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Italy - Consumer Code



Full title: Legislative Decree No. 206 of 6 September 2005 - Consumer Code – in accordance with Article 7 of the Law of 29 July 2003 No. 229 (OJ 235 of 10.08.2005 - Suppl. Ordinary No. 162) Entry into force: 23/10/2005

Principal Amendments Legislative Decree No. 146 of 2 August 2007, Implementing directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market.

Article 1 replaces Articles 18-27 of the Consumer Code

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- Articles 7, 28 of Decree-Law 1/2012 converted, with modifications, from Law No. 27 of 24 March 2012 on "Urgent provisions for competition, infrastructure development and competitiveness. Article 7 (1) inserts 18 (d) bis; Article 7 (2) amends Article 19 (1); Article 28 (3) amended Article 21(3-bis); Article 5 inserts Article 37-bis.

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- The legislative decree No. 21 of 21 February 2014, Implementing Directive 2011/83/EC on consumer rights, amending directives 93/13/EEC and 1999/44/EC and repealing directives 85/577/EEC and 97/7/EC

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Article 1 replaces Articles 45-67 of the Consumer Code. Article 1 (6) amends Article 27 Consumer Code

Title of relevant sections: Articles 5, 6-9, 11 (Part II: Education, Information, Business Practices, and Advertising; Title II: Consumer Information; Chapter I: General Provisions/Chapter II: Indications of Products)

Articles 18-27 Chapters I-III (Part II: Education, Information, Business Practices, and Advertising. Title III: Commercial Practices, advertising, and other marketing communications.)

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

PART II **Education, Information, Business Practices, and Advertising**

TITLE II **Consumer Information**

CHAPTER I **General Provisions**

Article 5 **General Obligations**

1. Without prejudice to the provisions of Article 3, paragraph 1(a), for the purposes of

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this Title, 'consumer' or 'user' are also intended to mean any natural person to whom the business information is directed.

2. Safety, composition and quality of the products and services form an essential part of the obligations relative to information.

3. Consumer information, from whatever source, must be suitable for the type of communication used and expressed in a clear, comprehensible manner, also taking into account the way in which the contract is concluded or the characteristics of the sector, to ensure the consumer's awareness.

Chapter II

Indications of Products

Article 6

Minimum Contents Information

1. The products or packs of products destined for consumers, marketed in the national territory, shall show, in a clearly visible and legible manner, at least indications relative to the following:

- a) The legal name or classified name of the product;
 - b) The name, business name or trade name and the registered office of the producer or that of an importer established in the European Union;
 - c) The country of origin if located outside the European Union;¹
 - d) The presence of any materials or substances that may be harmful to humans, things, or the environment;
 - e) The materials used and the production methods where these are significant for the quality or characteristics of the product;
 - f) The instructions, any precautions and intended use, where these are useful for the purposes of use and safety of the product.
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Article 7

Methods of Indication

1. The indications pursuant to Article 6 shall be shown on the packaging or labels of the products when they are placed on sale to the consumer. Instead of being shown on the product packaging or labels, the indications pursuant to paragraph 1(f) of Article 6 may alternatively be shown on other illustrative documentation provided together with the products.

Article 8

Scope of application

1. Products subject to specific provisions contained in EC directives or other Community provisions and relative national implementation laws are excluded from the application of this Chapter.
 2. For products subject to national provisions relating to consumer information, the rules of the present Chapter shall apply for those aspects not regulated by such national provisions.
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Article 9

Indications in Italian

¹ Decree Law 30 December 2005, n. 273 (GU 30/12/2005, 303), converted with amendments by Law 23 February 2006, n. 51. Ordered (with the art. 31-bis) the amendment of art. 6, paragraph 1, letter c). Art. 31-bis: 1. The efficacy of the regulation specified in Article 6, paragraph 1(c), of the Consumers' Code as contained in Legislative Decree n° 206, dated 6 September 2005, shall be applicable from 1 January 2007 onwards, with the enactment of the Decree specified at Article 10 of the aforementioned Consumer Code (Art. 10 relates to implementation).

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1. All the information intended for consumers and users shall be given in Italian, as a minimum requirement.
 2. Where indications pursuant to this Title are provided in more than one language, they shall also be shown in Italian and must be shown in characters that are no less visible and legible than those used for the other languages.
 3. Indications using expressions in common use, that are in a language other than Italian, shall be permitted.
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Article 11**Prohibitions on Marketing**

The marketing of any product or product packaging that does not show, in a clearly visible and legible form, the indications provided by Articles 6, 7 and 9 of this Chapter, shall be prohibited throughout the national territory.

PART II**Education, Information, Business Practices, and Advertising****TITLE III****Commercial Practices², advertising, and other marketing communications****Chapter I:****Chapter I: General Provisions****Article 18****Definitions**

1. For the purposes of this Title the following terms shall have the following meanings:

(a) 'Consumer' means any natural person who, in commercial practices covered by this Title, is acting for purposes which are outside their trade, business, craft or profession;

(b) 'Trader' means any natural or legal person who, in commercial practices covered by this Title, is acting for purposes relating to their trade, business, craft or profession and anyone acting in the name of or on behalf of a trader;

(c) 'Product' means any goods or service including immovable property, rights and obligations;

(d) 'Business-to-consumer commercial practices' (hereinafter also referred to as "commercial practices") means any act, omission, course of conduct or representation, commercial communication including advertising and marketing, by a trader, directly connected with the promotion, sale or supply of a product to consumers;

(d-bis³) "Micro-enterprises": entities, companies or associations that, regardless of their legal form, engage in an economic activity, even as an individual or family, that employs fewer than ten persons and generates an annual revenue or total annual balance sheet not in excess of two million euros, pursuant to section 2, paragraph 3 of the annex to recommendation n. 2003/361/EC of the Commission, dated 6 May 2003⁴;

(e) 'To materially distort the economic behaviour of consumers' means using a commercial practice to appreciably impair the consumer's ability to make an informed decision, thereby causing the consumer to take a transactional decision that they would not have taken otherwise;

² Inserted by Art. 4 of Legislative Decree, [no 221 of 23 October 2007](#) Corrective and supplementary provisions of Legislative Decree 6 September 2005, n. 206, on the Consumer Code, in accordance with Article 7 of the Law of 29 July 2003 no. 229

³ Art. 18(d-bis) inserted by Art. 7(1) of Decree-Law No. 1/ 2012

⁴ Sect. 2(3) Annex to Recommendation [2003/361/EC](#): Within the SME category, a microenterprise is defined as an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million

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(f) 'Code of conduct' means an agreement or set of rules not imposed by law, regulation or administrative provision of a Member State which defines the behaviour of traders who undertake to be bound by the code in relation to one or more particular commercial practices or business sectors;

(g) 'Code owner' means any entity, including a trader or group of traders, which is responsible for the formulation and revision of a code of conduct and/or for monitoring compliance with the code by those who have undertaken to be bound by it;

(h) 'Professional diligence' means the standard of special skill and care which a trader may reasonably be expected to exercise towards consumers, commensurate with honest market practice and/or the general principle of good faith in the trader's field of activity;

(i) 'Invitation to purchase' means a commercial communication which indicates characteristics of the product and the price in a way appropriate to the means of the commercial communication used and thereby enables the consumer to make a purchase;

(l) 'Undue influence' means exploiting a position of power in relation to the consumer so as to apply pressure, even without using or threatening to use physical force, in a way which significantly limits the consumer's ability to make an informed decision;

(m) 'Transactional decision' means any decision taken by a consumer concerning whether, how and on what terms to purchase, make payment in whole or in part for, retain or dispose of a product or to exercise a contractual right in relation to the product, whether the consumer decides to act or to refrain from acting;

(n) 'Regulated profession' means a professional activity or a group of professional activities, access to which or the pursuit of which, or one of the modes of pursuing which, is conditional, directly or indirectly, upon possession of specific professional qualifications, pursuant to laws, regulations or administrative provisions.

Article 19

Purpose

1. This Title shall apply to unfair business-to-consumer commercial practices before, during and after a commercial transaction in relation to a product *as well as any unfair commercial practices between professionals and micro-enterprises. The protection of micro-enterprises from deceitful advertising and unlawful comparative advertising is explicitly guaranteed by legislative decree n. 145 of 2 August 2007.*⁵

2. This Title is without prejudice to:

a) Contract law and, in particular, to the rules on the formation, validity, or effect of a contract;

b) Community or national rules relating to the health and safety aspects of products;

c) The rules determining the jurisdiction of the courts;

d) Any conditions of establishment or of authorisation regimes, or to the deontological codes of conduct or other specific rules governing regulated professions in order to uphold high standards of integrity on the part of professionals;

3. In the event of conflict, the provisions of Community directives or other Community legislation, and the national provisions transposing them to govern specific aspects of unfair commercial practices shall prevail over the provisions of this Title and shall apply to these specific aspects.

4. This Title shall not apply to the certification and indication of the standard of fitness

⁵ Added by Art. 7(2) of Decree-Law No 1/2012

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of articles of precious metal.

Chapter:**CHAPTER II Unfair Commercial Practices**

Article 20**Prohibition of unfair commercial practices**

1. Unfair commercial practices shall be prohibited.
 2. A commercial practice shall be unfair if it is contrary to the requirements of professional diligence and materially distorts or is likely to materially distort the economic behaviour with regard to the product of the average consumer whom it reaches or to whom it is addressed, or of the average member of the group when a commercial practice is directed to a particular group of consumers.
 3. Commercial practices which are likely to materially distort the economic behaviour only of a clearly identifiable group of consumers who are particularly vulnerable to the practice or the underlying product because of their mental or physical infirmity, age or credulity in a way which the trader could reasonably be expected to foresee, shall be assessed from the perspective of the average member of that group. This is without prejudice to the common and legitimate advertising practice of making exaggerated statements or statements which are not meant to be taken literally.
 4. In particular, commercial practices shall be unfair which:
 - (a) Are misleading within the meaning of Sections 21, 22 and 23 or
 - (b) Are aggressive within the meaning of Sections 24, 25 and 26.
 5. Sections 23 and 26 contain the list of those commercial practices which shall in all circumstances be regarded as misleading and aggressive, respectively.
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Sub-Chapter I**Sub-Chapter I: Misleading Commercial Practices**

Article 21**Misleading Actions**

1. A commercial practice shall be regarded as misleading if it contains false information and is therefore untruthful or in any way, including overall presentation, deceives or is likely to deceive the average consumer, even if the information is factually correct, in relation to one or more of the following elements, and in either case causes or is likely to cause him to take a transactional decision that he would not have taken otherwise:
 - (a) The existence or nature of the product;
 - (b) The main characteristics of the product, such as its availability, benefits, risks, execution, composition, accessories, aftersales customer assistance and complaint handling, method and date of manufacture or provision, delivery, fitness for purpose, usage, quantity, specification, geographical or commercial origin or the results to be expected from its use, or the results and material features of tests or checks carried out on the product;
 - (c) The extent of the trader's commitments, the motives for the commercial practice and the nature of the sales process, any statement or symbol in relation to direct or indirect sponsorship or approval of the trader or the product;
 - (d) The price or the manner in which the price is calculated, or the existence of a specific price advantage;
 - (e) The need for a service, part, replacement or repair;
 - (f) The nature, attributes and rights of the trader or his agent, such as his identity and assets, his qualifications, status, approval, affiliation or connection and ownership of
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industrial, commercial or intellectual property rights or his awards and distinctions;

(g) The consumer's rights, including the right to replacement or reimbursement under Section 130 of this Code.

2. A commercial practice shall also be regarded as misleading if, in its factual context, taking account of all its features and circumstances, it causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise, and it involves:

(a) Any marketing of a product, including comparative advertising, which creates confusion with any products, trade marks, trade names or other distinguishing marks of a competitor;

(b) Non-compliance by the trader with commitments contained in codes of conduct by which the trader has undertaken to be bound, where the commitment is firm and capable of being verified, and the trader indicates in a commercial practice the binding nature of the code.

3. It is considered to be an unfair commercial practice, in relation to products likely to harm the health and safety of consumers, to fail to state this likelihood such that consumers are induced to neglect to observe the normal standards of prudence and vigilance.

3-bis. It is considered to be an unfair commercial practice when a bank, credit institution or financial agency makes the stipulation of a loan contract conditional on the stipulation of an insurance policy supplied by the same bank, institution or intermediary.⁶ or to open an account with the same bank, institution or intermediary⁷

4-bis. It is considered to be an unfair commercial practice to require costs surcharge for the finalization of an electronic transaction with a supplier of goods or services.⁸

Article 22

Article 22: Misleading Omissions

1. A commercial practice shall be regarded as misleading if, in its factual context, taking account of all its features and circumstances and the limitations of the communication medium, it omits material information that the average consumer needs, according to the context, to take an informed transactional decision, thereby causing or being likely to cause the average consumer to take a transactional decision that they would not have taken otherwise.

2. It shall also be regarded as a misleading omission when, taking account of the matters described in paragraph 1, a trader hides or provides in an unclear, unintelligible, ambiguous or untimely manner such material information as referred to in that paragraph or fails to identify the commercial intent of the commercial practice if not already apparent from the context, and where, in either case, this causes or is likely to cause the average consumer to take a transactional decision that they would not have taken otherwise.

3. Where the medium used to communicate the commercial practice imposes limitations of space or time, these limitations and any measures taken by the trader to make the information available to consumers by other means shall be taken into account in

⁶ Added by Art. 36-bis of Decree Law [201/2011](#), which was converted with modifications from Law no. 214 of 22 December 2011 on the "Conversion to law, with modifications, of Decree Law no. 201 of 6 December 2011 on urgent measures for the growth, equity and consolidation of public finances."

⁷ Added by Art. 28, para.3, of Decree-Law 1/2012

⁸ Inserted by Art. 15(5-c) of Decree Law no. [179 of 18 October 2012](#) which was converted with modifications from Law no. 221 of 17 December 2012:

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deciding whether information has been omitted.

4. In the case of an invitation to purchase, the following information shall be regarded as material, within the meaning of paragraph (1), if not already apparent from the context:

(a) The main characteristics of the product, to an extent appropriate to the medium and the product;

(b) The geographical address and the identity of the trader, such as his trading name and, where applicable, the geographical address and the identity of the trader on whose behalf he is acting;

(c) The price inclusive of taxes, or where the nature of the product means that the price cannot reasonably be calculated in advance, the manner in which the price is calculated, as well as, where appropriate, all additional freight, delivery or postal charges or, where these charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable by the consumer;

(d) The arrangements for payment, delivery, performance and the complaints handling policy, if they depart from the requirements of professional diligence;

(e) For products and transactions involving a right of withdrawal or cancellation, the existence of such a right.

5. Information requirements established by Community law in relation to commercial communication including advertising or marketing shall be regarded as material within the meaning of paragraph (1).

Article 22-bis

Deceptive advertising of prices charged by maritime companies

1. Advertising regarding prices charged by maritime companies operating from Italy either directly or under code-sharing agreements is deemed deceptive when it advertises the cost of the ticket purchased from the maritime company separately from additional charges, port taxes and from any other charges borne by the consumer, the maritime company being obliged to advertise a single price which includes all of these items.⁹

Article 23

Commercial practices which in all circumstances are misleading

1. The following commercial practices are misleading in all circumstances:

a) Claiming to be a signatory to a code of conduct when the trader is not;

b) Displaying a trust mark, quality mark or equivalent without having obtained the necessary authorisation;

c) Claiming that a code of conduct has an endorsement from a public or other body which it does not have;

d) Claiming untruthfully that a trader, his commercial practices, or a product in he trades has been approved, endorsed or authorised by a public or private body when he/it has not, or making such a claim without complying with the terms of the approval, endorsement or authorisation;

e) Making an invitation to purchase products at a specified price without disclosing the existence of any reasonable grounds the trader may have for believing that he will not be able to offer for supply or to procure another trader to supply, those products or equivalent products at that price for a period that is, and in quantities that are, reasonable having regard to the product, the scale of advertising of the product and the

⁹ As amended by Art. 22(1) of [Law no. 99 of 23 July 2009](#) containing “Provisions for the development and internationalisation of firms, and regarding Energy”

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price offered (bait advertising);

f) Making an invitation to purchase products at a specified price and then:

- 1) Refusing to show the advertised item to consumers, or
- 2) Refusing to take orders for it or deliver it within a reasonable time, or
- 3) Demonstrating a defective sample of it with the intention of promoting a different product (bait and switch);

g) Falsely stating that a product will only be available for a very limited time, or that it will only be available on particular terms for a very limited time, in order to elicit an immediate decision and deprive consumers of sufficient opportunity or time to make an informed choice;

h) Undertaking to provide after-sales service to consumers with whom the trader has communicated prior to a transaction in a language which is not an official language of the Member State where the trader is located and then making such service available only in another language without clearly disclosing this to the consumer before the consumer is committed to the transaction;

i) Stating or otherwise creating the impression that a product can legally be sold when it cannot;

l) Presenting rights given to consumers in law as a distinctive feature of the trader's offer.

m) Without prejudice to the provisions of Legislative Decree No 177 of 31 July 2005, and subsequent amendments, using editorial content in the media to promote a product where a trader has paid for the promotion without making that clear in the content or by images or sounds clearly identifiable by the consumer (advertorial);

n) Making a materially inaccurate claim concerning the nature and extent of the risk to the personal security of the consumer or their family if the consumer does not purchase the product;

o) Promoting a product similar to a product made by a particular manufacturer in such a manner as deliberately to mislead the consumer into believing that the product is made by that same manufacturer when it is not;

p) Establishing, operating or promoting a pyramid promotional scheme where a consumer gives consideration for the opportunity to receive compensation that is derived primarily from the introduction of other consumers into the scheme rather than from the sale or consumption of products;

q) Claiming that the trader is about to cease trading or move premises when he is not;

r) Claiming that certain products are able to facilitate winning in games of chance;

s) Falsely claiming that a product is able to cure illnesses, dysfunctions or malformations;

t) Passing on materially inaccurate information on market conditions or on the possibility of finding the product with the intention of inducing the consumer to acquire the product at conditions less favourable than normal market conditions;

u) Claiming in a commercial practice to offer a competition or prize promotion without awarding the prizes described or a reasonable equivalent;

v) Describing a product as 'gratis', 'free', 'without charge' or similar if the consumer has to pay anything other than the unavoidable cost of responding to the commercial practice and collecting or paying for delivery of the item;

z) Including in marketing material an invoice or similar document seeking payment

which gives consumers the impression that they have already ordered the marketed product when they have not;

aa) Falsely claiming or creating the false impression that the trader is not acting for purposes relating to his trade, business, craft or profession, or falsely passing oneself off as a consumer;

bb) Creating the false impression that after-sales service in relation to a product is available in a Member State other than the one in which the product is sold.

Sub-Chapter II

Sub-Chapter II: Aggressive Commercial Practices

Article 24

Aggressive Commercial Practices

1. A commercial practice shall be regarded as aggressive if, in its factual context, taking account of all its features and circumstances, by harassment, coercion, including the use of physical force, or undue influence, it significantly impairs or is likely to significantly impair the average consumer's freedom of choice or conduct with regard to the product and thereby causes him or is likely to cause him to take a transactional decision that he would not have taken otherwise.

Article 25

Use of harassment, coercion and undue influence

1. In determining whether a commercial practice uses harassment, coercion, including the use of physical force, or undue influence, account shall be taken of:

- a) Its timing, location, nature or persistence;
 - b) The use of threatening or abusive language or behaviour;
 - c) The exploitation by the trader of any specific misfortune or circumstance of such gravity as to impair the consumer's judgement, of which the trader is aware, to influence the consumer's decision with regard to the product;
 - (d) Any onerous or disproportionate non-contractual barriers imposed by the trader where a consumer wishes to exercise rights under the contract, including rights to terminate a contract or to switch to another product or another trader;
 - (e) Any threat to take any action when such action is manifestly vexatious or groundless.
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Article 26

Commercial practices which in all circumstances are considered aggressive

1. The following commercial practices are in all circumstances considered aggressive:

- a) Creating the impression that the consumer cannot leave the premises until a contract is formed;
 - b) Conducting personal visits to the consumer's home ignoring the consumer's request to leave or not to return except in circumstances and to the extent justified, under national law, to enforce a contractual obligation;
 - c) Making persistent and unwanted solicitations by telephone, fax, e-mail or other remote media except in circumstances and to the extent justified under national law to enforce a contractual obligation, without prejudice to Section 58 and Section 130 of Legislative Decree No 196 of 30 June 2003;
 - d) Requiring a consumer who wishes to claim on an insurance policy to produce documents which could not reasonably be considered relevant as to whether the claim was valid, or failing systematically to respond to pertinent correspondence, in order to dissuade a consumer from exercising his contractual rights;
 - e) Including in an advertisement a direct exhortation to children to buy advertised
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products or persuade their parents or other adults to buy advertised products for them, without prejudice to the provisions of Legislative Decree No 177 of 31 July 2005 and subsequent amendments;

f) Demanding immediate or deferred payment for or the return or safekeeping of products supplied by the trader, but not solicited by the consumer except where otherwise provided by *Article 66-sexies, para. 2*¹⁰;

g) Explicitly informing consumers that if they do not buy the product or service, the trader's job or livelihood will be in jeopardy;

h) Creating the false impression that the consumer has already won, will win, or will on doing a particular act win, a prize or other equivalent benefit, when in fact either there is no prize or other equivalent benefit, or taking any action in relation to claiming the prize or other equivalent benefit is subject to the consumer paying money or incurring a cost.

Chapter III

Chapter III: Enforcement

Article 27

Administrative and judicial protection

1. [The Competition Authority](#), hereafter the "Authority", shall exercise the powers set forth in this section also as the authority competent for implementing regulation [2006/2004/EC](#) 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.*¹¹

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

¹⁰ Amended by Art. 1(3) of Legislative Decree 21/2014 – please note that there is no Art. 66-sexies, para 2. Original text referred to Art. 54(2)(2)

¹¹ Art. 27(1-bis) inserted by Art. 1(6a) of Legislative Decree 21/2014

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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 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 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 €5,000,000.00¹², 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

¹² Art. 1(6b) of Legislative Decree 21/2014 – amended this paragraph – replacing the sum 500,000€ with 5,000,000€
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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 €5,000,000¹³. 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. [Repealed¹⁴]. 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 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."

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.

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

¹³ Art. 1(6c) of Legislative Decree 21/2014 – amended this paragraph – replacing the sum 500,000€ with 5,000,000€

¹⁴ Following was repealed: Appeals may be filed against decisions adopted by the Authority solely before the Administrative Courts (1st sentence of Article 27(13)). By Art. 4(1)(33) in Annex 4 of [LD 104/2010](#)

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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.

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.

PART III**Consumer Relationship****TITLE III****Contract Procedures****Chapter I****Rights of Consumer's entering into contracts****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;

Sub-Chapter II**Consumer Information And Right Of Withdrawal For Distance And Off-Premises Contracts****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 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

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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 2010¹⁵ as subsequently modified and Legislative Decree No. 70 of 9 April 2003¹⁶ as subsequently modified and do not prevent imposition of additional information requirements in 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.

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

¹⁵ [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](#)

¹⁶ [LD 70/2003](#) implemented the E-Commerce Directive 2000/31/EC; Relevant articles: 7,8,9,12,13

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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 10¹⁷ 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.

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,

¹⁷ 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](#)

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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.
