer was informed of the right to withdraw and the amount to be paid in case of withdrawal.</p>	Same applies.	Same applies.
13	Lack of conformity with the agreement			
13.1	When are goods and/or services considered to lack conformity with the agreement in regard to sale to consumers?	Purchased goods and/or services are considered to lack conformity with the agreement if the goods are not in accordance with the agreement, e.g. if the goods and/or services are not fit for the purposes for which they have been sold, or if the goods do not have the duration promised by the trader.	Same applies.	Same applies.
13.2	What are the consumer's remedies if the purchased	According to the Danish Sales of Good Act (amongst others, implementing Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees), if purchased goods lack conformity with the agreement,	Same applies. As an additional remedy, the customer may also have claims of damage against the trader under certain conditions.	Same applies.

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	goods lack conformity with the agreement?	<p>the consumer may choose between:</p> <ol style="list-style-type: none"> 1. remedy of the lack of conformity; 2. delivery of substitute goods that are in conformity with the contract; 3. an appropriate price reduction; or 4. terminating the contract if the lack of conformity is material. <p>However, the consumer cannot require remedy or delivery of substitute goods if such delivery of substitute goods or remedy is impossible or will cause the seller disproportionate expenses.</p>		
13.3	What is the time period for giving notice of lack of conformity in terms of purchased goods in regard to sale to consumers?	<p>A consumer has two years to give notice of lack of conformity in relation to purchased goods.</p> <p>However, the consumer must give notice of lack of conformity within reasonable time after having discovered the lack of conformity. Giving notice of lack of conformity within two months after discovering the lack of conformity is always given in time.</p>	<p>Same applies for the two-year limitation period. (The period may be longer if the seller has fraudulently kept the defect in secret.)</p> <p>However, there is no specific deadline for a customer to give notice to the trader after having discovered the lack of conformity.</p>	<p>A consumer has two years to give notice of lack of conformity in relation to purchased goods.</p> <p>However, the consumer must give notice of lack of conformity within reasonable time after having discovered the lack of conformity.</p>
13.4	Is a consumer entitled to remedies if a purchased service lacks conformity with the agreement?	<p>Purchases of services are not covered by the Danish Sale of Goods Act. However, according to general principles of law of obligations the consumer will be entitled to remedies if a purchased service lacks conformity with the agreement.</p> <p>If a purchased service lacks conformity with the agreement, the consumer may choose between:</p> <ol style="list-style-type: none"> 1. remedy of the lack of conformity, if possible; 2. an appropriate price reduction; or 3. terminating the contract if the lack of conformity is material. 	<p>It depends on what kind of service the trader has to provide to the customer.</p> <p>On one hand, if the service requires achieving a certain result, such as the manufacture or modification of an item, then the customer is entitled to comparable remedies as if goods have been purchased.</p> <p>On the other hand, if a service in terms of a certain activity is required, general principles of law of obligations apply. In case of non-performance or poor performance, a claim of damage or the opportunity to terminate the contract may be possible.</p>	Same applies.
13.5	What is the time period for giving notice of lack of conformity in terms of purchased services in regard to sale to consumers?	<p>A performed service is governed by the Danish Act of limitations. A consumer therefore has three years to give notice of lack of conformity with the agreement regarding services. However, the consumer must give notice within reasonable time after having discovered the lack of conformity.</p>	<p>There is no specific time period, so the general limitation of three years applies here.</p>	<p>The consumer must give notice within reasonable time after having discovered the lack of conformity.</p> <p>What will be considered as within reasonable time, will depend on the circumstances of the service.</p>

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		What will be considered as within reasonable time, will depend on the circumstances of the service.		
14	Direct electronic marketing			
14.1	Under which conditions is a trader allowed to send direct electronic marketing?	According to the Danish Marketing Practices Act (which amongst other implements Directive 2002/58 on the processing of personal data and the protection of privacy in the electronic communications sector) a trader may only send direct electronic marketing if the receiver has given a valid prior marketing consent.	According to sec. 7 of the Unfair Competition Act (<i>Gesetz gegen den unlauteren Wettbewerb</i>), which implements directive 2002/58/EC, explicit consent is necessary before sending electronic marketing in general. However, the trader may rely on the existing customer exemption under certain conditions (as described in section 15.3).	Same applies. And a trader may also send electronic marketing information to the consumer to whom it sold a product or a service (if the electronic marketing is in line with the sold product and service) and whereby the consumer did not explicitly consent to the marketing messages.
14.2	What are the conditions for a valid electronic marketing consent?	<p>An electronic marketing consent must be obtained prior to sending the marketing, and the consent must be freely given and be specific, informed and unambiguous.</p> <p>That the marketing consent must be informed means that a marketing consent may not be obtained by using a pre-checked consent box, and that the marketing consent text and the consent box must be separated from the terms and conditions.</p> <p>That the marketing consent must be specific means that the person/business giving the marketing consent must be aware of which business(es) the marketing consent covers; how the person/business will be contacted (the medium); and which products or product categories the person/business will receive electronic marketing about.</p> <p>Further, the marketing consent text must specify that a marketing consent can be withdrawn at any time, which should be able to be done in an easy manner and free of charge.</p>	<p>It is necessary to obtain the electronic marketing consent with a double opt-in procedure.</p> <p>The trader needs to be able to provide evidence in each individual case that double opt-in has been used. It is not sufficient to prove just that a double opt-in exists.</p> <p>Additionally, it is also necessary to meet the criteria for consent in terms of data protection law: Consent must be obtained prior to sending the marketing, and the consent must be freely given and be specific, informed and unambiguous.</p> <p>Marketing consent must be "informed" means that a marketing consent may not be obtained by using a pre-checked consent box.</p> <p>The marketing consent text and the consent box must be separated from the terms and conditions, as it would not be considered as freely given otherwise.</p>	Same applies.
14.3	<p>Is it permissible to use opt-out (soft-opt-in) electronic marketing?</p> <p>If yes, what are the requirements?</p>	<p>According to the Danish Marketing Practices Act and the Guidelines from the Danish Consumer Ombudsman regarding unsolicited marketing, it is permissible to use soft opt-in (in Danish: "opt-out") for email marketing if the following requirements are fulfilled:</p> <ol style="list-style-type: none"> the customer must have purchased a product from the trader; 	<p>Electronic marketing on an opt-out basis is allowed if the trader may rely on the existing customer exemption pursuant to sec. 7(3) of the Unfair Competition Act, but the requirements are rather strict. Opt-out is admissible if:</p> <ul style="list-style-type: none"> There is a contract in place with the customer (it is not sufficient if partner has shown significant interest in forming a partnership); 	Same applies.

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		<ol style="list-style-type: none"> 2. the customer must have informed the trader of the customer's electronic address on his own in connection with the purchase of the product; 3. the trader must clearly and expressly inform the customer that the customer will receive marketing from the trader to the specific electronic address; 4. the trader must clearly and expressly inform the customer that the customer can decline receiving marketing free of charge and in an easy manner at the time when the customer informs the trader about the customer's electronic address; 5. the trader must inform the customer of the right to decline receiving further marketing in all subsequent communications; 6. the electronic marketing must be limited to the marketing of the trader's own products; and 7. the electronic marketing must be limited to the marketing of similar products. 	<ul style="list-style-type: none"> • Not much time has elapsed between the conclusion of the contract and the acquisition of the email address; • The marketing relates to similar products and/or services for which the recipient's details were originally obtained; • The recipient has not objected to the use of his email address for such purposes; and • The recipient has to be informed about his or her right to object to the marketing activities when the address is collected and each time it is used (via unsubscribe button). 	
14.4	Does the above apply to direct electronic marketing towards both consumers and businesses?	Yes.	Yes. However, data protection law only applies to individuals.	Same applies.
15	GDPR			
15.1	<p>Are there - under national law - further information requirements than what is required under the GDPR?</p> <p>In terms of the question and the questions below regarding GDPR, if the legal position under local laws deviates from the legal position in Denmark, please state whether the local legal</p>	No, the Danish Data Protection Act does not require any other information to be provided than the information required under the GDPR.	No, same applies to the Federal Data Protection Act (<i>Bundesdatenschutzgesetz</i>), which does not require additional information than required by the GDPR.	<p>The Dutch Implementation Act GDPR ("AVG") deviates on some points from the GDPR.</p> <p>The most important areas in which the Implementation Act plays a role are:</p> <ol style="list-style-type: none"> 1. the scope of the Regulation; 2. the role, position and powers of the national supervisor (the AP); 3. regulations concerning the use of special categories of personal data; 4. rules concerning (the exceptions to) the rights of the persons involved; 5. arrangements for specific processing situations (such as in

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	position is applicable to an online trader, which is solely established in Denmark.			relation to freedom of expression). The deviating provisions contained in the UAVG do not entail any additional requirements with regard to the provision of information.
15.2	Is it required to have a privacy policy for an e-commerce trader?	<p>When processing personal information, the e-commerce trader is required to comply with the requirements in the GDPR, including providing the required information to the data subject. Therefore, if the trader processes personal data, e.g. in relation to purchases made on the e-commerce platform, the information must be given.</p> <p>There are no requirements to the format the information is provided in. An e-commerce trader is therefore not necessarily required to have a privacy policy, as long as the required information is provided adequately.</p>	Same applies.	Same applies.
15.3	When and how should the information requirements be fulfilled?	<p>The data subject should be given the required information, when data is obtained from the data subject, e.g. when a purchase is made.</p> <p>In general, the information should be provided in writing, and where appropriate electronically, e.g. via a link to the privacy policy on the website. The information must be given in a concise, transparent, intelligible and easily accessible form, using clear and plain language.</p> <p>According to the guidelines from the Danish Data Protection Agency, the e-commerce trader must take active steps to "give" the data subject the required information, and the data subject should not have to search for the information, i.e. the attention of the data subject should be led to the privacy policy. Preferably, the link to the privacy policy should lead directly to the relevant sections of the privacy policy.</p>	Same applies. Data subjects need to have the opportunity to get the privacy policy with just one click.	Same applies.
15.4	Can a privacy policy be a part of e.g. the terms and conditions of an e-commerce trader?	The information must be clearly separated from other information. The privacy policy should therefore not be part of the terms and conditions, the terms of use of the website, or other required information, e.g. the cookie policy.	Same applies.	Same applies.

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15.5	Is it required for the customer to actively accept a privacy policy?	No, there is no requirement for the data subject to accept the privacy policy; actively or not.	Same applies.	Same applies.
15.6	Are there any predefined or best-practice period for, how long an e-commerce trader can retain personal data about customers?	<p>The specific retention period varies depending on the processing activity in question. In Denmark, the best-practice retention periods depend on the purposes and the types of personal data processed, e.g. HR and book-keeping material.</p> <p>Information collected in relation to sales on an e-commerce platform is generally regarded as book-keeping material. According to the Bookkeeping Act, the book-keeping material should normally be retained for a minimum of 5 years from the end of the year the sale was completed.</p> <p>Overall, the e-commerce trader must determine the appropriate retention period based on an assessment of the categories of data and the purpose of the processing. It is important to remember that data should only be retained as long as it is "need-to-have" and not "nice-to-have".</p>	Same method applies to Germany. However, different retention periods due to accounting or tax reasons apply in Germany. They are not applicable to businesses solely based in Denmark.	Same applies. Although a general retention period is 2 years. For the book-keeping materials a retention period of 7 years is required.
16	Cookies			
16.1	<p>What are the requirements for placing cookies on an e-commerce website?</p> <p>If the legal position under local laws deviates from the legal position in Denmark, please state whether the local legal position is applicable to an online trader, which is solely established in Denmark.</p>	<p>In order to legally place cookies on the users' terminal equipment under the Danish Ministerial Order on the Use of Cookies, it is a condition that the users have consented to this, unless the cookies are technically necessary for the webpage (e.g. a cookie to remember the items put in a shopping basket).</p> <p>In order for a consent to be valid, the consent must comply with the requirements for information under the GDPR, i.e. it must be a freely given, specific, informed and an unambiguous indication of the user's wishes, and further the user should be informed about the type of cookie (session or permanent), the cookies' retention period, and whether it is a first or third party cookie.</p> <p>Finally, the consent must be actively given, e.g. a tick-box must be checked by the user, and the user should have the opportunity to ad-</p>	Same applies.	<p>In the Netherlands:</p> <ul style="list-style-type: none"> • Functional cookies are allowed. You may use cookies if the site does not do what it is supposed to do otherwise. For example, logging in is not possible without cookies, and shopping carts or language choices do not work. • Analytical cookies are sometimes allowed. You may also use cookies to help you improve your website, if such cookies have little or no effect on the privacy of visitors. • All other cookies are only allowed if you have the prior consent of visitors. <p>Are cookies not necessary for the site to function properly? Or do they pose a risk to the privacy of visitors? Then you must ask the visitors for consent before you place such cookies.</p>

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		just his/her preferences and withdraw his/her consent. The right to withdraw his/her consent must be mentioned in the consent.		Same applies for the consent in the Netherlands and in Denmark. The consent must comply with the requirements for information under the GDPR.
17	Miscellaneous			
17.1	Are there any additional matters that an e-commerce trader based in other countries within the EU/EEC should be particularly aware of when marketing and selling goods and services in your country?	There are no additional matters to add.		There are no additional matters to add.