[DE] Distance Marketing Act Comes into Force

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The Fernabsatzgesetz (Distance Marketing Act), which was adopted on 9 June 2000, entered into force on 30 June 2000. Directive 97/7/EC on the protection of customers in respect of distance contracts (see IRIS 1997-7: 7) was thus transposed into German law (see IRIS 1999-7: 14 concerning the draft Act).

The Fernabsatzgesetz (FernAbsG) sets out basic conditions for purchases made via distance communication systems, ie letter, catalogue, e-mail, fax, telephone and broadcasting, telecommunications and media services.

According to Article 3 of the Act together with Article 361a of the Bürgerliches Gesetzbuch (Civil Code - BGB), customers have 14 days in which they may cancel an agreement made via a distance communication system or return goods at the supplier's expense (if they are worth more than DEM 80) and demand a refund. German law therefore goes beyond the requirements set out in Directive 97/7/EC, which only makes provision for a 7-day cancellation period.

Suppliers are also obliged to describe goods and set out the terms of contract in a transparent, ie clear way (Article 2 FernAbsG). According to Article 2.3, this information must be made available to the customer in permanent form immediately after the contract has been agreed and, where goods are involved, by the time they are delivered. If a supplier fails to disclose important information such as its address, the customer's right to cancel or return the goods (Articles 3 and 4 of the Act) or the general terms and conditions, the period in which the goods may be returned is automatically increased to four months (Article 2.3 in connection with Article 1.1 FernAbsG).

A further measure designed to protect consumers was incorporated in Article 661a of the Civil Code. From now on, companies that try to attract new customers by giving them the impression that they have won a prize must actually award that prize.

Finally, the law on the delivery of unsolicited goods has also been amended. Whereas such goods delivered with an invoice were previously not supposed to be returned, but kept, Article 241a of the Civil Code now states that they need neither be paid for nor kept.

The transposition of Directive 97/7/EC also entailed an amendment to provisions on joint petitions, which at the same time led to Directive 98/27/EC on injunctions

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for the protection of consumers' interests being incorporated into German law. Under the amended Articles 13.2.1 and 13.2.2 and Articles 22.3.1 and 22.3.2 of the Gesetz über allgemeine Geschäftsbedingungen (General Terms of Business Act - AGB-Gesetz) of 9 December 1976 (Federal Gazette I p.3317), consumer groups, for example, which are included on a list of approved institutions in accordance with Article 22a of the AGB-Gesetz, can lodge a joint petition in order to take proceedings against dubious business practices. Before this amendment was introduced, whether a consumer group was entitled to make a complaint depended, according to Article 13.2.1 of the AGB-Gesetz, on its statutes and whether it had actually been involved in a specific case.

Gesetz über Fernabsatzverträge und andere Fragen des Verbraucherrechts vom 9. Juni 2000.

Act on Distance Contracts and Other Consumer Law Issues, 9 June 2000.

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