

Decree Legislative 22 May 1999, n. 185

Performance of relative directive 97/7/CE to the protection of the consumers in contract matter at a distance

(Published in the G. U. n. 143 of the 21/6/1999 and rectified in the G. U. n. 230 of 30/9/1999)

(the d. lgs. the 196/2003 modernizations to, in italics)

THE PRESIDENT OF THE REPUBLIC

Seen articles 76 and 87 of the Constitution;

Seen directive 97/7/CE of the European Parliament and the 20 Council of May 1997, regarding one the protection of the consumers in contract matter at a distance;

Seen law 24 you open them 1998, n. 128;

Seen the decree legislative 15 January 1992, n. 50;

Approval art. 14 of the law 23 August 1998, n. 400;

Seen the deliberation of the Council of Ministers, adopted in the 21 reunions of the 14 and May 1999;

On the proposal of the Ministers for the communitarian political and industry, of the commerce and the craftsmanship, concert with the Ministers of the foreign policies, of grace and justice, the treasure, the budget and the economic programming;

IT EMANATES

The Following decree legislative:

Article 1 Definitions

1.1 To the ends of present the decree agrees for:

a) contracted at a distance: the contract having for object assets or services stipulated between a supplier and in to the sphere of consumer of a system of sale or at a distance organized performance of services from the supplier who, for such contract, employs exclusively one or more techniques than communication at a distance until the conclusion of the contract, comprised the conclusion of the same contract;

b) consumer: the physical person who, in relation to the contracts of which exactly to, acts for not in reference to a scopes professional at the activity eventually carried out;

c) supplying: the physical or legal person who in contracts at a distance acts in the picture of its professional activity;

d) technical of communication at a distance: any means that, without the physical and simultaneous presence of the supplier and the consumer, can be employed for the conclusion of the contract between the said parts; an indicative directory of the techniques contemplated from present the decree is brought back at the enclosure I;

e) operating of communication technique: the physical or legal person, publishes or private, the whose professional activity consists in putting to disposition of the suppliers one or more techniques than communication at a distance.

Article 2 Field of application

1.2 present the decree is applied at a distance to contracts, excluded contracts:

- a) relative you to the financial services an indicative directory of which is brought back at the enclosure II;
- b) concluded through vending machines to us or premises trades automates them to you;
- c) concluded with operating of the telecommunications employing the telephones publics;
- d) with the reference to you to the construction and the sale or other relative rights you to immovable assets, with exclusion of the lease;
- e) sale concluded in occasion of one sell at auction.

Article 3 Information for consumer

1.3 In useful time, before the conclusion of whichever contracted at a distance, the consumer must receive the following information:

- a) identity of the supplier and, in contract case that previews the advance payment, to the address of the supplier;
- b) characteristic essential things of the good or the service;
- c) price of the good or the service, all comprised the taxes or the taxes;
- d) delivery expenses;
- e) modality of the payment, the delivery of the good or the performance of the every service and other shape of execution of the contract;
- f) existence of the right of recess or exclusion of the same one to senses of the article 5, codicil 3;
- g) modality and times of restitution or withdrawal of the good in case of exercise of the recess right;
- h) cost of the use of the communication technique at a distance, when various base from the base rate is calculated on one;
- i) duration of the validity of the offers and the price;
- l) minimal duration of the contract in contract case for the supply of products or the performance of services to continued or periodic execution.

2.3 The information of which to codicil 1, whose scope trades them it must be unequivocal, must be supplied in clear way and comprehensible, with every half adapted to the technique of communication at a distance employed, observing in particular the principles of good faith and loyalty in matter of transactions it trades them, estimated to the final function of the requirements of protection of the categories of particularly vulnerable consumers.

3.3 In case of telephone communications the identity of the supplier and the scope trades them of the telephone call must be declares to you in unequivocal way at the begin of the conversation with the consumer, to pain of invalidity of the contract.

4.3 In the case of use of techniques that concur a communication characterizes them, the information of which to codicil 1 they are supplied, where the consumer demands it, in Italian language. In such case, the confirmation and the ulterior information are supplied in the same language also of which at the article 4.

Article 4 Written Confirmation of

1.4 information the consumer must receive confirmation for enrolled or, to its choice, on other long-lasting support to its disposition and accessible he, of all the previewed information of the article 3, codicil 1, before or at the moment of the execution of the contract. Within such moment and in the same the following shapes must however be supplied to the consumer also information:

- a) a information on the conditions and the modalities of exercise of the right of recess to senses of the article

5, included the cases of which at the article 5, codicil 2;

- b) The address geographic of the central office of the supplier to which the consumer it can introduce claims;
- c) the information on the services and the guarantees trade them existing;
- d) the conditions of recess from the contract in case of unspecified or advanced duration to a year.

2.4 The dispositions of which to the present article they are not applied to the services whose execution is carried out by means of one technical of communication at a distance, in case the sayings services are supplied in an only solution and are turnovers of the operator of the communication technique. Also in such case the consumer must be able to decide of the address geographic of the central office of the supplier which to be able to introduce claims.

Article 5 Exercise of the right of recess

1.5 the consumer has straight of recess at a distance from any contracted, without some penalty and without to specify of the reason, within the term of ten work days to you passing:

- a) for the assets, from the day of their reception from part of the consumer where has been satisfied the obligation of which at the article 4 or from the day in which these last ones they have been satisfied, in case that happens after the conclusion of the contract provided that not beyond the term of three months from the same conclusion;
- b) for the services, from the day of the conclusion of the contract or from the day in which they have been satisfied the obligation of which at the article 4, in case that happens after the conclusion of the contract provided that not beyond the term of three months from the same conclusion.

2.5 In the case in which the supplier it has not satisfied the obligation of which at the article 4, the term for practice of the recess right is of three months and passes:

- a) for the assets, from the day of their reception from part of the consumer;
- b) for the services, from the day of the conclusion of the contract.

3.5 But various agreement between the parts, the consumer cannot exercise the right of recess previewed to codicils 1 and 2 for contracts:

- a) of supply of services whose execution is begun, with the account of the consumer, before the expiration of the term of seven days previewed from codicil 1;
- b) of supply of assets or services whose price is legacy to fluctuations of the rates the financial market that the supplier is not in a position to controlling;
- c) of supply of assets it manufactures to you on measure or clearly it personalizes to you or that, for they nature, cannot be to send back or risks to lose strength itself or to alter quickly;
- d) of supply of products audiovisual aids or software informed to us it seals to you, opened from the consumer;
- e) of supply of newspapers, periodicals and reviews;
- f) of services of bets and lotteries.

4.5 The recess right practices with the dispatch, within the previewed term, of one written communication at the address geographic of the office centre of the supplier by means of letter registered with reception warning. The communication can be send, within the same term, also by means of telegram, telex and facsimile, on condition that registered letter with warning of reception within the 48 successive hours is confirmed by means of letter.

5.5 In case the consumer has happened the delivery of the good is held to give back it or to put it to

disposition of the supplier or the person from these designated, second the modalities and the times previewed from the contract. The term for the restitution of the good cannot however be inferior to ten work days to you passing from the date of reception of the good.

6.5 The only expenses due from the consumer for the practice of the right of recess to norm of the present article are direct expenses of restitution of the good to the sender, where express previewed from the contract at a distance.

7.5 If the recess right is exercised from the consumer in compliance with the dispositions of the present article, the supplier is held to the reimbursement of the sums poured from the consumer. The reimbursement must happen free of charge, in minor the possible time and in any case within thirty days from the date in which the supplier it has come to acquaintance of the exercise of the right of recess from part of the consumer.

8.5 In case the price of a good or a service, object of a contract at a distance, entire or partially is covered from a granted credit the consumer, from the supplier that is from thirds party based on an agreement between these and the supplier, the credit contract agrees resolved of right, without some penalty, in the case in which the consumer he exercises the recess right in compliance with the dispositions of which to the previous codicils. E' fact obligation to the supplier to communicate to the third conceding credit the happen exercise of the right of recess from part of the consumer. The sums eventually poured from the third party that has granted the credit to payment of the good or of the service until the moment in which exercise of the right of recess from part of the consumer has acquaintance of the happen are reimbursed to the third party from the supplier, without some penalty, made save the correspond of the interests matured lawyers.

Article 6 Execution of contract

1.6 But various agreement between the parts, the supplier must execute the ordination within thirty days to pass from the successive day to that one in which the consumer it has transmitted the ordination to the supplier.

2.6 In case of lacked execution of the ordination from part the supplier, due to the not availability, also temporary, of the good or the demanded service, the supplier, within the term of which to codicil 1, he informs the consumer, second the modalities of which at the article 4, codicil 1, and supplies to the reimbursement of the sums eventually already corresponded for the payment of the supply. But consent of the consumer, to express itself before or at the moment of the conclusion of the contract, the supplier cannot carry out executing one various supply from that agreement with the end user, even if of equivalent or advanced value and qualities.

Article 7 Exclusions

1.7 articles 3, 4 and 5 and codicil 1 and the article 6 are not applied:

a) to contracts of supply of alimentary kinds, drinks or other assets for supplied domestic use of running consumption to the address of the consumer, its place of residence or its place of job, from distributors who carry out frequent and regular turns;

b) to contracts of supply of relative services you at the accommodation, to the transports, about the restaurant, to the free time, when at the act of the conclusion of the contract the supplier engages itself to supply such performances to one given determined or in an established period.

Article 8 Payment by means of paper

1.8 the consumer can carry out the payment by means of paper where that is previewed between the payment modalities, to communicate to the consumer to the senses of article 3, codicil 1, letter and) of present the decree legislative.

2.8 The institute of emission of the paper of payment confirm the credit to the consumer the payments of which these demonstrates to the surplus regarding the agreement price that is the carry out by means of the use fraudulent of the own paper of payment from part of the supplier or of a third party, made May 1991

saves the application of article 12 of the law by decree 3 n. 143, converted, with modifications, from the law 5 July 1991, n. 197. The institute of emission of the payment paper has straight to debit to the supplier the sums reimbursed to the consumer.

Article 9 Supply not demanded

1.9 It is prohibited the supply of assets or services to the consumer in lack of one its consulting ordination in the case in which the supply it involves one demanded of payment.

2.9 The consumer is not held to some correspond performance in case of supply not demanded. In any case, the lacked answer does not mean consent.

Article 10 Limits of the use of some techniques of communication at a distance

1.10 The use from part of a supplier of the telephone, of the e-mail, systems automates you of call without the participation of an operator or of fax, it demands the consent estimate of the consumer.

2.10 At a distance various techniques of communication from those of which to codicil 1, in case concur a communication characterize them, can be employed from the supplier if the consumer does not declare itself explicitly contrary.

Articolo11 The give up of something of the rights

1.11 rights attributed to the consumer from present the decree legislative are not possible to give up, and not every agreement in contrast with the dispositions of present the decree.

2.11 Where the parts have chosen to apply to the contract a various legislation from that Italian, to the consumer must however be recognized the previewed conditions of protection from present the decree legislative.

Articolo12 Endorsements

1.12 Made to saves the application of the penal law in case the fact constitutes crime, the supplier who contravene to the norms of which to articles 3, 4, 6, 9 and 10 of present the decree legislative, that is that the modalities of which at the article 5 hinder the exercise of the right of recess from part of the consumer second or does not reimburse to the consumer the sums from these eventually paid, are punished with the peculiar administrative endorsement from Euros 516.45 to Euros 5 165.

2.12 In the cases of particular gravity, the limits minimal and maximum of the endorsement indicated to codicil 1 are double to you.

3.12 The endorsements are applied to the senses of the law 24 November 1981, n. 689. Detention remaining previewed how much in order to the powers of assessment of the officials and the judicial police officers of the article 13 of the foretold 24 law November 1981, n. 689, about the check of the violations supply, of office or on denunciation, the organs of administrative police. Previewed relationship of the article 17 of the law 24 November 1981, n. 689, are introduced at the office provincial of the industry, of the craftsmanship and the commerce, and of the province in which there is the residence of the operator legal headquarter of the site trades them, that is, limitedly to the violation of which at the article 10, to the Guarantor for the protection of the personal data.

Article 13 Collective Action

1.13 In relation to the dispositions of present the decree legislative, the associations of the consumers and the customers is approve to act to protection of the interests collectives of the consumers, to senses of the article 3 of the 30 law July 1998, n. 281.

Article 14

Competent Hole

1.14 For inherent civil the controversies at the application of present the decree legislative the territorial competence is of the judge of the place of residence or address of the consumer, if it locates to you in the territory of the State.

Article 15 Transitory and final Dispositions

1.15 the contract at a distance must contain the reference to present the decree legislative.

2.15 Until the emanation of a Unified Body of Laws of coordination of the dispositions of which to present the decree legislative with the discipline brought from the decree legislative 15 January 1992, n. 50, to the special shapes of sales estimate at the article 9 of the decree legislative 15 January 1992, n. 50 and from articles 18 and 19 of 31 the decree legislative March 1998, n. 114, apply the more favourable dispositions for the consumer contained in present the decree legislative.

3.15 The Present decree legislative enters in vigour in 120 days from the date of publication in the Official Gazette of the Italian Republic.

Rome, 22 May 1999

THE PRESIDENT OF ITALIAN REPUBLIC CIAMPI

D'ALEMA, Prime Minister of the Cabinet of Ministers,
LETTA Minister for the communitarian political,
BERSANI, Minister of Industry and of the Commerce and of craftsmanship,
DINI, Minister of Foreign political,
DILIBERTO, Minister of Justice and Guaranteed,
AMATO, Minister of the treasure, the budget and the Seen economic programming,

the Guard of the seal : DILIBERTO