[IT] Implementation of the Distance Marketing Directive

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On 19 October 1999 the Distance Marketing Decree (Attuazione della direttiva 97/7/CE relativa alla protezione dei consumatori in materia di contratti a distanza, Decreto legislativo of 22 May 1999, no. 185, in Gazzetta Ufficiale 1999, 143) entered into force. By this decree Italy transposes Directive 97/7/EC on the protection of consumers in respect of distance contracts. The decree applies to any contract concerning goods or services concluded between a supplier and a consumer under an organised sales or service-provision scheme run by the supplier, who makes exclusive use of one or more means of distance communication up to and including the moment at which the contract is concluded (Articles 1, 2 and 7). Among the means of distance communications covered by the decree, annex 1 specifically mentions catalogues, letters, e-mail, fax, telephone communications, audio-visual services, hereunder teleshopping. As already required by the Door-to-door Sales Decree (Attuazione della direttiva 85/577/CEE in materia di contratti negoziati fuori dei locali commerciali, Decreto legislativo of 15 January 1992, no. 50, in Gazzetta Ufficiale 1992, 27), the main provisions for consumer protection are the obligation upon the company to provide clear and complete information and the right of withdrawal. In due time prior to the conclusion of the contract, the consumer shall be provided with information on the identity of the supplier, the characteristics and the price of the goods or services including all taxes and delivery costs, the arrangements for payment, delivery or performance, the existence of a right of withdrawal, the cost of using the means of distance communication, the period for which the offer or the price remain valid and eventually the minimum duration of the contract (Article 3). All these terms require written confirmation at the latest at the moment of conclusion of the contract (Article 4).

For any distant contract the consumer shall have a period of ten working days in which to withdraw from the contract without penalty and without giving any reason. Where the obligations laid down in Article 4 have been fulfilled, the period of exercise of this right shall begin, in the case of goods, from the day of receipt by the consumer and, in the case of services, from the day of conclusion of the contract. In any case the right of withdrawal expires after three months and may not be exercised in respect of contracts, among others, for the supply of audio-visual products or computer software whose seal was broken by the consumer (Article 5).

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As stated in the Directive, unless the parties have agreed otherwise, the supplier must execute the order within a maximum of thirty days from the day following that on which the consumer forwarded his order to the supplier. The decree prohibits the supply of goods or services to a consumer without their being ordered by the consumer beforehand, where such supply involves a demand for payment and exempts the consumer from the provision of any consideration in cases of unsolicited supply, as the absence of a response does not constitute consent. None of the rights conferred by the Distant Marketing Decree may be waived by the consumer and the more favourable provisions have even to be applied to door-to-door sales contracts until the provisions contained in decrees no. 50/92 and no. 185/99 will have been co-ordinated. According to the Consumer Rights Act (Disciplina dei diritti dei consumatori e degli utenti, Legge of 30 July 1998, no. 281, in Gazzetta Ufficiale 1998, 189) any consumer association is entitled to bring an action in order to ensure that the provisions referred to in this decree are complied with.

Decreto legislativo dal 22 Maggio 1998, no. 185, Attuazione della direttiva 97/7/CE relativa alla protezione dei consumatori in materia di contratti a distanza.

http://www.parlamento.it/parlam/leggi/deleghe/99185dl.htm

Statutory instrument of 22 May 1998, no. 185.

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