[DE] Draft Bill on Distance Marketing

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On 31 May this year, the Federal Ministry of Justice tabled a draft Distance Marketing Law (FernAG) which, according to the Federal Minister for Justice, should give mail order and electronic commerce customers greater protection. The aim is to bring German legislation into line with the provisions of Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts.

The draft's two main provisions for consumer protection are: the full obligation on companies to provide information, and consumers' cancellation rights - requirements which already exist in Germany in other sectors such as door-to-door sales and consumer credit agreements.

The draft covers contracts for the supply of goods or services concluded between a company and a consumer within the framework of a marketing and service-provision structure which only uses distance communication systems for the drawing up and conclusion of contracts. In addition to letters and catalogues, this covers telephone calls, faxes, e-mails, telecommunications and media services.

In concrete terms, the draft requires that, before a contract is concluded, the consumer is sufficiently well informed about the identity and address of the supplier, the price and essential features of the product or service, the delivery costs, details of payment conditions and the right to cancel (§2.1 and §2.2 nos. 1-8). The company must ensure that the necessary information is made available to the consumer in permanent form immediately after the contract is concluded or, in the case of goods, no later than the time of delivery, provided this has not already been done before or when the contract was concluded.

Paragraph 3 of the draft Distance Marketing Law establishes the right to cancel. The basic principle is enshrined in sub-paragraph 1.1. The consumer's declaration of acceptance of the contract only takes effect if it is not cancelled within 7 working days, starting when the duty to provide information under the terms of §2 is fulfilled. The right to cancel expires automatically after three months. The onus is on the company to prove when its duty to provide information was fulfilled (§3.2). As far as the legal consequences of cancellation are concerned, sub-paragraphs 1.1 and 1.2 refer to §3 and §4 of the Law on the cancellation of door-to-door sales and similar contracts (Gesetz über den Widerruf von

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Haustürgeschäften und ähnlichen GeschäftenHaustürWG), which provide a suitable regulatory model for cancellation procedures.

The provisions of the draft Distance Marketing Law are partially binding (§5.1). They may not be broken to the disadvantage of the consumer, but only to the advantage of the consumer. Companies and consumers may agree on regulations more favourable to the consumer. Paragraph 6 clearly states that, for reasons of confidentiality, the provisions of the Distance Marketing Law are not applicable to contracts concluded before its entry into force. The draft also contains regulations concerning the unsolicited delivery of goods: it makes provision for the amendment of §305 of the Civil Code to the effect that recipients of goods or other services which have not been ordered but are delivered for the purpose of initiating a contract, shall be under no obligation to buy.

Referentenentwurf Fernabsatzgesetz vom 31. Mai 1999.

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