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Articles 49 and 51; Sub-Chapter II: Consumer information and right of withdrawal for distance and off-premises contracts; Chapter I: Rights of consumers entering into contracts; Title III: Contractual procedures; Part III: Consumer relationship

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### Chapter III Enforcement

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#### Article 27

#### Administrative and judicial protection

1. The Competition Authority<sup>1</sup>, hereafter the "Authority", shall exercise the powers set forth in this section also as the authority competent for implementing regulation 2006/2004/EC<sup>2</sup> of the European Parliament and the Council of 27 October 2004 on cooperation between the national authorities responsible for enforcing consumer protection legislation within the limits imposed by law.

*1-bis. Even in regulated sectors pursuant to Section 19, paragraph (3), the power to intervene with respect to conducts of traders involved in unfair commercial practices, without prejudice to current regulations, shall lie exclusively with the Competition Authority which acts on the basis of the powers granted by this Section after getting the opinion of the competent Regulation Authority. This without prejudice to the competence of the Regulation Authorities to exercise their powers in the event of infringement of the regulations not constituting unfair commercial practices. The Authorities may regulate through memorandums of understanding the enforcement and procedural issues of their mutual cooperation, pursuant to the respective competences.<sup>3</sup>*

2. The Authority, acting on its own authority or at the request of any individual or organisation having an interest, shall prohibit the continuation of any unfair commercial practices and eliminate their effects. To this end the Authority shall avail itself of the investigative and executive powers provided by the aforementioned Regulation 2006/2004/EC also in relation to offences which are not of a cross-border nature. In the performance of the tasks referred to in paragraph (1) above, the Authority may use the Guardia di Finanza (Customs and Excise Police) exercising their own powers to assess value added tax and income tax liability. Action by the Authority may take place independently of whether the consumers concerned in the territory of the member state in which the trader is resident, or in another member state.
3. The Authority may issue a reasoned measure ordering the provisional suspension of unfair commercial practices whenever there is a particularly urgent need. At all events, it shall serve notice of the commencement of proceedings on the trader concerned, and if the principal is unknown the Authority may request the owner of the medium advertising the unfair practice to supply the information needed to identify the principal. The Authority may also request businesses, organisations or private individuals in possession of information and documents to supply them if they are of relevance for the purposes of identifying infringements. The provisions of section 14 (2), (3) and (4) of Law No 287 of 10 October 1990 shall apply.
4. In the event of failure to comply without good reason with the determinations of the Authority pursuant to section 14 (2) of Law No 287 of 10 October 1990, the Authority shall impose an administrative fine of between €2,000 and €20,000. In the event that the information or the documentation is untruthful, the authority shall impose an administrative fine of between €4,000 and €40,000.
5. The Authority may require the trader to furnish evidence as to the accuracy of factual

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<sup>1</sup> <http://www.agcm.it/en/>

<sup>2</sup> <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32004R2006>

<sup>3</sup> Art. 27(1-bis) inserted by Art. 1(6a) of Legislative Decree 21/2014

<sup>4</sup> Art. 1(6b) of Legislative Decree 21/2014 – amended this paragraph – replacing the sum 500,000€ with 5,000,000€

<sup>5</sup> Art. 1(6c) of Legislative Decree 21/2014 – amended this paragraph – replacing the sum 500,000€ with 5,000,000€

<sup>6</sup> <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32004R2006> by the Authority solely before the

Art. 27(1-bis) inserted by Art. 1(6a) of Legislative Decree 21/2014 in Annex 4 of [LD 104/2010](http://www.governo.it/leggi/legge-104-2010)

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claims in advertising if, taking into account the legitimate interest of the advertiser and any other party to the proceedings, such a requirement appears appropriate on the basis of the circumstances of the particular case. If the evidence is not provided or is deemed to be insufficient the factual data shall be deemed to be inaccurate. At all events, the burden of proof lies with the trader who must demonstrate, by proving with facts, that he could not reasonably have foreseen the impact of the commercial practice on consumers, within the meaning of section 20 (3).

6. When the commercial practice has been or is intended to be disseminated in the periodical or daily press, or by radio or television or any other telecommunications medium, before issuing its measure, the Authority shall request the opinion of the Communications Regulatory Authority.
7. Except when the commercial practice is manifestly unfair and of a serious nature, the Authority may require the liable trader to give an undertaking to end the infringement and to cease its dissemination, or to modify such that the unlawful parts are removed. The Authority may order the trader to publish a statement of the commitment entered into with the Authority, at the trader's expense. In this case, having assessed the appropriateness of such commitments, the Authority may make them mandatory on the trader and lay down the procedure to be followed without proceeding to investigate the infringement.
8. If the Authority deems the commercial practice to be unfair it shall prohibit its dissemination, in the event that it has not yet been brought to the attention of the public, or ban its further dissemination in the event that a the practice has already begun. Under the same measure the Authority may order the trader, at the trader's expense, to publish the Authority's resolution, or an extract of it, or a specific corrective statement, to ensure that the unfair commercial practices do not continue to procure any effects.
9. In its measure prohibiting the unfair commercial practice, the Authority shall also impose an administrative fine of between €5,000.00 and €5,000,000.00<sup>4</sup>, to take account of the seriousness and the duration of the infringement. In the case of the unfair commercial practices provided by section 21 (3) and (4) the penalty shall not be less than €50,000.00.
10. In cases relating to commercial communications forming part of product packages, when the Authority issues the measures referred to in paragraphs (3) and (8), it shall set a deadline for its instructions to be acted upon, taking account of the time materially needed for compliance.
11. The Competition Authority shall issue its own regulations to govern the procedure for investigations, in a way which gives all the parties the opportunity to put their cases and to be fully acquainted with all the case papers and the transcripts.
12. If the trader fails to comply with the emergency measures or injunctions or instructions to remove the effects referred to in paragraph (3), (8) and (10) above, and in the event of failure to comply with the commitments undertaken pursuant to paragraph (7), the Authority shall impose an administrative fine of between €10,000 and €5,000,000<sup>5</sup>. In the event of repeated non-compliance, the Authority may order the trader to suspend trading for a period which shall not be more than thirty days.
13. [Repealed<sup>6</sup>]. With regard to the administrative fines imposed as a result of infringements of this decree, the provisions of Chapter I, Subchapter I, and Sections 26, 27, 28 and 29 of Law No 689 of 24 November 1981, as subsequently amended, where applicable, shall apply. The administrative fines referred to in this section must be paid within 30 days of the service of notice of the Authority's measure.
14. In the event that the commercial practice has been approved with an administrative

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<sup>4</sup> Art. 1(6b) of Legislative Decree 21/2014 – amended this paragraph – replacing the sum 500,000€ with 5,000,000€

<sup>5</sup> Art. 1(6c) of Legislative Decree 21/2014 – amended this paragraph – replacing the sum 500,000€ with 5,000,000€

<sup>6</sup> Following was repealed: Appeals may be filed against decisions adopted by the Authority solely before the Administrative Courts (1<sup>st</sup> sentence of Article 27(13)). By Art. 4(1)(33) in Annex 4 of [LD 104/2010](http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2005-09-06;206lvig=)

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measure, which is also designed to ascertain its non-unfair character, the protection of the persons and organisations having a legitimate interest can be provided by appealing against the aforementioned measure before the Administrative Court.

15. The ordinary courts of law retain jurisdiction to take cognisance of acts of unfair competition provided by article 2598 of the civil code and, with regard to comparative advertising, of acts infringing copyright law provided by Law No 633 of 22 April 1941, as subsequently amended, and trademark protection provided by Legislative Decree No 30 of 10 February 2005, as subsequently amended, and denominations of origin recognised and protected in Italy and other distinctive signs of competing companies, goods and services."

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**Article 27-bis**  
**Codes of Conduct**

1. Professional and business associations and organisations may adopt specific codes of conduct, in relation to one or more commercial practices or one or more specific business sectors, laying down rules for the conduct of traders who undertake to comply with these codes, indicating the name of the person or the organisation responsible for monitoring and enforcement.
2. The code of conduct shall be drawn up in the Italian and English languages and made accessible also via the Internet, by the persons or organisations responsible.
3. The codes of conduct shall at least guarantee protection of children and safeguard human dignity.
4. The codes of conduct referred to in paragraph (1) shall be notified to traders in the relevant sectors and shall be kept by the party responsible for the code, indicating the names of all the persons who agree to comply with it, for their acceptance.
5. Consumers must be given advance notice of the existence of the code of conduct, its contents, and the trader's acceptance of it.

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**Article 27-ter**  
**Self-Regulation**

1. Before instituting the procedure provided by Section 27, consumers and competitors, either directly or through their associations or organisations, may agree in advance with the trader on the party having responsibility or the body charged with overseeing the code of conduct for a particular sector, on an agreed settlement of the dispute in order to prohibit or put an end to the unfair commercial practice.
2. In all instances, appeals filed pursuant to the previous section, whatever the outcome of the procedure, shall not affect the right of consumers to apply to the Authority pursuant to section 27 or to the appropriate court.
3. Once the procedure before a self-regulatory body has begun, the parties may agree not to apply to the Authority until the final ruling is issued, or they may request the proceeding before the Authority to be suspended in the event that it has also been initiated by another party having a legitimate interest while awaiting the ruling of the self-regulatory body. After examining all the circumstances the Authority may decide to suspend the proceeding for a period of not more than 30 days.

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**Article 27-quarter**  
**Requirement to provide information**

1. The Competition Authority and the traders' and business associations or organisations referred to in Section 27-bis shall regularly report to the Ministry for Economic Development on the decisions adopted pursuant to the provisions of this Title.
2. The Ministry for Economic Development shall ensure that the following are available on the official website:
  - (a) General information on the procedures referring to the complaints and appeals procedures available in the event of disputes, and on the codes of conduct adopted pursuant to Section 27-bis
  - (b) Details of the authorities, organisations or associations from which further information or assistance may be acquired;
  - (c) Details and synopses of major decisions regarding disputes, including those issued by out-of-court settlement bodies.

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**PART III. Consumer relationship****TITLE III. Contract procedures****Chapter I. Rights of consumers entering into contracts**

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**Article 45****Definitions**

- g) "Distance contract" means any contract concluded between the trader and the consumer under an organised distance sales or service-provision scheme without the simultaneous physical presence of the trader and the consumer, with the exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded;
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**Sub-chapter II****Consumer Information and right of withdrawal for distance and off-premises contracts**

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**Article 49****Information requirements for distance and off-premises contracts**

1. Before the consumer is bound by a distance or off-premises contract, or any corresponding offer, the trader shall provide the consumer with the following information in a clear and comprehensible manner:
- a) The main characteristics of the goods or services, to the extent appropriate to the medium and to the goods or services;
  - b) The identity of the trader;
  - c) The geographical address at which the trader is established and the trader's telephone number, fax number and e-mail address, where available, to enable the consumer to contact the trader quickly and communicate with him efficiently and, where applicable, the geographical address and identity of the trader on whose behalf he is acting;
  - d) If different from the address provided in accordance with letter (c), 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;
  - e) 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 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;
  - f) 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;
  - g) 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;
  - h) Where a right of withdrawal exists, the conditions, time limit and procedures for exercising that right in accordance with Section 54, paragraph (1), as well as the model withdrawal form set out in Annex I (B);
  - i) Where applicable, that the consumer will have to bear the cost of returning the goods in case of withdrawal and, for distance contracts, if the goods, by their nature, cannot normally be returned by post, the cost of returning the goods;
  - l) That, if the consumer exercises the right of withdrawal after having made a request in accordance with Section 50 paragraph (3) or Section 51 paragraph (8), the
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- consumer shall be liable to pay the trader reasonable costs in accordance with Section 57, paragraph (3);
- m) Where a right of withdrawal is not provided for in accordance with Section 59, the information that the consumer will not benefit from a right of withdrawal or, where applicable, the circumstances under which the consumer loses his right of withdrawal;
  - n) A reminder of the existence of a legal guarantee of conformity for goods;
  - o) Where applicable, the existence and the conditions of after sale customer assistance, after-sales services and commercial guarantees;
  - p) The existence of relevant codes of conduct, as defined in Section 18, paragraph (1), letter f) of this Code, and how copies of them can be obtained, where applicable;
  - q) 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;
  - r) Where applicable, the minimum duration of the consumer's obligations under the contract;
  - s) 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;
  - t) Where applicable, the functionality, including applicable technical protection measures, of digital content;
  - u) 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;
  - v) 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.
2. Pre-contractual information obligations referred to in paragraph (1) shall also apply to contracts for the supply of water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, of district heating or of digital content which is not supplied on a tangible medium.
  3. In the case of a public auction, the information referred to in letters b), c) and d) of paragraph (1) may be replaced by the equivalent details for the auctioneer.
  4. The information referred to in letters h), i) and l) of paragraph (1) may be provided by means of the model instructions on withdrawal set out in Annex 1 (A). The trader shall have fulfilled the information requirements laid down in letters h), i) and l) of paragraph (1) if he has supplied these instructions to the consumer, correctly filled in.
  5. The information referred to in paragraph (1) shall form an integral part of the distance or off-premises contract and shall not be altered unless the contracting parties expressly agree otherwise.
  6. If the trader has not complied with the information requirements on additional charges or other costs as referred to in letter (e) of paragraph (1), or on the costs of returning the goods as referred to in letter i) of paragraph (1), the consumer shall not bear those charges or costs.
  7. In the event of use of techniques that permit individual communication, the information referred to in paragraph (1) is supplied in Italian if the consumer so requests (at the consumer's request).
  8. The information requirements laid down in this section are in addition to information requirements contained in Legislative Decree No. 59 of 26 March 2010<sup>7</sup> as subsequently modified and Legislative Decree No. 70 of 9 April 2003<sup>8</sup> as subsequently modified and do not prevent imposition of additional information requirements in
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<sup>7</sup> [LD 59/2010](#) implemented Directive 2006/123/EC; Relevant article: 31 (Information on providers and their services); Title VI: Quality of Services. This article transposes Art. 22 from Directive [2006/123/EC](#)

<sup>8</sup> [LD 70/2003](#) implemented the E-Commerce Directive 2000/31/EC; Relevant articles: 7,8,9,12,13

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accordance with those provisions.

9. Without prejudice to the provisions of paragraph (8), in the event of conflict between the provisions of Legislative Decree No. 59 of 26 March 2010 as subsequently amended, and Legislative Decree No. 70 of 9 April 2003 as subsequently amended, on the content and form of provision of information and a provision of this section, the latter shall prevail.
10. As regards compliance with the information requirements laid down in this subchapter, the burden of proof shall be on the trader.

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## Article 51

### Formal requirements for distance contracts

1. With respect to distance contracts, the trader shall give the information provided for in Section 49, paragraph (1) or make that information available to the consumer in a way appropriate to the means of distance communication used in plain and intelligible language. In so far as that information is provided on a durable medium, it shall be legible.
2. If a distance contract to be concluded by electronic means places the consumer under an obligation to pay, the trader shall make the consumer aware in a clear and prominent manner, and directly before the consumer places his order, of the information provided for in letters (a), (e), (q) and (r) of Section 49, paragraph (1). The trader shall ensure that the consumer, when placing his order, explicitly acknowledges that the order implies an obligation to pay. If placing an order entails activating a button or a similar function, the button or similar function shall be labelled in an easily legible manner only with the words 'order with obligation to pay' or a corresponding unambiguous formulation indicating that placing the order entails an obligation to pay the trader. If the trader has not complied with this sub-article, the consumer shall not be bound by the contract or order.
3. Trading websites shall indicate clearly and legibly at the latest at the beginning of the ordering process whether any delivery restrictions apply and which means of payment are accepted.
4. If the contract is concluded through a means of distance communication which allows limited space or time to display the information, the trader shall provide, on that particular means prior to the conclusion of such a contract, at least the pre-contractual information regarding the main characteristics of the goods or services, the identity of the trader, the total price, the right of withdrawal, the duration of the contract and, if the contract is of indeterminate duration, the conditions for terminating the contract, as referred to in letters a), b), e), h) and q) of Section 49 paragraph (1). The other information referred to in Section 49 paragraph (1) shall be provided by the trader to the consumer in an appropriate way in accordance with paragraph (1) of this Section.
5. Without prejudice to paragraph (4), if the trader makes a telephone call to the consumer with a view to concluding a distance contract, he shall, at the beginning of the conversation with the consumer, disclose his identity and, where applicable, the identity of the person on whose behalf he makes that call, and the commercial purpose of the call and the information referred to in Article 10<sup>9</sup> of Presidential Decree No. 178 of 7 September 2010.
6. Where a distance contract is to be concluded by telephone, the trader has to confirm the offer to the consumer who is bound only once he has signed the offer or has sent his written consent; in such case the electronic document may be signed digitally pursuant to Section 21 of Legislative Decree No. 82 of 7 March 2005 as subsequently amended. Upon agreement with the consumer, such confirmations may be given, on a durable medium.

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<sup>9</sup> Article 10: Information requirements: Regardless of a specific request made by the data subject, the operators and/or the respective data processors or persons in charge of the processing shall accurately inform data subjects, at the time of calling them, that their personal data were taken from subscribers' directories; they shall also provide them with the details required in order for them to record their preferences in the opt-out register. Simplified mechanisms may be implemented to provide the said information. English version of Presidential Decree [178/2010](http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2005-09-06;206lvig=)

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7. The trader shall provide the consumer with the confirmation of the contract concluded, on a durable medium within a reasonable time after the conclusion of the distance contract, and at the latest at the time of the delivery of the goods or before the performance of the service begins. That confirmation shall include:
    - a) All the information referred to in Section 49 paragraph (1), unless the trader has already provided that information to the consumer on a durable medium prior to the conclusion of the distance contract; and
    - b) Where applicable, the confirmation of the consumer's prior express consent and acknowledgment in accordance with letter o) of Section 59.
  8. Where a consumer wants the performance of services, or the supply of water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, or of district heating, to begin during the withdrawal period provided for in Section 52, paragraph (2), the trader shall require that the consumer make an express request.
  9. This Article shall be without prejudice to the provisions on the conclusion of e-contracts and the placing of e-orders set out in Section 12, paragraphs (2) and (3), and Section 13 of Legislative Decree No. 70 of 9 April 2003, as subsequently amended.
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