

**Legislative Decree 6 September 2005 no.206 , Consumer Code, pursuant to Article 7 of Law no. 229 of 29 July 2003.**

**SUMMARY**

**PART I GENERAL PROVISIONS**

**TITLE I General provisions and purposes**

Article 1 (Purpose and subject)

Article 2 (Consumers' rights)

Article 3 (Definitions)

**PART II EDUCATION, INFORMATION, ADVERTISING**

**TITLE I Consumer education**

Article 4 (Consumer education)

**TITLE II Consumer information CHAPTER I General provisions**

Article 5 (General obligations)

**CHAPTER II Indications of products**

Article 6 (Minimum contents of information)

Article 7 (Methods of indication) Article 8

(Scope of application) Article 9 (Indications in Italian) Article 10 (Implementation)

Article 11 (Prohibitions on marketing)

Article 12 (Sanctions)

**CHAPTER III Special information methods SECTION I**

**Indication of prices per unit of measurement**

Article 13 (Definitions)

Article 14 (Scope of application)

Article 15 (Methods of indicating unit price)

Article 16 (Exemptions)

Article 17 (Sanctions)

**TITLE III Advertising and other commercial communications**

**CHAPTER I General provisions**

Article 18 (Scope of application)

## CHAPTER II Nature of advertising

### SECTION I Misleading and comparative advertising

Article 19 (Purpose)

Article 20 (Definitions)

Article 21 (Assessment criteria)

Article 22 (Conditions under which comparative advertising is permitted)

Article 23 (Transparency of advertising)

Article 24 (Advertising of products which are dangerous to the health and safety of consumers)

Article 25 (Children and teenagers)

Article 26 (Administrative and judicial remedies)

Article 27 (Self-regulation)

## CHAPTER III Particular methods of advertising communication

### SECTION I Strengthening of consumer protection with regard to teleshopping

Article 28 (Scope of application)

Article 29 (Limits) Article 30

(Prohibitions) Article 31 (Protection of minors) Article 32 (Sanctions)

## PART III THE CONSUMER RELATIONSHIP

### TITLE I On consumer contracts in general

Article 33 (Unfair terms in agreements between a professional and a consumer)

Article 34 (Assessment of the unfair nature of terms)

Article 35 (Form and interpretation)

Article 36 (Nullity for protection of consumers)

Article 37 (Injunctions)

Article 38 (Reference)

### TITLE II Exercising commercial activities

#### CHAPTER I General provisions

Article 39 (Rules in commercial activities)

#### CHAPTER II Promotion of sales

##### SECTION I Consumer credit

Article 40 (Consumer credit)

Article 41 (Annual percentage rate of charge and advertising)

Article 42 (Supplier's non-performance)

Article 43 (Reference to the Law on Banking and Credit)

### TITLE III Contractual modality Article

44 (Contracts negotiated on business premises. Reference)

#### CHAPTER I Particular ways of concluding the contract SECTION

##### I Contracts negotiated away from business premises

Article 45 (Scope of application)

Article 46 (Exclusions)

Article 47 (Information on the right of cancellation)

Article 48 (Exclusion of cancellation)

Article 49 (Applicable provisions)

##### SECTION II Distance contracts

Article 50 (Definitions)

Article 51 (Scope of application)

Article 52 (Consumer information)

Article 53 (Written confirmation of information)

Article 54 (Performance)

Article 55 (Exclusions)

Article 56 (Payment by card)

Article 57 (Unsolicited supply)

Article 58 (Restrictions on the use of certain means of distance communications)

Article 59 (Selling on television and other audio-visual means)

Article 60 (References)

Article 61 (Reference)

##### SECTION III Common provisions

Article 62 (Sanctions)

Article 63 (Jurisdiction)

##### SECTION IV Right of withdrawal

Article 64 (Exercise of the right of withdrawal)

Article 65 (Starting dates)

Article 66 (Effects of the right of withdrawal)

Article 67 (Further obligations of the parties)

## CHAPTER II E-commerce

Article 68 (Reference)

### TITLE IV Provisions relating to single contracts

#### CHAPTER I

Article 69 (Definitions)

Article 70 (Informative document)

Article 71 (Requirements of the contract)

Article 72 (Vendor's specific obligations)

Article 73 (Right of withdrawal)

Article 74 (Prohibition on advances)

Article 75 (Reference to general provisions on contracts with special procedures of conclusion)

Article 76 (Obligation of guarantee)

Article 77 (Cancellation of the contract of credit granting)

Article 78 (Voidness of contractual terms or additional covenants)

Article 79 (Binding territorial jurisdiction)

Article 80 (Purchaser's rights when foreign law applies)

Article 81 (Sanctions)

#### CHAPTER II Tourist services

Article 82 (Scope of application)

Article 83 (Definitions)

Article 84 (Packages)

Article 85 (Form of contract for the sale of packages)

Article 86 (Contents of contract for the sale of packages)

Article 87 (Consumer information)

Article 88 (Informative brochure)

Article 89 (Transfer of the contract)

Article 90 (Revision of price)

Article 91 (Alteration of contractual terms)

Article 92 (Consumer's rights in the event of withdrawal or cancellation of service)

Article 93 (Incomplete performance or non-performance)

Article 94 (Liability for personal injury)

Article 95 (Liability for damages other than personal injury)

Article 96 (Exemption from liability)

Article 97 (Right of subrogation)

Article 98 (Claim)

Article 99 (Insurance)

Article 100 (Guarantee fund)

### TITLE V Supply of public services

#### CHAPTER I Public services

Article 101 (Reference provision)

## PART IV SAFETY AND QUALITY

### TITLE I Product safety

- Article 102 (Purpose and scope of application)
- Article 103 (Definitions)
- Article 104 (Obligations of the producer and distributor)
- Article 105 (Presumption and assessment of safety)
- Article 106 (Consultation and co-ordination procedures)
- Article 107 (Checks)
- Article 108 (Procedural provisions)
- Article 109 (Market surveillance)
- Article 110 (Notification and exchange of information)
- Article 111 (Producer's liability)
- Article 112 (Sanctions)
- Article 113 (Reference to statutes)

### TITLE II Liability for damage caused by defective products

- Article 114 (Producer's liability)
- Article 115 (Product)
- Article 116 (Supplier's liability)
- Article 117 (Defective product)
- Article 118 (Exclusion of liability)
- Article 119 (Circulation of product)
- Article 120 (Proof)
- Article 121 (Plurality of parties liable)
- Article 122 (Fault of injured person)
- Article 123 (Compensating damage)
- Article 124 (Terms exempting liability)
- Article 125 (Limitation)
- Article 126 (Forfeiture)
- Article 127 (Liability pursuant to other legal provisions)

### TITLE III Legal guarantee of conformity and commercial guarantees for consumer goods

#### CHAPTER I sale of consumer goods

- Article 128 (Scope of application and definitions)
- Article 129 (Conformity with the contract)
- Article 130 (Consumers' rights)
- Article 131 (Right of redress)
- Article 132 (Time limits)
- Article 133 (Conventional guarantee)
- Article 134 (Binding nature of provisions)
- Article 135 (Protection on the basis of other provisions)



## PART V CONSUMERS' ASSOCIATIONS AND ACCESS TO JUSTICE

### TITLE I National consumers' associations

Article 136 (National Council of Consumers and Users) Article  
137 (List of national consumers and users' associations) Article  
138 (Incentives and contributions)

### TITLE II Claim for injunction and access to justice

Article 139 (Entitlement to act)  
Article 140 (Procedure)  
Article 141 (Out of court settlement of disputes)

## PART VI FINAL PROVISIONS

Article 142 (Amendments to the civil code)  
Article 143 (Inalienable rights)  
Article 144 (Updates)  
Article 145 (Competence of Regional authorities and Autonomous Provinces)  
Article 146 (Abrogations)

Annex I Financial services within the meaning of Article 51, paragraph 1(a) Annex

II Procedures for the application of RAPEX and guidelines for notifications



**Legislative Decree no. 206 of 6 September 2005 Consumer Code, pursuant to Article  
7 of Law no. 229 of 29 July 2003.**

**PART I**  
*GENERAL PROVISIONS*

**TITLE I**  
*General provisions and purposes*

*Article 1 (Purpose  
and subject)*

1. In accordance with the Constitution and in compliance with the principles contained in the Treaties establishing the European Communities, the Treaty on European Union, European Community law with special reference to Article 153 of the Treaty establishing the European Economic Community, and international treaties, the present Code harmonises and consolidates the laws of purchase and consumption, so as to ensure a high level of protection to consumers and users.

*Article 2*  
*(Consumers' rights)*

1. The individual and collective rights and interests of consumers and users shall be recognised and guaranteed, their protection shall be promoted at national and local level, also collectively and in the form of associations, measures designed to pursue such aims shall be encouraged, also through the regulation of relations between consumers' and users' associations and public authorities.
2. The following shall be recognised as fundamental rights of consumers and users:
  - a) health protection;
  - b) the safety and quality of products and services;
  - c) adequate information and correct advertising;
  - d) consumer education;
  - e) fairness, transparency and equity in contractual relations;
  - f) the promotion and development of free, voluntary and democratic associations between consumers and users;
  - g) the supply of public services according to standards of quality and efficiency.

*Article 3*  
*(Definitions)*

1. The following definitions are used for the purposes of this Code:
  - a) consumer or user: any natural person who is acting for purposes which are outside his trade, business or profession;
  - b) consumers' and users' associations: social groupings whose sole purpose as provided in their articles of association is the protection of consumers' or users' rights and interests;
  - c) professional: any natural or legal person who is acting for purposes related to his trade, business or

profession, or his intermediary;

- d) producer: without prejudice to the provisions of Article 103, paragraph 1(d) and Article 115, paragraph 1, the manufacturer of the goods or the supplier of the services, or his intermediary, the importer into the territory of the European Union or any natural or legal person purporting to be a producer by placing his name, trade mark or other distinguishing mark on the goods or services;
- e) product: without prejudice to the provisions of Article 115, paragraph 1, 'product' shall mean any product - including in the context of provision of services - intended for consumers, or liable, under reasonably foreseeable conditions, to be used by consumers even if not intended for them, which is supplied or made available whether for consideration or not in the course of a commercial activity, irrespective of whether it is new, used or reconditioned. This definition shall not apply to second-hand products, those supplied as antiques, or as products to be repaired or reconditioned prior to use, provided that the supplier informs in writing the person to whom he supplies the product to that effect;
- f) Code: this Legislative Decree consolidating the provisions in force concerning consumer protection.

## PART II

### *EDUCATION, INFORMATION, ADVERTISING*

#### TITLE I

##### *Consumer education*

##### Article 4 (*Consumer education*)

1. Education of consumers and users is designed to encourage awareness of their rights and interests, the development of associations, participation in administrative procedures and their presence in representative bodies.
2. The activities designed to educate consumers carried out by public or private bodies are not for promotional purposes. They are intended to explain clearly the characteristics of goods and services and to make the costs and benefits of choosing such goods and services clearly evident. They shall also give special consideration to those categories of consumers that are most vulnerable.

#### 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 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 of 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;
  - 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.

### 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.

#### Article 9

##### *(Indications in Italian)*

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, are permitted.

#### Article 10

##### *(Implementation)*

1. By decree of the Minister of Productive Activities, together with the Minister for European Community Policies and the Minister of Justice, having heard the opinion of the Unified Conference as provided by Article 8 of Legislative Decree no. 281 of 28 August 1997, the rules implementing Article 6 shall be adopted, in order to ensure that the application of Article 6 to products coming from countries within the European Union is effected in accordance with the principles of Community law, specifying the product categories or presentation methods for which it is not compulsory to show the indications provided by paragraph 1(a) and (b) of Article 6. The said implementing provisions also govern the cases in which it shall be permitted to show certain information contained in the indications provided by Article 6, in the original language.
2. Until such time as the Decree referred to in paragraph 1 enters into force, the provisions of Decree no. 101 of the Minister for Industry, Trade and Crafts of 8 February 1997, shall remain in force.

#### Article 11

##### *(Prohibitions on marketing)*

1. 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 the present Chapter, shall be prohibited throughout the national territory.

#### Article 12

##### *(Sanctions)*

1. Without prejudice to the provisions of Part IV, Title II and without prejudice to the commission of any offence as pertaining to the manufacturer's liability, any one in breach of the prohibition under Article 11 shall be subject to an administrative penalty of between 516 euro and 25,823 euro. The amount of the fine shall be determined in each case by reference to the list price of each product and the number of units put up for sale.
2. The fines shall be applied pursuant to Law no. 689 of 24 November 1981. Without prejudice to the provisions relating to the powers of officials and law enforcement agents to carry out checks in Article 13 of said Law no. 689 of 24 November 1981, administrative police authorities shall determine such breaches, during the course of their duties or following a complaint. The report

provided for by Article 17 of Law no. 689 of 24 November 1981 is to be presented to the office of the Chamber of Commerce, Industry, Crafts & Agriculture of the province in which the professional is resident or has his registered office.

## CHAPTER III

### *Special information methods*

#### SECTION I

#### *Indication of prices per unit of measurement*

Article 13 (*Definitions*) 1. For the purposes of this Chapter the following definitions are used:

- a) selling price: the final price for a unit of the product or a given quantity of the product, including VAT and all other taxes;
- b) unit price: the final price, including VAT and all other taxes, for one kilogramme, one litre, one metre, one square metre or one cubic metre of the product or a different single unit of quantity which is widely and customarily used in the marketing of specific products;
- c) products sold in bulk: products which are not pre-packaged and are measured in the presence of the consumer;
- d) products sold individually: products that cannot be separated without altering their nature or properties;
- e) packaged product: a group of homogeneous pieces contained in a package;
- f) pre-packed product: the unit for sale destined to be presented as such to the consumer and to the public is composed of a product and its packaging, in which the product has been placed prior to being put up for sale and is wrapped entirely or in part in said packaging, but in any event in such a way that its contents may not be changed without opening or modifying the package.

#### Article 14 (*Scope of application*)

1. In order to improve consumer information and to facilitate price comparison, products offered by traders to consumers shall bear, in addition to the indication of the selling price, according to provisions in force, an indication of the unit price, without prejudice to the provisions of Article 16.
2. The unit price is not required to be shown if it is identical to the selling price.
3. For products sold in bulk only the unit price shall be indicated.
3. All forms of advertising and catalogues shall bear the indication of the unit price when the selling price is indicated, except in the case of exemptions pursuant to Article 16.
4. This Section shall not apply:
  - a) to products supplied in the course of the provision of a service, including the provision of food and beverages;
  - b) to products sold by auction;
  - c) to works of art and antiques.

#### Article 15

#### *(Methods of indicating unit price)*

1. The unit price refers to a quantity declared in accordance with provisions in force.
2. For the methods of indicating unit price the provisions of Article 14 of Legislative Decree no. 114 of 31 March 1998, reforming the law on trade, shall apply.
3. For pre-packed food products immersed in a brining liquid, whether frozen or deep-frozen, the unit price shall refer to the net weight of the drained product.
4. Indication of the unit price of multiples or sub-multiples, decimals of the unit of measurement, is permitted where certain products are generally and customarily sold in said quantities.
5. The prices of petroleum products for motor propulsion, displayed and advertised at automatic petrol fuel filling stations, shall only be those effectively charged to consumers. It is compulsory to display the prices offered to consumers so that they are visible from the road.

#### Article 16

##### *(Exemptions)*

1. The obligation to indicate the price of products shall be waived where such indication would not be useful because of the products' nature or purpose or would be liable to create confusion. The following products shall belong to this category:
  - a) products marketed in bulk that, in accordance with the implementing provisions of Law no. 441 of 5 August 1981 (as amended), containing provisions on the sale of goods at their net weight, may be sold individually or packaged;
  - b) products of various types included in the same package;
  - c) products sold at vending machines;
  - d) products destined to be mixed for a preparation and contained in a single package;
  - e) pre-packed products that are exempt from the obligation to indicate the net quantity, according to the provisions of Article 9 of Legislative Decree no. 109 of 27 January 1992 (as amended) concerning implementation of EC directives with regard to labelling of foodstuffs;
  - f) pre-cooked, or prepared foodstuffs, or those to be prepared, formed of two or more separate items contained in a single package, requiring additional preparation by the consumer before the finished product is obtained;
  - g) fancy goods;
  - h) single-portion ice-creams;
  - i) non-food products that can only be sold individually or by the package.
2. The Minister of Productive Activities may, by decree, update the list of exemptions under paragraph 1, and may expressly indicate non-food products or categories of non-food products to which the said exemptions shall not apply.

#### Article 17

##### *(Sanctions)*

1. Anyone neglecting to indicate the unit price or failing to indicate it in accordance with the provisions of this Section shall be subject to a fine pursuant to Article 22, paragraph 3 of Legislative Decree no. 114 of 31 March 1998, to be imposed in accordance with the procedures provided therein.

**TITLE III**  
*Advertising and other commercial communications*

**CHAPTER I**  
*General provisions*

Article 18  
*(Scope of application)*

1. The provisions of this Title shall apply to all forms of commercial communications in whatever form they are carried out.
2. Without prejudice to the provisions of Article 3, paragraph 1(a), for the purposes of the present Title, 'consumer' or 'user' shall include any natural or legal person to whom the commercial communications are directed or who is subject to the consequences thereof.

**CHAPTER II**  
*Nature of advertising*

**SECTION I**  
*Misleading and comparative advertising*

Article 19  
*(Purpose)*

1. The purpose of this Section is to protect from misleading advertising and the unfair consequences thereof, persons carrying on a trade or business or practising a craft or profession, consumers, and the interests of the public in general in the use of advertising messages, and to lay down the conditions under which comparative advertising is permitted.
2. Advertising must be clear, truthful and correct.

Article 20  
*(Definitions)*

1. For the purposes of this Section:
  - a) advertising: means the making of a representation in any form in connection with a trade, business, craft or profession in order to promote the sale of movable or immovable property, the establishment or transfer of rights and obligations over said property or the provision of works or services;
  - b) misleading advertising: means any advertising which in any way, including its presentation, is liable to deceive the natural or legal persons to whom it is addressed or whom it reaches and which, by reason of its deceptive nature, may affect their economic behaviour or which, for such reasons, is liable to injure a competitor;
  - c) comparative advertising: means any advertising which explicitly or by implication identifies a

competitor or goods or services offered by a competitor;

- d) advertiser: means the principal commissioning the advertising message and its author, and, where such persons cannot be identified, the owner of the means by which the advertising message is spread or the person in charge of the radio or television programming.

#### Article 21

##### *(Evaluation criteria)*

1. In determining whether advertising is misleading, all its features shall be taken into account, and in particular any information it contains concerning:
  - a) the characteristics of goods or services, such as their availability, nature, execution, composition, method and date of manufacture or provision, fitness for purpose, uses, quantity, specification, geographical or commercial origin, or the results that may be obtained from their use, or the results and material features of tests or checks carried out on the goods or services;
  - b) the price or the manner in which the price is calculated and the conditions on which the goods or services are supplied;
  - c) the category, attributes and rights of the advertiser, such as his identity and assets, his qualifications and ownership of intellectual and industrial property rights, all other rights over intangible property relating to the business and his awards or distinctions.

#### Article 22 *(Conditions under which comparative advertising is permitted)*

1. Comparative advertising shall, as far as the comparison is concerned, be permitted when the following conditions are met:
  - a) it is not misleading according to this Section;
  - b) it compares goods or services meeting the same needs or intended for the same purpose;
  - c) it objectively compares one or more material, relevant, verifiable and representative features of those goods and services, which may include price;
  - d) it does not create confusion in the market place between the advertiser and a competitor or between the advertiser's trademarks, trade names, other distinguishing marks, goods or services and those of a competitor;
  - e) it does not discredit or denigrate the trademarks, trade names, other distinguishing marks, goods, services, activities or circumstances of a competitor;
  - f) for products with designation of origin, it relates in each case to products with the same designation;
  - g) it does not take unfair advantage of the reputation of a trademark, trade name or other distinguishing marks of a competitor or of the designation of origin of competing products;
  - h) it does not present goods or services as imitations or replicas of goods or services bearing a protected trade mark or trade name.
2. The requirement for verifiability pursuant to paragraph 1(c), shall be deemed to be satisfied when the information used to illustrate the features of the goods or service advertised are capable of demonstration.
3. Any comparison referring to a special offer shall indicate in a clear and unequivocal way the date on which the offer ends or, where the special offer has not yet begun, the date of the start of the period during which the special price or other specific conditions shall apply and, where

appropriate, that the special offer is subject to the availability of the goods and services.

#### Article 23

##### *(Transparency of advertising)*

1. Advertising shall be clearly recognisable as such. Printed advertisements shall be distinguishable from other forms of communication to the public, with clearly obvious graphics.
2. The terms "guarantee", "guaranteed" and similar terms may only be used if accompanied by a specification of the content and modalities of the guarantee offered. If the advertisement is so short that such information cannot be shown in full, a brief reference to the content and modalities of the guarantee offered must be supplemented by the express reference to a text that is easily recognisable by the consumer which contains such specifications in full.
3. All forms of subliminal advertising shall be prohibited.

#### Article 24

##### *(Advertising of products which are dangerous to the health and safety of consumers)*

1. Advertising shall be considered misleading where, regarding products that are liable to pose a risk for the health and safety of consumers, it fails to give information in this regard, so as to lead consumers to neglect the normal rules of prudence and vigilance.

#### Article 25

##### *(Children and teenagers)*

1. Misleading advertising is considered to be that which, being liable to reach children or teenagers, may, even indirectly, threaten their safety or abuse their natural credulity or lack of experience or that which, using children and teenagers in advertising messages, save for the prohibition pursuant to Article 10, paragraph 3 of Law no. 112 of 3 May 2004, takes advantage of the natural feelings of adults towards children.

#### Article 26

##### *(Administrative and judicial remedies)*

1. The Authority for competition and the market, founded by Article 10 of Law no. 287 of 10 October 1990, ('the Authority' for the remainder of this Section) shall exercise the functions governed by this Article.
2. Competitors, consumers, their associations and organisations, the Minister of Productive Activities and every other public authority having an interest in relation to its own institutional tasks, also following a complaint from the public, may request the Authority to ensure the restraint of acts of misleading or comparative advertising deemed to be unpermitted pursuant to this Section, to ensure that the continuance of such acts be prevented and that their effects be eliminated.
3. In urgent cases, the Authority may issue a reasoned decision for the cessation with interim effect of the misleading or comparative advertising that is considered to be unpermitted. In any event, it shall notify the advertiser that the procedure has been opened and if the principal commissioning the advertisement is unknown, may demand all such information as may identify the principal from the owner of the medium that has spread the advertisement. The Authority may also demand that the advertiser or the owner of the medium that spread the advertisement produce a copy of the advertisement considered to be misleading or unpermitted. If such demand is not complied with the Authority may also exercise its powers pursuant to Article 14, paragraphs 2, 3 and 4 of Law no. 287 of 10 October 1990.

4. The Authority may require the advertiser to furnish evidence as to the accuracy of factual claims in the advertising if, taking into account the legitimate interest or rights 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. Where such evidence is not furnished, or is considered insufficient, the factual claims shall be deemed inaccurate.
5. If the advertisement has been or is to be published in periodicals or daily publications or broadcast on the radio or television or other means of telecommunication, the Authority shall request the opinion of the Authority for safeguards in communications before taking measures.
6. The Authority shall take measures giving reasons for its decisions. If it finds the advertisement misleading or the comparative advertising to be unpermitted, it shall allow the complaint, prohibiting advertising that has not yet been made public or ordering the cessation of advertising that has already commenced. The decision upholding the complaint may include an order for that decision to be published in part or in full, and may include in addition an order for the publication of a special corrective statement to eliminate the continuing effects of the misleading or unpermitted comparative advertising.
7. By its decision to uphold the complaint, the Authority shall also order the imposition of an administrative fine of between 1,000 euro and 100,000 euro, depending on the severity and duration of the infringement. For misleading advertising pursuant to Articles 24 and 25, the fine shall not be less than 25,000 euro.
8. For advertising included on packaging, when adopting the measures provided by paragraphs 3 and 5, the Authority shall set a deadline for their implementation, taking into account the technical time needed for compliance.
9. The procedure is laid down, by regulation issued under Article 17, paragraph 1 of Law no. 400 of 23 August 1988, in such a way as to ensure the right of the parties to be heard, full disclosure of documents and the reporting of proceedings.
10. In case of failure to comply with interim measures and injunctions or measures for elimination of effects, the Authority shall impose an administrative fine of between 10,000 euro and 50,000 euro. In the event of repeated non-compliance the Authority may order that the firm's activities be suspended for no more than thirty days.
11. For failure to comply with requests to furnish the information or documentation provided by paragraph 3, the Authority shall impose an administrative fine of between 2,000 euro and 20,000 euro. If the information or documentation supplied are untruthful, the Authority shall impose an administrative fine of between 4,000 euro and 40,000 euro.
12. Appeals against decisions adopted by the Authority shall fall within the exclusive jurisdiction of the administrative court. For fines ensuing from infringements of the present Decree, the provisions of Chapter I, Section I and Articles 26, 27, 28 and 29 of Law no. 689 of 24 November 1981 (as amended) shall be observed, in so far as applicable. Payment of the fines imposed pursuant to this Article shall be made within thirty days following notification of the Authority's order.
13. If the advertising has been approved by an administrative measure which is also designed to check that it is not misleading nor unpermitted comparative advertising, the protection of competitors, consumers and their associations and organisations may be enforced by taking proceedings in the administrative courts against the said measure.
14. The jurisdiction of the ordinary courts remains unaffected in matters concerning unfair competition, as governed by Article 2598 of the Civil Code, and, with regard to comparative advertising, in matters concerning infringement of the law on copyright, protected by Law no. 633 of 22 April 1941 (as amended), and of trade names, protected under Legislative Decree no. 30 of 10 February 2005 (as amended), and of designations of origin that are recognised and protected in Italy, and other distinguishing marks of competitors' undertakings, goods and services.

Article 27

*(Self-regulation)*

1. The interested parties may demand that the misleading or unpermitted comparative advertising be suspended by applying to voluntary, independent, self-regulatory bodies.
2. Once proceedings have been brought before a self-regulatory body, the parties may agree to refrain from resorting to the Authority until the final ruling has been made.
3. Where the complaint to the Authority has already been made or is subsequently made by another legitimate subject, any interested party may request that the Authority suspend proceedings while awaiting the decision of the self-regulatory body. Having assessed all the circumstances, the Authority may provide for suspension of proceedings for no more than thirty days.

CHAPTER III

*Particular methods of advertising communication*

SECTION I

*Strengthening of consumer protection with regard to tele shopping*

Article 28

*(Scope of application)*

1. The provisions of this Section shall apply to teleshopping as defined in the regulation concerning radio and television advertising and teleshopping adopted by the Authority for safeguards in communications by its decision no. 538/01/CSP dated 26 July 2001, including teleshopping relating to astrology, tarot cards and similar and broadcasts relating to contests or games involving or structured as forecasts. These provisions also apply to teleshopping advertisements.

Article 29

*(Limits)*

1. Teleshopping shall in no way take advantage of superstition, credulity or fear, it shall not contain scenes of physical or moral violence or scenes that are offensive to the good taste and sensitivity of consumers due to its indecent, vulgar or repugnant nature.

Article 30

*(Prohibitions)*

1. Teleshopping that offends human dignity, that includes any discrimination on grounds of race, sex or nationality, that offends religious or political beliefs, or that may encourage behaviour prejudicial to health, safety or protection of the environment shall not be permitted. Teleshopping for cigarettes or other tobacco-based products shall be prohibited.
2. Teleshopping shall not contain declarations or representations that may mislead users or consumers, even by way of omission, ambiguity or exaggeration, especially with regard to the characteristics and effects of the service, the price, conditions of sale or payment, methods of supply, prizes or the identity of those represented.

Article 31

*(Protection of minors)*

1. Teleshopping shall not exhort minors to enter into contracts for the sale or hire of goods or services. Teleshopping shall not cause moral or physical detriment to minors and shall comply with the following criteria for their protection:
  - a) it shall not exhort minors to purchase a product or service by exploiting their inexperience or credulity;
  - b) it shall not exhort minors to persuade their parents or others to purchase the goods or services being advertised;
  - c) it shall not exploit the special trust that minors place in their parents, teachers or other persons;
  - d) it shall not show minors in dangerous situations.

Article 32

*(Sanctions)*

1. Without affecting any criminal liability, and subject to the provisions and sanctioning system laid down for distance contracts, as regulated by Part III, Title III, Chapter L Section II from Article 50 to Article 61 of this Code, together with further advertising provisions, teleshopping is also subject to the fines provided by Article 2, paragraph 20(c) of Law no. 481 of 14 November 1995, and Article 1, paragraph 31 of Law no. 429 of 31 July 1997.

PART III

*THE CONSUMER RELATIONSHIP*

TITLE I

*ON CONSUMER CONTRACTS IN GENERAL*

Article 33

*(Unfair terms in agreements between a professional and a consumer)*

1. In contracts entered into between consumers and professionals, terms shall be considered unfair where, contrary to good faith, they cause a significant imbalance in the rights and obligations arising under the contract, to the detriment of the consumer.
2. Terms are presumed unfair, unless proved otherwise, where they have the object or effect of:
  - a) excluding or limiting the liability of the professional in the event of the death of the consumer or personal injury to the latter resulting from an act or omission of that professional;
  - b) excluding or limiting the actions or legal rights of the consumer vis-à-vis the professional or another party in the event of total or partial non-performance or inadequate performance by the professional;
  - c) excluding or limiting the option of offsetting a debt owed to the professional against any claim which the consumer may have against him;
  - d) making an agreement binding on the consumer whereas provision of services by the professional is subject to a condition whose realisation depends on his own will alone;
  - e) permitting the professional to retain sums paid by the consumer where the latter does not conclude the contract or withdraws from it, without providing the right for the consumer to demand from the professional twice the amount of the sum paid where the professional is the party that fails to conclude or withdraws from the contract;

- f) requiring any consumer who fails to fulfil or delays in fulfilling his obligation to pay a sum of money by way of compensation, a penalty clause or similar, which is manifestly excessive;
  - g) authorising only the professional to dissolve the contract where the same facility is not granted to the consumer, or permitting the professional to retain even a part of the sum paid by the consumer by way of consideration for services not yet supplied, where it is the professional himself who cancels the contract;
  - h) enabling the professional to terminate an open-term contract without reasonable notice, except where there are fair grounds for doing so;
  - i) establishing a period of notice to terminate which is too far in advance of the contract's expiry date in order to avoid tacit extension or renewal;
  - l) providing for an extension of the consumer's acceptance to terms with which he had no real opportunity of becoming acquainted before the conclusion of the contract;
  - m) enabling the professional to alter the terms of the contract unilaterally, or the features of the product or service to be supplied, without a valid reason which is specified in the contract;
  - n) providing for the price of the goods or services to be determined at the time of delivery or provision of the service;
  - o) allowing the professional to increase the price for the goods or services without giving the consumer the right to cancel the contract if the final price is too high in relation to the price originally agreed;
  - p) giving the professional the right to determine whether the goods or services supplied are in conformity with the contract or giving him the exclusive right to interpret any clause of the contract;
  - q) limiting the professional's liability with respect to commitments arising from contracts entered into in his name by his agents, or making the performance of said commitments subject to compliance with particular formalities;
  - r) limiting or excluding the consumer's right to refuse the fulfilment of his obligations where the professional fails to fulfil his own obligations arising from the contract;
  - s) allowing the professional to transfer his rights and obligations under the contract to a third party, even with the consumer's prior consent, where this reduces protection of the consumer's rights;
  - t) burdening the consumer with expiry deadlines, limitations on his right to refuse the fulfilment of his obligations, derogations from the jurisdiction of the courts, restrictions in evidence available, shifts in the burden of proof, restrictions on freedom of contract in relations with third parties;
  - u) establishing as forum in case of dispute, a jurisdiction other than the place where the consumer is resident or has his domicile of choice;
  - v) subjecting the assignment of a right or the assumption of an obligation to a condition precedent dependent on the mere will of the professional, as against an immediately effective obligation binding the consumer. This is without prejudice to Article 1355 of the Civil Code.
3. If the object of the contract is the supply of financial services of indeterminate duration, the professional may, in derogation from subparagraphs (h) and (m) of paragraph 2:
- a) where there is a valid reason, terminate the contract without notice, informing the consumer immediately thereof;
  - b) where there is a valid reason, alter the conditions of the contract, informing the consumer with reasonable notice; the latter is entitled to dissolve the contract.
4. If the object of the contract is the supply of financial services, provided that there is a valid reason, the professional may, without notice, alter the rate of interest or the amount of any other charge relating to the financial service originally agreed, in derogation from subparagraphs (l) and (m) of paragraph 2. The professional is required to inform the consumer immediately, and the consumer is

entitled to withdraw from the contract.

5. Subparagraphs (h), (m), (n) and (o) of paragraph 2 are without hindrance to contracts which have as their object transferable securities, financial instruments and other products or services whose price is linked to fluctuations in a stock exchange quotation or index or a financial market rate that the professional does not control, and to contracts which have as their object the sale and purchase of foreign currency, traveller's cheques or international money orders denominated in foreign currency.
6. Subparagraphs (n) and (o) of paragraph 2 shall not apply to price-indexation clauses, where lawful, provided that the method by which prices vary is explicitly described.

#### Article 34

##### *(Assessment of the unfair nature of terms)*

1. The unfair nature of a term shall be assessed taking into account the nature of the goods or services for which the contract was concluded and by referring to all the circumstances existing at the time of conclusion of the contract, and to the other terms of the same contract or of another contract on which it is dependent.
2. Assessment of the unfair nature of the terms shall relate neither to the definition of the main subject matter of the contract nor the adequacy of the consideration for the goods or services, in so far as these terms are in plain intelligible language.
3. Terms which reproduce provisions of law or which reproduce provisions or implement principles contained in international conventions to which all Member States of the European Union or the European Union itself are Contracting Parties, shall not be unfair.
4. Terms or aspects of terms that have been individually negotiated shall not be unfair.
5. For contracts concluded by signing a preformulated form or standard contract designed to regulate certain contractual relations in a uniform way, the professional shall bear the burden of proving that the terms or aspects of terms have been individually negotiated with the consumer, even though they have been prepared unilaterally by the professional.

#### Article 35

##### *(Form and interpretation)*

1. In the case of contracts where all or certain terms are presented to the consumer in writing, these terms must always be drafted in plain, intelligible language.
2. Where there is doubt as to the meaning of a term, the interpretation that is most favourable to the consumer shall prevail.
3. The rule on interpretation provided by paragraph 2 shall not apply in the case of the procedures laid down in Article 37.

#### Article 36 *(Nullity for protection of consumers)*

1. Terms considered to be unfair pursuant to Articles 33 and 34 shall be void, while the remainder of the contract shall remain valid.
2. Terms shall be void, even if they have been individually negotiated, where they have the object or effect of:
  - a) excluding or limiting the liability of the professional in the event of the death of the consumer or personal injury to the latter resulting from an act or omission of that professional;

- b) excluding or limiting the actions of the consumer vis-à-vis the professional or another party in the event of total or partial non-performance or inadequate performance by the professional;
- c) providing for an extension of the consumer's acceptance to terms with which he had no real opportunity of becoming acquainted before the conclusion of the contract;
3. Nullity shall only operate for the benefit of the consumer and may be ascertained *ex officio* by the court.
4. The seller has the right of redress against the supplier for damage suffered as a result of the declaratory judgment of nullity of the terms declared unfair.
5. All contractual terms that have the effect of depriving the consumer of the protection given by the present Title by providing that the law applicable to the contract shall be the law of a non-Member country, shall be void, if the contract has a closer connection with the territory of a Member State of the European Union.

#### Article 37

##### *(Injunctions)*

1. Consumers' associations pursuant to Article 137, associations representing professionals, and Chambers of Commerce, Industry, Crafts and Agriculture, may bring proceedings against any professional or professional association that uses or recommends the use of contractual terms drawn up for general use, and may request the competent court to grant orders preventing the use of terms that have been found unfair pursuant to this Title.
2. The injunction may be granted, when there are fair grounds of urgency, pursuant to Articles 669-bis et seq. of the Civil Procedure Code.
3. The court may direct that the order be published in one or more newspapers, of which at least one is distributed nationally.
4. For all matters not covered by this Article, the provisions of Article 140 shall apply to applications for injunctions brought by consumers' associations under paragraph 1 hereof.

#### Article 38

##### *(Reference)*

1. For all matters not provided for by the present Code, the provisions of the Civil Code shall apply to contracts concluded between the consumer and the professional.

### TITLE II

#### *Exercising commercial activities*

#### CHAPTER I

##### *General provisions*

#### Article 39

##### *(Rules in commercial activities)*

1. Commercial activities shall be conducted with respect for the principles of good faith, fairness and integrity, also assessed according to protection requirements of categories of consumers.

CHAPTER II  
*Promotion of sales*

SECTION I  
*Consumer credit*

Article 40  
*(Consumer credit)*

1. The Interministerial Committee for Credit and Savings (Comitato interministeriale per il credito e il risparmio:CICR) shall take steps to adapt national legislation to Directive 98/7/EC of the European Parliament and of the Council of 16 February 1998 amending Directive 87/102/EEC for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit, with special regard to the requirement to indicate the annual percentage rate of charge (APR) by means of a representative example.

Article 41  
*(Annual percentage rate of charge and advertising)*

1. For the purposes of Article 40, the CICR, in accordance with Articles 122 paragraph 2 and 123 paragraph 2 of the Law on Banking and Credit, Legislative Decree no. 385 of 1 September 1993 (as amended), shall as necessary amend the law provided in the Decree of the Minister of the Treasury of 8 July 1992, published in the Official Gazette of the Republic of Italy no. 169 dated 20 July 1992.

Article 42  
*(Supplier 's non-performance)*

1. In case of non-performance by the supplier of goods or services, a consumer who has made a demand to the supplier to fulfil his obligations, to no effect, is entitled to take action against the financier within the limits of the credit granted, provided that an agreement exists that grants the financier exclusive rights to grant credit to the supplier's customers. Liability also extends to any third party to whom the financier has transferred or assigned the rights arising from the credit agreement.

Article 43  
*(Reference to the Law on Banking and Credit)*

1. For the remainder of the law on consumer credit, reference shall be made to Chapters II and III of Title VI of the aforementioned Legislative Decree no. 385 of 1993 (as amended), together with Articles 144 and 145 of the same Law for the application of the relative sanctions.

TITLE I  
Contractual modality

Article 44 *(Contracts negotiated on business premises.*  
*Reference)*

1. Unless otherwise regulated by this Code, reference shall be made for the law governing trade to Legislative Decree no. 114 of 31 March 1998, reforming the law on trade pursuant to Article 4, paragraph 4 of Law no. 59 of 15 March 1997.

## CHAPTER I

### *Particular ways of concluding the contract*

## SECTION I

### *Contracts negotiated away from business premises*

#### Article 45

##### *(Scope of application)*

1. This Section shall regulate contracts concluded in any form whatsoever between a professional and a consumer concerning the supply of goods or the provision of services, concluded:
  - a) during a visit by the professional to the consumer's home or that of another consumer, or at the consumer's place of work, or on the premises in which the consumer is present, even on a temporary basis, for reasons of work, study, or treatment;
  - b) during an excursion organised by the professional away from his business premises;
  - c) in a public area or one that is open to the public, by signing an order note of any kind;
  - d) by correspondence or in any case on the basis of a catalogue to which the consumer has had access in the absence of the professional.
2. The provisions of this Section shall also apply in the event of contractual offers, whether binding or not, made by the consumer under conditions similar to those described in paragraph 1, which have not yet been accepted by the professional.
3. For contracts as provided in subparagraph 1(d), the provisions of Section II shall apply where more favourable.

#### Article 46

##### *(Exclusions)*

1. The provisions of this Section shall not apply to the following:
  - a) contracts for the construction, sale and rental of immovable property or contracts concerning other rights relating to immovable property, excepting contracts relating to the supply of goods and their incorporation in immovable property and contracts for repairing immovable property;
  - b) contracts for the supply of foodstuffs, beverages or other goods intended for current consumption in the household and supplied at frequent and regular intervals;
  - c) insurance contracts;
  - d) contracts for financial instruments.
2. Contracts for the supply of goods or the provision of services for which the total consideration to be paid by the consumer does not exceed 26 euro, including taxes and net of any ancillary expenses that are specifically identified in the order note, catalogue or other explanatory document, together with an indication of the relative reason for payment, shall also be excluded from the application of this Section. In any event the provisions of this Section shall apply to contracts concluded concomitantly between the same parties, where the total consideration, irrespective of the amount for each contract, exceeds the sum of 26 euro.

## Article 47

### *(Information on the right of cancellation)*

1. For contracts and contractual offers subject to the provisions of this Section, the professional shall inform the consumer of his right of cancellation as provided by Articles 64 to 67, inclusive. Such notice shall be in writing and shall contain:
  - a) an indication of the periods, procedures and any conditions for exercising the right of cancellation;
  - b) the name and address of the person against whom the right of cancellation is to be exercised, or if a company or other legal person, its name and registered office, together with the name of the subject, if different, to whom any product that may already have been delivered is to be returned.
2. Should the contract provide that the exercise of the right of cancellation is not subject to any specific notice periods or procedure, the information shall in any case contain the points referred to at paragraph 1(b).
3. For contracts under Article 45, paragraph 1 (a), (b) and (c), if an order note, under whatever name, is submitted for signing to the consumer, the information at paragraph 1 shall be shown in said order note, separately from the other contractual terms and in print of the same size or larger than the print used for the other elements in the document. One copy of the order note, also indicating the place and date of signing, shall be handed to the consumer.
4. If an order note is not prepared, the information shall in any event be supplied at the time of conclusion of the contract or at the time the contractual offer is made in cases provided by Article 45, paragraph 2, and the relative document shall contain, in clearly legible print, in addition to the points provided by paragraph 1, an indication of the place and date on which it has been delivered to the consumer and particulars enabling the contract to be identified. The professional may require a copy of this document, signed by the consumer.
5. For contracts as provided by Article 45, paragraph 1(d), the information relative to the right of cancellation must be shown in the catalogue or other document illustrating the goods or services that are the object of the contract, or in the relative order note, in print of the same size or larger than the other particulars relating to stipulation of the contract contained in the document. The order note may, in place of the full indication of the points provided by paragraph 1, merely refer to the consumer's right to cancel, specifying the relative notice period and referring to the indications contained in the catalogue or other document illustrating the goods or service for the further elements that must be provided in the information.
6. The professional may not, by way of consideration, accept bills of exchange with a due date of less than fifteen days from the date of conclusion of the contract, neither may he present such bills for payment before the expiry of the same period.

## Article 48

### *(Exclusion of cancellation)*

1. For contracts concerning the supply of services, the right of cancellation may not be exercised in relation to services that have already been provided.

## Article 49

### *(Applicable provisions)*

1. For sales under this Section the provisions of Articles 18, 19 and 20 of Legislative Decree no. 114 of 31 March 1998, reforming the law on trade, shall apply.

SECTION II  
*Distance contracts*

Article 50  
*(Definitions)*

1. For the purposes of this Section:

- a) distance contract shall mean any contract concerning goods or services concluded between a professional and a consumer under an organised distance sales or service-provision scheme run by the supplier, who, for the purpose of the contract, makes exclusive use of one or more means of distance communication up to and including the moment at which the contract is concluded;
- b) means of distance communication shall mean any means which, without the presence of the supplier and the consumer in the same place at the same time, may be used for the conclusion of a contract between those parties;
- c) operator of a means of communication shall mean any public or private natural or legal person whose trade, business, or profession involves making one or more means of distance communication available to suppliers.

Article 51  
*(Scope of application)*

1. The provisions in this Section shall apply to distance contracts, excluding contracts:

- a) relating to financial services, a non-exhaustive list of which is given in Annex I;
- b) concluded by means of automatic vending machines or automated commercial premises;
- c) concluded with telecommunications operators through the use of public payphones;
- d) concluded for the construction and sale of immovable property or relating to other immovable property rights, except for rental;
- d) concluded at an auction.

Article 52  
*(Consumer information)*

1. In good time prior to the conclusion of any distance contract, the consumer shall be provided with the following information:

- a) the identity of the seller and, for contracts requiring payment in advance, the address thereof;
- b) the main characteristics of the goods or services;
- c) the price of the goods or services, including all taxes and duties;
- d) delivery costs;
- e) the arrangements for payment, delivery of the good or provision of the service and any other form of execution of the contract;
- f) the existence of a right of withdrawal from or the exclusion of such right, pursuant to Article 55, Paragraph 2;

- g) procedures and deadlines for the return or collection of the goods if the aforementioned right of withdrawal is exercised;
  - h) the cost of using the means of distance communication, where it is calculated other than at the basic rate;
  - i) the period for which the offer or the price remains valid;
  - j) the minimum duration of contracts for the supply of products or services to be provided continuously or repeatedly.
2. The information referred to in Paragraph 1 (the commercial purpose of which shall be required to be made clear) shall be required to be provided in a clear and comprehensible manner in any way appropriate to the means of distance communication used, and especially with due regard to the principles of good faith and integrity in commercial transactions, assessed in accordance with the protection requirements of particularly vulnerable categories of consumers.
  3. For telephone communications, the identity of the professional and the commercial purpose of the call shall be required to be made explicit at the beginning of any telephone calls to consumers. Failure to observe this shall invalidate any contract. If e-mail is used, the regulations provided for at Article 9 of Legislative Decree no. 70 of 9 April 2003 shall apply.
  4. If methods are used that allow personal communication, the information pursuant to Paragraph 1 shall be provided in Italian if the consumer so requests. In this case, confirmation and further information pursuant to Article 53 shall also be provided in Italian.
  5. For e-commerce, professional information obligations should be added to the information provided for under Article 12 of Legislative Decree no. 70 of 9 April 2003.

#### Article 53

##### *(Written confirmation of information)*

1. The consumer shall receive written confirmation (or, at his request, confirmation in another durable medium available and accessible thereto) of the information referred to in Article 52, Paragraph 1, before or when entering into any contract. By this time and in the same ways, consumers must also be provided with the following information:
  - a) details of the conditions and procedures for exercising the right of withdrawal pursuant to Section IV of this Chapter, including the cases pursuant to Article 65 Paragraph 3;
  - b) the address of the professional against whom the consumer may bring claims;
  - c) information about after-sales services and any existing guarantees;
  - d) conditions for withdrawing from the contract where it is of unspecified duration or a duration exceeding one year.
2. The provisions of this Article shall not apply to services which are provided via some means of distance communication, where they are supplied on only one occasion, and are invoiced by the operator of the same means of distance communication. Even in this case the consumer must be able to obtain the address of the professional to which complaints may be addressed.

#### Article 54

##### *(Implementation)*

1. Unless agreed otherwise by both parties, a professional must implement orders by no later than thirty days after that upon which the consumer placed an order with the professional.
2. In the event of a professional failing to implement an order on the grounds that the goods or services ordered are permanently or even temporarily unavailable, the professional shall be required

to inform the consumer by no later than the date specified at Paragraph 1, according to the procedures pursuant to Article 53, (1), and shall arrange to refund any sums already received in payment. Unless the consumer agrees otherwise, before or at the time of entering into the contract, the professional shall not fulfil his obligations by supplying anything other than that which has been agreed upon, even if it is of equivalent or superior value and quality.

#### Article 55

##### *(Exclusions)*

1. The right of withdrawal provided for by Articles 64 *et seq.* and Articles 52, 53, and 54, (1) shall not apply to :
  - a) contracts for the supply of foodstuffs, beverages or other goods for everyday consumption supplied to the consumer's home, residence, or workplace by regular delivery personnel;
  - b) contracts for the provision of accommodation, transport, catering or leisure services, where the supplier undertakes, when the contract is concluded, to provide these services on a certain date or by a specific date thereafter.
2. Unless otherwise agreed by both parties, consumers shall not be entitled to any right of withdrawal provided for by Articles 64 *et seq.* in the following cases:
  - a) the provision of services if provision thereof has already begun, with the consumer's agreement before the end of the period referred to in Article 64 Paragraph 1;
  - b) the supply of goods or services, the price of which is dependent on financial market rate fluctuations beyond a professional's control;
  - c) the supply of goods made to the customer's specifications or clearly customised or which, by virtue of their nature, cannot be returned or are liable to deteriorate or expire rapidly;
  - d) the supply of audio or video recordings or computer software which have been opened by a consumer;
  - e) the supply of newspapers, periodicals and magazines;
  - f) gaming and lottery services.

#### Article 56

##### *(Payment by card)*

1. Consumers shall be entitled to by card where this is provided for in payment procedures, notification of which has been made to consumers pursuant to Article 52, Paragraph 1, subparagraph e).
2. Card issuers shall be required to credit consumers with payments for which consumers are able to demonstrate that an excess has been paid with regard to the price agreed upon, or payments made following fraudulent use of his card by the professional or a third party, save for application of Article 12 of Decree-Law no. 143 of 3 May 1991, as amended by Law no.197 of 5 July 1991. Card issuers shall be entitled to charge professionals for any monies credited to the consumer.

#### Article 57

##### *(Unsolicited supply)*

1. In cases involving requests for payment, the supply goods or services to consumers without having received orders shall be strictly prohibited.
2. Consumer shall not be required to make any payments for unsolicited supplies. The lack of any response shall never be understood to be consent.

## Article 58

### *(Restrictions on the use of certain means of distance communication)*

1. Use by a professional of telephones, e-mail or automated call systems without the intervention of an operator or facsimile machine shall require the prior consent of consumers to have been given.
2. All and any means of distance communication other than those pursuant to Paragraph 1 (where individual communication is possible) may be used by the professional if no clear objection thereto has been made by the consumer.

## Article 59

### *(Television and other mass-media selling)*

1. For distance contracts involving the supply of goods or the provision of services on the basis of offers made to the public via television or other audio-visual mass media means, where the purpose is a direct conclusion of a contract, and in the case of contracts entered into via the use of information technology or electronic instruments, the information about the right of withdrawal pursuant to Article 52, Paragraph 1, subparagraphs f) and g) as regulated by Articles 64 *et seq.* shall be provided during the presentation of the product or service to which the contract relates in accordance with the special requirements of the type of instrument used and any relative technological developments. For contracts negotiated on the basis of an offer made on television, information must be provided at the beginning and during the broadcast containing sales offers. Information about entitlement to withdraw must also be provided in writing, according to the procedures provided for at Article 52, by no later than the time at which any goods are delivered. Pursuant to Article 65, the period for sending the communication for the exercising of the right to withdraw shall be deemed to commence on the date the goods are received.

## Article 60

### *(References)*

1. Distance contracts shall be required to contain reference to the provisions of this Section.

## Article 61

### *(Reference)*

1. The provisions of Article 18 of Legislative Decree no. 114 of 31 March 1998 containing the reform of the regulations of business relations shall also apply to distance contracts.

## SECTION III

### *Common provisions*

## Article 62

### *(Sanctions)*

1. Except where an action by a professional constitutes a more serious offence, any breach of the regulations in this Chapter or failure to provide information to consumers pursuant to Articles 64 *et seq.* or to refund consumers with sums paid thereby, and where a professional has presented bills of exchange for payment or discount before the end of the period pursuant to Article 64, he shall be

liable to a fine of between € 516 and € 5,165.

2. In particularly serious or repeated cases, the minimum and maximum limits for the fine given above in Paragraph subsection 1 shall be doubled. Persistent offences shall be construed when the same breach is repeated twice in one year, even if a fine has already been paid.
3. Fines shall be applicable pursuant to Law no. 689 of 24 November 1981. Subject to the provisions referring to the powers of officials and law enforcement officers to carry out checks in Article 13 of the aforementioned Law no. 689 of 24 November 1981, administrative police authorities shall determine even such breaches, during the course of their duties or following the lodging of a complaint. The complaints procedure envisaged under Article 17 of Law no. 689 of 24 November 1981 shall be presented to the Chamber of Commerce, Industry, Trade and Agriculture in the Province in which the professional is resident or has his business premises, or in the case of a breach pursuant to Article 58 only, to the Italian Data Protection Authority.

Article 63  
*(Jurisdiction)*

1. For any disputes arising out of the application of this Chapter, the District Court in the place of domicile or residence of a consumer, if in Italy, shall have binding jurisdiction.

SECTION IV  
*Right of withdrawal*

Article 64  
*(Exercise of the right of withdrawal)*

1. For distance contracts and contract proposals, or those negotiated away from business premises, consumers shall be entitled to a period of ten business days to withdraw from a contract without being liable to any penalty and without giving any reason, save for the provisions of Article 65, Paragraphs 3, 4, and 5.
2. Right of withdrawal may be exercised by making written notification, by no later than the term provided for at Paragraph 1, to the premises of the professional, by recorded delivery (with notification of receipt). Notification may also be sent, by the same term, by telegram, telex, e-mail or facsimile machine, provided that confirmation is also given by recorded delivery (with notification of receipt) by no later than 48 hours thereafter; a by recorded delivery letter shall be understood to have been sent in good time if delivered to a post office accepting the delivery by no later than the term provided for by the Code (or by the contract, if different). Notification of receipt, however, shall not be considered sufficient for the exercise of any right of withdrawal.
3. If expressly provided for in the offer or information regarding the right of withdrawal, goods received may be returned by no later than the term specified above at Paragraph 1, instead of specific notification having to be made.

Article 65  
*(Starting dates)*

1. For contracts or contract proposals negotiated away from business premises, periods for consumers to avail themselves of their right of withdrawal pursuant to Article 64 shall commence:
  - a) on the day of signing the order note containing the information referred to in Article 47 or, if an order note has not been provided, on the date the information itself is received, for contracts for services or contracts for the supply of goods, provided that the professional has previously shown

or explained to a consumer the product for which a contract has been concluded.

- b) on the date of receipt of goods, if later, for contracts for the supply of goods, if the purchase was made without the professional being present, or a product of a different type than that for which a contract has been concluded has been shown or explained.
2. For distance contracts, the period for exercising the right of withdrawal pursuant to Article 64 shall commence:
- a) in the case of goods, from the date of receipt by the consumer, provided that all information requirements pursuant to Article 52 have been met, or from the date upon which such requirements were met, if they are fulfilled after conclusion of the contract, provided that this period does not exceed three months after the date of conclusion;

- b) in the case of services, from the day of conclusion of the contract or the date on which the requirements pursuant to Article 52 have been met, if they are met after conclusion of the contract, provided that this period does not exceed three months after the date of conclusion.
3. For contracts or contract proposals negotiated away from business premises, if a professional has failed to meet his information requirements pursuant to Article 47, or for distance contracts, the information requirements pursuant to Article 52, Paragraph 1, subparagraphs f) and g), and Article 53, the period for exercising the right of withdrawal shall be sixty or ninety days respectively, and in the case of goods, shall commence on the day of receipt by the consumer, for services, from the day the contract is concluded.
4. Provisions pursuant to Paragraph 3 shall also apply if a professional supplies incomplete or incorrect information that does not permit the right of withdrawal to be exercised correctly.
5. Parties shall be entitled to agree upon broader guarantees for consumers than those provided for in this Article.

#### Article 66

##### *(Effects of the right of withdrawal)*

1. Upon receipt by the professional of a notification pursuant to Article 64, the parties shall be released from their respective obligations arising out of any contract or contract proposal. If, in the meantime, any requirements have been met out in full or in part, this shall not affect the further obligations pursuant to Article 67.

#### Article 67

##### *(Further obligations of the parties)*

1. If goods have been delivered, consumers shall be required to return them or to make them available to the professional or the person appointed thereby, according to the procedures and timeframes provided for in the contract. The period for returning the goods shall never be less than ten business days after the day the goods were received. Upon expiry of this term, any goods shall be understood to have been returned when they are delivered to the post office accepting the delivery or to the forwarding agent.
2. For contracts for the sale of goods, if goods have been delivered, the substantial integrity thereof shall be an essential prerequisite for the exercise of the right of withdrawal. However the goods need only be returned in a normal state of repair, to the extent that they have been kept and preferably used with all due care and attention.
3. The only expenses due from a consumer when exercising his right of withdrawal pursuant to this Article shall be the direct expenses of returning any such goods to the sender, where expressly provided for in the contract.
4. If the right of withdrawal is exercised by the consumer in conformity with the provisions of this Section, professionals shall be required to refund any monies paid by consumers, including any deposits. Refund must be made free of charge, in the shortest possible time, and never any later than thirty days after the date upon which the professional was informed of the consumer's intention to withdraw. These sums shall be understood to have been refunded if they are effectively returned, sent or credited with an effective date of no later than the termination of the period previously indicated.
5. If payment has been made by way of bills of exchange, and the latter have not yet been presented for payment, arrangements must be made for the return thereof. Any contract term which limits refunds to the consumer of the sums paid as a result of exercising the right of withdrawal shall not be valid.
6. If the price for goods or services is covered by a contract pursuant to this Title is fully or partially

covered by a loan granted to the consumer by the professional or by third parties on the basis of an agreement between the latter and the professional, the credit agreement shall be understood to have been automatically terminated, without any penalty, provided that the consumer exercises his right of withdrawal in accordance with the provisions of this Article. The professional shall be required to notify any third parties granting any credit that the consumer has exercised his right to withdrawal. Any sums paid by the third party granting the credit for payment of goods or services until it became aware that the consumer had exercised his right of withdrawal shall be refunded to the third party by the professional, without any penalty, except for payment of legally accrued interest.

## CHAPTER II *E-commerce*

### Article 68 *(Reference)*

1. For services offered by e-commerce companies to consumers via e-mail, for all aspects not covered by this Code, the provisions of Legislative Decree no. 70 of 9 April 2003 incorporating implementation of European Parliament and Council Directive 2000/31/EC of 8 June 2000 shall apply, relating to certain legal aspects of services offered by e-commerce companies, (especially e-commerce), in the internal market.

## TITLE I *Provisions relating to single contracts*

### CHAPTER I *Contracts relating to the purchase of the right to use immovable properties on a timeshare basis*

#### Article 69 *(Definitions)*

1. For the purposes of this chapter the following definitions are used:
  - a) contract: one or more contracts concluded for at least three years under which, on payment of a global price, a real property right or any other right relating to the use of one or more immovable properties for a specified or specifiable period of the year, which may not be less than one week, is established or is the subject of a transfer or an undertaking to transfer,
  - b) purchaser: shall mean the consumer in whose favour the right for which the contract is concluded is established or is subject to an undertaking to transfer;
  - c) vendor: shall mean any natural or legal person who, acting in his professional capacity, establishes, transfers or undertakes to transfer the right which is the subject of the contract. For the purposes of this code the vendor is also anyone who, for any reason, promotes the establishment, transfer or undertaking to transfer the right which is the subject of the contract.
  - d) immovable property: shall mean any building, also used as a hotel, or part of the same, for use as a residence, hotel or tourist accommodation subject to the right which is the subject of the contract.

Article 70 (*Informative  
document*)

1. The vendor is bound to provide any person requesting information on immovable property with an informative document indicating precise details of the following:
  - a) the right which is the subject of the contract, specifying the nature and conditions of exercise of such right in the country in which the immovable property is situated; if said conditions have been fulfilled or, if not, which are to be fulfilled;
  - b) the vendor's name and address, specifying his legal capacity, identity and the address of the owner;
  - c) if the immovable property has been determined:
    1. a description of that property and its location;
    2. the number of the building permit or other building authorisation and the regional laws governing use of the immovable property as tourist accommodation and for immovable properties located abroad, details of the documents guaranteeing their conformity with existing legislation on the subject;
  - d) if the immovable property is under construction:
    1. the number of the building permit and the regional laws governing use of immovable property as tourist accommodation and for immovable properties located abroad, details of the documents guaranteeing their conformity with legislation in force on the subject, and the state of completion of the immovable property and a reasonable estimate of the deadline for completion of the works;
    2. the state of completion of the services such as the gas, electricity, water and telephone connections;
    3. if the immovable property has yet to be completed, the guarantees relating to the reimbursement of any payment made and the conditions governing the operation of those guarantees.
  - e) the common services to which the purchaser has or will have access such as electricity, water, maintenance, refuse collection and on what conditions.
  - f) the common facilities to which the purchaser has or may have access such as swimming pool, sauna etc., and on what conditions.
  - g) the principles on the basis of which the maintenance of and repairs to the immovable property and its administration and management will be arranged.
  - h) the global price, including VAT, to be paid by the purchaser by way of consideration; an estimate of the amount of charges borne by the purchaser for the use of common services and facilities and the basis for the calculation of the amount of charges relating to occupation of the property, the taxes and fees, the administrative overheads, expenses for maintenance and repair and any costs for transcribing the contract.
  - i) information on the right to withdraw from the contract indicating details of the person to whom the withdrawal is to be addressed, specifying the arrangements under which such letters may be sent and the total amount of costs, specifying those which the purchaser will be required to repay in the event of withdrawal; information on the arrangements for cancellation of the credit agreement linked to the contract in the event of withdrawal;
  - j) the ways in which further details may be obtained
2. The provisions of paragraph 1 also apply where the vendor offers to the public a right granting the enjoyment of one or more immovable properties on the basis of lists, catalogues or other forms of

communication. In this case an informative document shall be handed over for each of the immovable properties forming the subject of the offer.

3. The vendor may not make any changes to the elements of the document pursuant to paragraph 1, unless these are due to circumstances beyond his control. In such a case the amendments shall be notified to the interested party before the contract is concluded and included in the contract. Nevertheless, after the informative document is delivered, the parties can agree to amend the document itself.
4. The document pursuant to subsection 2 shall be drafted in the language or one of the languages of the Member State in which the interested party is resident or, at the latter's request, in the language or one of the languages of the country in which the person himself is a citizen, provided that this is an official language of the European Union.
5. The provisions of the Code for Cultural and Landscape Heritage referred to in Legislative Decree of 22 January 2004 no. 42 are not affected.

#### Article 71

##### *(Requirements of the contract)*

1. The contract shall be in writing, failing which it shall be invalid. It shall be drawn up in Italian and translated into the language or one of the languages of the Member State in which the purchaser is resident or at the purchaser's request in the language or one of the languages of the Member State of which he is a citizen, provided that this is an official language of the European Union.
2. The contract shall contain, apart from all the elements pursuant to Article 70, paragraph 1, subparagraphs a) - i), the following additional information:
  - a) the identity and domicile of the purchaser;
  - b) duration of the contract and the date from which the consumer may exercise his right of enjoyment;
  - c) a clause stating that the purchase does not involve additional burdens, obligations or expenses other than those set out in the contract to be borne by the purchaser;
  - d) whether or not there is a possibility of taking part in a system of exchange or sale of the right which is the subject of the contract, together with any costs if the system of exchange or sale has been organised by the vendor or by a third party named by the latter in the contract;
  - e) the date and place of signing of the contract.
3. The vendor shall provide the purchaser with a translation of the contract in the language of the Member State in which the immovable property is located, provided that this is an official language of the European Union.

#### Article 72

##### *(Vendor 's specific obligations)*

1. The vendor shall use the term timeshare in the informative document, in the contract and the commercial advertising relating to the immovable property when the right which is the subject of the contract is a real right.
2. The commercial advertising relating to the immovable property shall refer to the right to obtain the informative document indicating the place in which it is delivered.

#### Article 73

##### *(Right of withdrawal)*

1. Within ten working days from conclusion of the contract the purchaser may withdraw without

specifying the reason. In this case the purchaser is not bound to pay any penalty and is only required to refund the vendor for the documented costs incurred as a result of conclusion of the contract and which are mentioned in the contract, provided that these are expenses relating to formalities to be completed before the end of the period of withdrawal.

2. If the contract does not contain one of the elements pursuant to section 70, paragraph 1, subparagraphs a), b), c), d), points 1), h) and i), and Article 71, paragraph 2, subparagraphs b) and d), and does not contain the date referred to at Article 71, paragraph 2, subparagraph e), the purchaser may withdraw from the contract within three months from conclusion. In such a case the purchaser shall not be required to pay any penalty or reimbursement.
3. If, within three months from conclusion of the contract, the elements pursuant to subsection 2 have been provided, the purchaser may exercise the right of withdrawal under the conditions pursuant to paragraph 1, and the period of ten working days starts from the date said elements are received.
4. If the purchaser does not exercise the right of withdrawal pursuant to subsection 2, and the vendor does not provide the notice pursuant to subsection 3, the purchaser may exercise the right of withdrawal under the conditions pursuant to paragraph 1, and the period of ten working days starts from the day after the expiry of three months from conclusion of the contract.
5. The right of withdrawal shall be exercised by notifying the person whose name and address appears in the contract and failing that, to the vendor. The notification shall be signed by the purchaser and shall be sent by registered post with return receipt before the deadline expires; it may be sent, within the same period, also by telegram, telex or fax, provided that it is confirmed by registered post with return receipt within the following 48 hours.

#### Article 74

##### *(Prohibitions on advances)*

1. The vendor is prohibited from demanding or receiving from the purchaser the payment of sums of money by way of an advance, deposit or down payment, until expiry of the period granted for the right of withdrawal pursuant to section 73.

#### Article 75

##### *(Reference to general provisions on contracts with special procedures of conclusion)*

1. Unless expressly provided for, the provisions of sections 64 to 67 apply to contracts regulated by this chapter.
2. Where appropriate, the more favourable provisions laid down by chapter I of title III of part III apply to contracts pursuant to this chapter.

#### Article 76

##### *(Obligation of guarantee)*

1. Any vendor who is not a stock company or has paid up share capital of less than € 5,164,569 and whose registered head office or branch offices are not in a Member State shall be required to provide a suitable bank or insurance surety to guarantee correct execution of the contract.
2. In any event the vendor shall be required to provide a bank or insurance surety if the immovable property which is the subject of the contract is under construction, by way of guarantee for the completion of the works.
3. Express reference shall be made to the guarantees in the contract, failing which it shall be invalid.
4. The guarantees pursuant to paragraphs 1 and 2 may not impose prior discussion of the vendor on the purchaser.

#### Article 77

##### *(Cancellation of the contract of credit granting)*

1. The credit agreement supplied by the vendor or a third party on the basis of an agreement between the latter and the vendor, signed by the purchaser for payment of the price or part of the same, is automatically cancelled without the payment of any penalty, if the purchaser has exercised the right of withdrawal pursuant to section 73.

#### Article 78

##### *(Nullity of contractual terms or additional covenants)*

1. Any term or additional covenant whereby a purchaser renounces the enjoyment of rights under this chapter or limits the liabilities to be borne by the vendor shall not be binding.

#### Article 79

##### *(Binding territorial jurisdiction)*

1. For civil disputes arising out of the application of this chapter, the court of the consumer's domicile or place of residence, if situated in an EU Member State, shall have unchallengeable jurisdiction.

#### Article 80

##### *(Purchaser 's rights under overseas law)*

1. If the parties have chosen to apply to the contract a law other than Italian law, the purchaser shall in any event be afforded the protection provided by this chapter, if the immovable property which is the subject of the contract is located in an EU Member State.

#### Article 81

##### *(Sanctions)*

1. Unless the act constitutes an offence, any vendor in breach of the provisions pursuant to Article 70, (1), a), b), c), (1), d), (2) and (3), f), g), h) and i), Article 71, paragraph 3, and Articles 72, 74 and 78, shall be punished by a fine of between € 500 and € 3,000.
2. The additional sanction of suspension of business activities from fifteen days to three months for any vendor who repeatedly breaches the provisions pursuant to paragraph 1 shall be applied.
3. For the purposes of ascertaining the infringement and application of the fine or sanction, paragraph 62, 3 shall apply.

### CHAPTER II *Tourist services*

#### Article 82

##### *(Scope of application)*

1. The provisions of this chapter shall apply to tourist packages defined under Article 83, sold or offered for sale in Italy by the organiser or vendor, pursuant to Article 84.
2. This chapter shall also apply to tourist packages negotiated away from the business premises and on a distance basis, subject to the provisions of Articles 64 - 67.

Article 83

*(Definitions)*

1. For the purposes of this chapter the following definitions are used:
  - a) organiser means the person who organises the combination of elements pursuant to Article 84 and undertakes in his own name and for a flat-rate consideration to procure packages to third parties;
  - b) retailer means the person who sells or undertakes to procure packages created pursuant to Article 84 against a flat-rate consideration;
  - c) consumer means the purchaser, transferee of a package or any person, also to be nominated, provided that he meets the conditions required to use the service, on behalf of whom the principal contractor undertakes to purchase a package without remuneration.
2. The organiser may sell packages directly or via a retailer.

Article 84

*(Packages)*

1. Packages concern the journeys, the holidays and excursions or visits all included, resulting from the pre-determined combination of at least two of the elements referred to below, sold or offered for sale at a flat-rate consideration, and of a duration in excess of twenty four hours or including at least one night:
  - a) transport;
  - b) accommodation;
  - c) tourist services not related to the transport or accommodation referred to in Article 86, paragraphs i) and o), that form a significant part of the package.
2. The separate billing of elements of the same package shall not absolve the organiser or retailer from the obligations in this unit.

Article 85 *(Form of contract for the sale of packages)*

1. The contract for the sale of packages shall be drawn up in written, clear and precise terms.
2. The consumer shall be issued with a copy of the contract entered into, signed or stamped by the organiser or retailer.

Article 86

*(Contents of contract for the sale of packages)*

1. The contract shall contain the following elements:
  - a) the destination, duration, start and end date, and - if there are various stages of the holiday - the duration of such stages with relative start and end dates;
  - b) the name, address, telephone number and details of the business licence of the organiser or retailer signing the contract;
  - c) the price of the package, procedures for changing the price, dues and taxes on landing, disembarking and embarking at ports and airports and the other charges paid by the traveller;
  - d) the amount, in any event no higher than twenty five per cent of the price, to be paid upon booking, together with the period for payment of the balance. Said amount is paid by way of deposit but the effects of Article 1385 of the civil code do not arise if the withdrawal is due to exceptional

circumstances or is justified by some serious breach committed by the other party;

- e) details of insurance cover and any additional policies agreed with the traveller;
- f) requirements and procedures for use of the guarantee fund pursuant to Article 100;
- g) the means, characteristics and categories of transport, dates, times, and points of departure and return, type of seat assigned;
- h) where the package includes hotel accommodation, its location, tourist category, grade, suitability for disabled people if appropriate, as well as its main features and compliance with the rules of the host Member State concerned and the meal plan;
- i) the itinerary, visits, excursions or other services included in the package, including the presence of group leaders and tourist guides;
- j) (this letter does not exist in the Italian alphabet)
- k) (this letter does not exist in the Italian alphabet)
- l) the deadline for informing the consumer of cancellation of the holiday if the minimum number of persons required is not reached;
- m) specific agreements on the travel arrangements expressly agreed between the organiser or the retailer and the consumer at the time of booking;
- n) any costs borne by the consumer for transfer of the contract to a third party;
- o) period within which the consumer shall make any complaint concerning failure to perform or improper performance of the contract;
- p) period within which the consumer shall notify his decision concerning amendments to the contract terms pursuant to Article 91.

## Article 87

### *(Consumer information)*

1. During negotiations and in any event prior to conclusion of the contract, the retailer or organiser shall provide written information of a general nature concerning the conditions applicable to citizens of the Member State of the European Union concerning passports and visas indicating the periods for obtaining them, as well as with information on the health formalities required for the journey and the stay.
2. The organiser and the retailer shall provide the consumer with the following information in writing before the start of the journey:
  - a) the times and places of intermediate stops and transport connections;
  - b) the name, address and telephone number of any local representatives of the organiser or retailer or local agencies that may be contacted by the traveller if in difficulty;
  - c) the telephone number of the organiser or retailer that may be used in the case of difficulty in the absence of local representatives;
  - d) in the case of overseas journeys and stays by minors, telephone numbers to establish direct contact with the minor or the person responsible at the minor's place of stay;
  - e) concerning the optional conclusion of an insurance policy to cover the cost of cancellation by the consumer or the cost of assistance, including repatriation, in the event of accident or illness.
3. Where the contract is stipulated just prior to departure, the indications contained in paragraph 1 shall be supplied at the same time the contract is concluded.
4. The provision of any misleading information about service procedures offered, the price, and other

elements of the contract are always prohibited, whatever method is used to communicate such information to the consumer.

#### Article 88

##### *(Information brochure)*

1. Where made available to the consumer, brochures shall be required to indicate clearly and accurately:
  - a) the destination, means, type, and category of transport used;
  - b) the accommodation in a hotel or other type of accommodation, the location, category or level and the main features, its approval and classification by the host country;
  - c) the meal plan;
  - d) the route;
  - e) the general information applicable to a citizen of a European Union Member State in relation to passports and visas, indicating the period of time required for obtaining them, as well as the health obligations and the formalities to be completed to carry out travel and holidays;
  - f) the amount or percentage of the price to be paid as a deposit and the deadlines for payment of the balance;
  - g) a rough indication of the minimum number of participants that may be required for the all-inclusive journey and the period within which the consumer shall be informed of cancellation of the package;
  - h) the deadlines, procedures, and person against whom the right of withdrawal is to be exercised pursuant to Articles 64 - 67 for contracts negotiated away from business premises or on a distance basis.
2. The information contained in the brochure binds the organiser and the retailer in relation to their respective liabilities, unless the amendments to the conditions indicated therein are notified to the consumer in writing before the contract is concluded or are agreed by the parties to the contract, by means of a specific written agreement, after conclusion.

#### Article 89

##### *(Transferring a contract)*

1. The consumer may ask a third party to stand in for him, provided the third party meets all the requirements for using the package within the terms arising out of the contract, and provided he notifies the organiser or retailer in writing no later than four working days before departure, that he is unable to proceed with the package, and gives the third party's details.
2. The transferor and the transferee shall be jointly liable vis-à-vis the organiser or the retailer for payment of the price and any further expenses that may arise out of the transfer.

#### Article 90

##### *(Price review)*

1. Revision of the flat-rate consideration for the package agreed by the parties shall only be admitted if expressly stated in the contract, and details of calculation methods are provided, as a result of changes in the cost of transport, fuel, taxes and duties such as those for landing, disembarkation or embarkation in ports or airports, of the exchange rate applied. The costs shall be suitably

documented by the retailer.

2. An increase may never exceed ten per centum of the original price.
3. If the price increase exceeds the percentage referred to above at paragraph 2, the purchaser may withdraw from the contract upon reimbursement of the sums already paid to the other party.
4. In any event the price may not be increased during the twenty days prior to departure.

#### Article 91

##### *(Alteration of contractual terms)*

1. Before departure, if the organiser or retailer finds that he is required to make significant alterations to any of the elements of the contract, he shall immediately make written notification to the consumer, indicating the type of alteration and the resulting price change pursuant to Article 90.
2. If the consumer does not accept the proposed alteration pursuant to paragraph 1, the consumer may withdraw without penalty and is entitled to the provisions of Article 92.
3. The consumer shall inform the organiser or retailer of his decision within two working days from the date on which he received the notice referred to at paragraph 2 above.
4. After departure, if an essential part of the services provided for in the contract cannot be provided, the organiser shall be required to arrange for adequate alternatives for continuation of the planned journey that do not involve costs of any kind to be borne by the consumer, or shall be required to reimburse the consumer up to the difference between the services originally planned and those actually provided, not including any damage compensation.
5. If no alternative solution is possible or the consumer does not accept it (in bona fide), the organiser shall be required to provide the consumer with equivalent transport back to the place of departure or another agreed point, and shall pay the consumer the difference between the services planned and those effectively provided up until the moment of early return.

#### Article 92

##### *(Consumer 's rights in the event of withdrawal from or cancellation of service)*

1. If the consumer withdraws from the contract in the circumstances covered by Articles 90 and 91, or if the package is cancelled before departure for any reason (other than due to some fault for which the consumer is liable), the consumer shall be entitled to take a substitute package of equivalent or higher quality at no additional cost, or a package of lower quality with a reimbursement of the difference in price, or he shall be repaid (by no later than seven working days after withdrawal or cancellation) any sums of money he has already paid.
2. In the cases covered by Paragraph 1, a consumer shall be entitled to compensation for all and any further damages arising out of a failure to meet the terms of the contract.
3. Paragraph 2 shall not apply if cancellation of the package is due to a failure to reach the minimum number of participants required and the consumer has been informed in writing at least twenty days prior to the date scheduled for departure, or due to exceptional circumstances (force majeure), except overbooking.

#### Article 93

##### *(Partial or total failure to meet obligations)*

1. Subject to the obligations provided for in the Article above, in the event of failure to perform or inadequate performance of the obligations assumed upon sale of the package, the organiser and retailer shall be required to pay damages, according to their respective liabilities, if they fail to prove that their partial or total failure to meet their contractual obligations was caused by impossibility to perform due to circumstances beyond their control.

2. If an organiser or retailer uses other service providers, he shall still be liable for damages arising to consumers, without prejudice to the right of the organiser and/or retailer to pursue those other suppliers of services.

Article 94 (*Liability for  
personal injury*)

1. Damages for personal injury arising out of any partial or total failure to meet contractual obligations for services covered by a package may be paid up to the limits established by International Conventions thereon, of which Italy or the European Union are members, and in particular within the limits provided for by the Warsaw Convention dated 12 October 1929 on international air transport, implemented by Law no. 841 of 19 May 1932, the Berne Convention of 25 February 1961 on rail transport, implemented by Law no. 806 of 2 March 1963, and the Brussels Convention of 23 April 1970 (C.C.V.), implemented by Law no. 1084 of 27 December 1977, for all other possible liability of the organiser and/or vendor, as implemented in current enacted law or up to the limits established by further conventions, implemented in Italian legislation, of which members of the European Union or the European Union itself are part.
2. The right to compensation for damages shall expire three years after the traveller returns to his point of departure, save for the period of eighteen or twelve months with regard to failure to provide transport services included in the package, as covered by Article 2951 of the Civil Code.
3. Any term establishing limits on compensation lower than that referred to at paragraph 1 shall be null and void.

Article 95

*(Liability for damages other than personal injury)*

1. Contracting parties may agree in writing (always excepting the application of Article 1341 of the Civil Code and Articles 33 - 37 of the Code) to limitations to compensation for damages other than personal injury, arising out of partial or total failure to meet their contractual obligations in regard of services in a package.
2. If the limitation pursuant to paragraph 1 is lower than the amount provided for by Article 13 of the International Convention on Travel Contracts (C.C.V.) signed in Brussels on 23 April 1970, and implemented by Law no. 1084 of 27 December 1977, it shall be unenforceable.
3. Unless otherwise agreed, compensation for damages shall be allowed up to the limits provided for by Article 13 of the International Convention on Travel Contracts signed in Brussels on 23 April 1970 (and implemented by Law no. 1084 of 27 December 1977), and by Articles 1783 - 1786 of the Civil Code.
4. The right to compensation for damages shall expire one year after the traveller returns to the place of departure.

Article 96

*(Exemption from liability)*

1. The organiser and the retailer are exempted from the liability pursuant to sections 94 and 95 where the failure to perform or inadequate performance of the contract is due to the consumer or depends on an unforeseeable or unavoidable act of a third party or a fortuitous event or exceptional circumstances (force majeure).
2. The organiser or retailer shall be required, at his earliest opportunity, to take all measures necessary to permit the consumer to continue his holiday, in no circumstances subject to the consumer's right to compensation for damages if the failure to meet the terms of a contract is due thereto.

#### Article 97

##### *(Subrogation rights)*

1. Organisers or retailers who have paid compensation to a consumer shall be subrogated as to all the rights and actions of the latter vis-à-vis any third parties responsible.
2. Consumers shall be required to furnish the organiser or retailer with all documents, information, and any other details elements in their possession that may be useful for the exercise of the right of subrogation.

#### Article 98

##### *(Making complaints)*

1. Consumers shall be required to make complaints about partial or total failure by the organiser (or his local representative, or the group leader) to meet his contractual obligations without delay so that the former may remedy such failures at his earliest opportunity.
2. Consumers may also make a claim by sending a recorded delivery letter (with notification of receipt) to the organiser or retailer, no later than ten working days after returning to the point of departure.

#### Article 99

##### *(Insurance)*

1. The organiser and the retailer shall be required to take out insurance cover for damages to consumers, pursuant to Articles 94 and 95.
2. This shall not affect the tourist's entitlement to take out insurance policies for assistance.

#### Article 100

##### *(Guarantee fund)*

1. To cover insolvency or bankruptcy of retailers or organisers, a national guarantee fund has been set up by the Ministry of Productive Activities to enable reimbursement of monies paid and repatriation of consumers in the case of journeys overseas, and to provide immediate financial resources in the event of forced repatriation of tourists from countries outside the European Union in emergencies, whether or not these are due to the organiser.
2. This fund is financed by an annual amount equivalent to two per centum of the amount of the premium of compulsory insurance policies pursuant to Article 99, received as revenue from Member States for reallocation by an order of the Ministry of Economy and Finance to the fund referred to above at Paragraph 1.
3. For the purposes listed above at Paragraph 1, the fund operates up to the limits determined pursuant to Paragraph 2.
4. Fund managers may have right of redress against any defaulting party.
5. Procedures for the operation and management of the fund are specified in a joint Decree by the Ministry of Productive Activities and the Ministry of Economy and Finance.

### TITLE IV

#### *The provision of public services*

### CHAPTER I

*Public services*

Article 101

*(Reference provision)*

1. The State and the Regions, within the sphere of their relative powers, shall guarantee the rights of those using public services by the proper and day-to-day implementation of the letter and spirit of current enacted law.
2. All dealings with users shall be conducted with due respect for pre-determined and adequately publicised standards of quality.
3. Users shall be entitled, via the democratic process, to participate in the procedures for determining and assessing the quality standards provided for by consumer legislation.
4. Legislation requires the providers of certain public services to draw up charters, using specific implementation programmes.

PART IV  
*SAFETY AND QUALITY*

TITLE I  
*Product safety*

Article 102 *(Purpose and scope of  
application)*

1. This Title aims to ensure that free products or those sold on the market are safe for use.
2. The provisions of this Title shall apply to all products defined by Article 103, paragraph 1, subparagraph a). Each shall apply where there are no specific provisions with the same objective in current enacted product safety law.
3. In the event of certain products being subject to European safety legislation, the provisions of this Title shall only apply to the aspects and risks or categories of risks not covered by those provisions.
4. Article 103, paragraph 1, subparagraphs b) and c) and Articles 104 and 105 shall not apply to products referred to in Paragraph 3.
5. Articles 104 - 108 shall only apply to products referred to in Paragraph 3 in the event of there being no specific provisions elsewhere covering the same area.
6. The provisions of this Title shall not apply to food products pursuant to Parliament and Council Regulation no. 178/2002/EC of 28 January 2002.

Article 103

*(Definitions)*

1. For the purposes of this chapter the following definitions are used:
  - a) safe product: any product, as defined by Article 3, paragraph 1, subparagraph e) which (under normal conditions of use or those which may be reasonably envisaged, including shelf life and,

where applicable, usage, installation and maintenance requirements) does not present any hazard or only minimum risks arising out of use of a product and considered acceptable and consistent with a high level of personal health and safety taking into account the following points in particular:

1. product characteristics, including its make-up, packaging, and instructions for assembly and - where applicable - installation and maintenance instructions;
  2. its effect on other products, where it can be reasonably envisaged that it will be used with other products;
  3. the appearance and packaging of the product, its labelling, any warnings and instructions for use and disposal, and any other general information about the product;
  4. those categories of consumers who are at risk when using the product (in particular children and the elderly).
- b) dangerous product: any product which does not meet the definition of "safe product" as per subparagraph a) above;
- c) serious risk: any serious risk including those with non-immediate effects which require assistance by the emergency services;
- d) producer: the manufacturer of the product in the European Union and any other person or persons presenting themselves as the manufacturer or manufacturers by placing a name, trademark or other distinguishing mark on the product, or the person who reconditions the product; the manufacturer's representative when the manufacturer is not established in the European Union, the importer of the product; other persons in the supply chain insofar as their activities may affect the safety properties of a product;
- e) distributor: any person in the supply chain whose activity does not affect the safety properties of a product;
- f) recall: any measure aimed at achieving the return of a dangerous product that has already been supplied or made available to consumers by the producer or distributor;
- g) withdrawal: any measure aimed at preventing the distribution and display or offer of a product dangerous to the consumer.
2. The possibility of achieving a higher safety level or of procuring other products presenting a lesser risk does not constitute sufficient grounds for considering a product as unsafe or dangerous.

*Article 104 (Obligations of the producer and distributor)*

1. Producers may only place safe products on the market.
2. Producers shall be required to provide consumers with all relevant information to enable them to assess the risks inherent in a product throughout its normal or reasonably foreseeable use, where such risks are not immediately obvious without adequate warnings, and to take precautions against such risks. The presence of warnings does not exempt any person from compliance with the other requirements laid down in this Title.
3. The producer shall adopt measures commensurate with the characteristics of the products which they supply, enabling the consumer to be informed of risks which the use of these products might pose and to take appropriate action, including - if necessary to avoid these risks - their withdrawal from the market, adequately and effectively warning consumers, or recalling them from consumers.
4. The measures referred to in Paragraph 3 shall include:
  - a) an indication, based on the product or its packaging, of the identity and details of the producer and the product reference or, where applicable, the batch of products to which it belongs, except where not to give such information is reasonably justified;

- b) sample testing of marketed products, investigating and - if necessary - keeping a register of complaints and informing retailers of such monitoring activities.
5. The withdrawal, recall, and information procedures mentioned in Paragraph 3 above may be voluntary or upon request of the competent authorities pursuant to Article 107. Recalls shall be made when all other procedures have been seen to be inadequate as a means of avoiding specific hazards, or when producers consider it necessary or a required to recall products by the competent authorities.
  6. When carrying out their activities, distributors shall be required to act with the due care to help to ensure that safe products are put onto the market. In particular they shall be required:
    - a) not to supply products which they know or should reasonably have presumed to be unsafe, on the basis of the information in their possession and as professionals;
    - b) to monitor the safety of products placed on the market, by passing on information on product hazards to the producer and competent authorities for the actions for which they are responsible;
    - c) to co-operate with any actions taken pursuant to subparagraph b) by keeping and providing the documentation necessary for tracing the origin of the products for a period of ten years from the date they are transferred to the end consumer.
  7. Where producers and distributors know or ought to know, on the basis of both the information in their possession their experience, that a product that they have placed on the market poses hazards to the consumer incompatible with general safety requirements, they shall be required to notify the competent authorities referred to at Article 106, paragraph 1 immediately, specifying the actions taken to prevent risk to consumers.
  8. In the event of serious hazards, the information to be provided shall include at least:
    - a) information enabling exact identification of the product or batch of products in question;
    - b) a full description of the hazard that the products in question present;
    - c) all relevant available information for use in tracing the product;
    - d) details of actions implemented to prevent risks to consumers.
  9. Up to the limits of their respective fields, producers and distributors shall be required to cooperate with the competent authorities where so requested in relation to actions implemented to avoid risks caused by products that they supply or have supplied.

#### Article 105

##### *(Safety presumption and appraisals)*

1. Except where there are already other specific European safety provisions, a product shall be assumed to be safe when it conforms to the legislation in force in the Member State in which a product is marketed and with reference to that country's health and safety regulations.
2. It is to be assumed that a product is safe with regard to the risks and risk categories governed by legislation in a Member State when it complies with non-mandatory regulations in a Member State implementing European laws reference to which has been published in the European Commission Official Journal pursuant to Article 4 of Parliament and Council Directive 2001/95/EC of 3 December 2001.
3. In the absence of regulations pursuant to Paragraphs 1 and 2, product safety is assessed on the basis of non-mandatory national laws implementing European laws, the laws in force in the Member State in which the product is marketed, European Commission recommendations relating to directions on the appraisal of product safety, codes of good practice relative to safety in the sector concerned, the latest technical discoveries, and levels of safety that consumers can reasonably expect.

4. Except where otherwise specified in Paragraphs 1, 2 and 3, the competent authorities shall be required to implement the all measures necessary to limit or prevent the placing on the market or to request the withdrawal or recall of the product from the market, if the product, notwithstanding its conformity, proves to be dangerous to the health and safety of consumers.

#### Article 106

##### *(Consultation and co-ordination procedures)*

1. The Ministries of Productive Activities, Health, Employment and Social Policy, the Interior, Economy and Finance, Infrastructures and Transport and the other Ministries currently in charge of carrying out the checks referred to in Article 107, shall arrange, up to the limits of normal budget resources and according to their respective fields, for the creation of a rapid information exchange system via a suitable electronic retrieval device, whether or not over the public network, in compliance with the provisions laid out at European level, and which allow the storage and distribution of information.
2. The criteria for co-ordinating the controls provided for by Article 107 have been established in a special Conference of Services between the competent Ministries and Departments referred to above at Paragraph 1, called at least twice a year by the Ministry of Productive Activities. The Ministry of Justice and the other Departments referred to above in Paragraph 1 currently responsible for the matter shall also take part in the conference.
3. The conference, pursuant to Paragraph 2, shall also consider data gathered and processed as part of the European household accidents and leisure time system.
4. Trade Associations for production and distribution, together with Consumers' Associations and users registered on the list pursuant to Article 137 may also present observations at the conference pursuant to Paragraph 2, in accordance with procedures laid down by the conference itself.

#### Article 107

##### *(Checks)*

1. The Departments listed above in Article 106, 1, shall check that all products placed on the market are safe. The Ministry of Productive Activities shall notify the European Commission of the aforementioned list of Departments, as well as the Ministries on which these Departments rely, updated annually upon indications from the Departments themselves.
2. The Departments, pursuant to Article 106 may, *inter alia*, adopt the following measures:
  - a) for any product:
    1. even after it has been placed on the market as safe, organise suitable checks on its safety properties, on an adequate scale, up to the final stage of use or consumption, and if necessary carry out inspections at production or packaging plant, warehouses, and sales depots;
    2. require all necessary information to be provided by the parties concerned;
    3. take samples of products and subject them to safety checks, and draw up a report (a copy of which shall be delivered to the parties concerned);
  - b) for any product that might pose risks in certain conditions:
    1. require that it be marked with suitable, clearly-worded and easily comprehensible warnings in Italian of the risks it may present.
    2. subject the sale thereof to preliminary safety conditions;
  - c) for any product that might pose risks for certain persons:
    1. order that such persons be given warning of the risk in good time and in an appropriate form

(including the issuing of special warnings);

- d) for any product that might be dangerous:
  - 1. ban its sale, marketing, or display, for a period necessary to carry out all and sundry safety appraisals, checks and controls;
  - 2. order, for a mandatory period, that the product or batch of products already marketed be adapted to the safety requirements laid out in this Title, provided there is no imminent risk to public health and safety;
- e) for any dangerous product:
  - 1. ban the marketing thereof, and introduce measures required to ensure the ban is enforced;
- f) for any dangerous product already on the market, for which actions already implemented by producers and distributors is unsatisfactory or insufficient:
  - 1. order or arrange for its effective and immediate withdrawal, and for consumers to be informed about its hazards. All relative costs are to be borne by the producer and, where this is partly or wholly impossible, by the distributor;
  - 2. order, arrange, or - if appropriate - organise with producers and distributors for its recall from consumers and its destruction in suitable conditions. All relative costs are to be borne by producers and distributors.
- 3. For products with serious hazards, the Departments referred to in Article 106 shall implement all required actions to apply, with suitable haste, appropriate measures similar to those provided for in Paragraph 2, subparagraphs b) - f), taking into account the guidelines concerning RAPEX management pursuant to Annex II.
- 4. When adopting measures similar to those listed above in Paragraph 2, and in particular to those in to subparagraphs d), e) and f), the competent authorities, with all due caution, shall act with respect to the Treaty establishing the European Community (especially Articles 28 and 30 thereof) to implement them in a way that is commensurate with the seriousness of the risk.
- 5. The competent authorities, within the scope of the measures adopted out of caution and without causing any additional burdens to public finances, shall encourage and promote voluntary cooperation by producers and distributors to comply with the requirements of this Title, including (where appropriate) the drafting of codes of good practice and agreements with professional associations.
- 6. For the purposes of this Title and without causing any additional burdens to public finances, the Departments listed above at Article 106, 1 avail themselves of all cooperation afforded by the Customs and Excise and by the Revenue Commissioners, who have access to the rapid information exchange system managed by the RAPEX system referred to at Annex II, and shall act according to the regulations and powers granted to them by the legal system.
- 7. Measures pursuant to this Article may be applicable, respectively, to:
  - a) producers;
  - b) distributors and in particular the person or persons responsible for initial placings on the market;
  - c) any other person or persons in possession of products, where necessary, with a view to co-operation in actions undertaken to avoid hazards arising out of products themselves.
- 8. To harmonise surveillance arising out of this Title with the surveillance put in place for products for which safety requirements are contained in firefighting regulations, the Ministry of the Interior shall, as far as co-ordination is concerned, avail itself of its own Fire Service, First Aid, and Emergency Services Departments, as well as branches of the Fire Brigade, for operations throughout Italy, in relation to existing personnel and without causing any additional burdens for central government finances.

9. In order to comply with European product safety regulations and this Title, the Health Ministry shall also avail itself of its own naval, air and border Health Departments in relation to existing personnel and without causing any additional burdens for central government finances.
10. Except where otherwise specified in current enacted law, the parties referred to in Paragraph 1 shall not be required not to divulge any information acquired which, by its nature, is covered by professional secrecy, unless it is necessary to divulge such information to provide health care or to ensure public or private safety.

#### Article 108

##### *(Procedural measures)*

1. The measure adopted pursuant to Article 107 limiting the placing on the market of a product or ordering its withdrawal or recall shall be required to be adequately justified with an indication of the deadlines and the competent authorities to which complaints should be addressed, and shall be notified within seven days of its adoption.
2. Save for cases of serious or immediate danger to health or public or private safety, prior to adoption of the measures pursuant to Article 107, 2 and 3, the parties concerned shall be allowed to participate in the administrative procedure and to approve the checks on their own products pursuant to Articles 7 *et seq.* of Law no. 241, of 7 August 1990. In particular, parties concerned may present written observations and documents to the competent authorities.
3. The parties concerned may also present written observations following the issuing of orders, even when, due to the urgency of the measure to be adopted, they have not been able to take part in the process.

#### Article 109

##### *(Market surveys)*

1. To exercise effective market surveys with a view to guaranteeing a sufficiently high level of consumer health and safety protection, the authorities referred to at Article 106, whether inside or outside the Conference of Services, shall be required to guarantee:
  - a) the establishment, regular re-scheduling, and implementation of sector survey programmes for categories of products or hazards, and the monitoring of survey activities, findings and results;
  - b) the re-scheduling and updating of scientific and technical knowledge on product safety;
  - c) a periodical review and assessment of the functioning of checks and balances and, if necessary, reviewing of the survey methods and techniques adopted.
2. The Departments listed above at Article 106 shall also deal with complaints submitted by consumers and other parties as regards product safety, and surveillance and control activities. The operational procedures pursuant to this Paragraph shall be agreed upon at the Conference of Services.
3. The administrative structures competent to carry out the activities pursuant to subsection 2 shall be made known at the Conference of Services convened after the date the Code comes into force. The procedures for informing consumers and other parties concerned of complaints procedures will be drawn up by the Conference of Services.
4. No new or increased burdens to public finance shall arise out of the implementation of this Article.

#### Article 110 *(Notification and exchange of*

*information)*

1. The Ministry of Productive Activities shall be required to notify the European Commission, specifying their reasons, of the measures pursuant to Article 107, Paragraph 2, subparagraphs b), c), d), e) and f), and Paragraph 3, together with any amendments and repeals, save for any specific European legislation concerning the notification procedure.
2. Even if agreements have been reached with producers and distributors, the measures adopted to limit or subject the marketing or use of products presenting a serious risk for consumers to special conditions, shall be notified to the European Commission according to the directions of the RAPEX system, taking into account Annex II of Directive 2001/95/EC as mentioned at Annex II.
3. If the measure adopted concerns a risk that is considered to be limited to Italy alone, the Ministry of Productive Activities shall notify the European Commission (even when requested to do so by other competent authorities) if the measure contains information which is potentially interesting (in terms of product safety) to other Member States, especially if such a measure responds to a new risk that has not yet been otherwise notified.
4. For the purposes of the obligations pursuant to Paragraph 1, the Ministry of Productive Activities shall be promptly notified of all measures adopted by the competent authorities pursuant to Article 106; similar communications shall be given by Court Registries or Secretariats in relation to measures (whether temporary or permanent) issued by such Courts in their various rulings.
5. The Ministry of Productive Activities shall be required to notify the competent authority of any decisions adopted by the European Commission in relation to products presenting a serious risk to the health and safety of consumers in various Member States and which therefore require adoption of suitable measures, by no later than twenty days thereafter. Compliance with a shorter period provided for in Commission decisions is not affected.
6. The competent authorities shall be required to assure the interested parties of the possibility of expressing opinions and findings to be forwarded to the Commission, by no later than one month after adoption of a Ruling pursuant to subparagraph 5.
7. Dangerous products subject to a Ruling pursuant to Paragraph 5 may not be exported outside the European Union, unless the Ruling itself states otherwise.

Article 111

*(Producer 's liabilities)*

1. The provisions of the second Title in relation to liability for damage caused by defective products shall not apply.

Article 112

*(Sanctions)*

1. Except where an action constitutes a more serious offence, producers or distributors placing dangerous products on the market in breach of the prohibition pursuant to Article 107, Paragraph 2, subparagraph e) shall be liable to a period of detention of between six months and one year, and a fine of between € 10,000 and € 50,000.
2. Except where an action constitutes a more serious offence, producers placing dangerous products on the market shall be liable to a period of detention of up to one year, and a fine of between € 10,000 and € 50,000.
3. Except where an action constitutes a more serious offence, producers or distributors failing to comply with the measures issued pursuant to Article 107, Paragraph 2, subparagraphs b) (points 1 and 2) c) and d) (points 1 and 2) shall be liable to a fine of between € 10,000 and € 25,000.

4. Producers or distributors failing to provide due assistance for the purposes of conducting the activities pursuant to Article 107, Paragraph 2, subparagraph a) shall be subject to an administrative fine of between € 2,500 and € 40,000.
5. Except where an action constitutes an offence, producers breaching the provisions of Article 104, Paragraphs 2, 3, 5, 7, 8, and 9 and distributors breaching the provisions of Article 104, Paragraphs 6, 7, 8, and 9, shall be liable to an administrative fine of between € 1,500 and € 30,000.

#### Article 113

*(Reference to statutes)*

1. With reference to special product categories, specific sector regulations that require compliance with specific safety standards shall not apply.
2. Regional provisions governing the relevant controls are not affected.

### TITLE II

*Liability for damage caused by defective products*

#### Article 114

*(Producer 's liabilities) 1.*

Producers shall be liable for any damages caused by product defects.

#### Article 115

*(Products)*

1. For the purposes of this Title, product shall mean all movables even if part of another tangible or intangible item.
2. Electricity shall also be considered to be a product.

#### Article 116

*(Supplier 's liabilities)*

1. Where a producer cannot be identified, each supplier of a product shall be treated as its producer should he fail to inform the injured person, within three months of the date of application, of the name and domicile of the producer or person who supplied him with the product.
2. Applications shall be made in writing and shall indicate the product which caused the damage, the place and the date of purchase (or a reasonable approximation thereof). It shall also be required to make the product available for viewing, if it still exists.
3. If the serving of the writ of summons has not been preceded by the application referred to in Paragraph 2, the defendant may make the serve it in the three months thereafter.
4. In any event, following an application presented by the supplier at the preliminary hearings of a case, the Court may extend the deadline for the notification pursuant to Paragraph 1 by no more than three months, if appropriate.
5. The third party named as the producer or previous supplier may be brought for trial pursuant to Article 106 of the Code of Civil Procedure and the supplier ousted, if the person indicated appears and does not appeal against the direction. In the event of a situation similar to Paragraph 3 arising,

the defendant may ask for the plaintiff to be ordered to bear all court and other legal expenses.

6. The provisions of this Article shall apply to products imported into the European Union, where the importer cannot be identified, although the producer is known.

#### Article 117

##### *(Defective Products)*

1. A product is defective when it does not provide the safety which one can reasonably expect, taking all circumstances into account, including:
  - a) the way in which the product was distributed, its packaging, evident features, instructions, and warnings supplied;
  - b) the use to which the product can reasonably be put and the life cycle which the product can be reasonably expected to undergo;
  - c) the period during which the product was distributed.
2. A product cannot be considered defective simply because a better one has been marketed at some stage.
3. A product is defective if it does not offer the safety normally offered by other samples from the same range.

#### Article 118

##### *(Elimination of liability)*

1. All liability shall be eliminated if:
  - a) the producer has not distributed the product;
  - b) any defects causing damages did not exist when the producer began distributing the product;
  - c) the producer did not produce the product for sale or any other form of distribution for consideration, nor did he produce or distribute it as part of his day-to-day work;
  - d) the defect is due to product compliance with a mandatory legal requirement or some binding measure;
  - e) the state of scientific and technical knowledge at the time at which the producer distributed the product would not have considered product to be defective;
  - f) a defect is entirely due to the form of the product in which a component or raw material was incorporated or the compliance of the latter to the instructions given by the producer who used it.

#### Article 119

##### *(Product distribution)*

1. A product is distributed when delivered to the purchaser, user or a person connected with them, including on a trial or sale-or-return basis.
2. Distribution also takes place upon delivery to the carrier or forwarding agent for dispatch to the purchaser or user
3. Liability shall not be eliminated if distribution is due to forced sale, unless a debtor has specifically pointed out the defect with a declaration provided to the bailiff at the time of seizure or with a deed served on the creditor and filed at the registry of the executing court within fifteen days of seizure.

## Article 120

### *(Proofs)*

1. Injured parties shall be required to provide proof of defects, damages, and the causal relationship between the two.
2. Producer shall be required to provide facts that might eliminate liability according to the provisions of Article 118. For the purposes of the elimination of liability provided for in Article 118, paragraph 1, subparagraph b), it shall suffice to show that, taking the circumstances into account, the defect probably did not exist when the product was distributed.
3. If damages are likely to have been caused by some product defect, a Court may order that Expert Witness expenses be borne by the producer.

## Article 121

### *(Plurality of liability)*

1. If several persons are liable for the same damage, they shall all be jointly liable to pay compensation.
2. The person paying damages shall be entitled to redress against the others to the extent of individually applicable liability, the gravity of any defect, and the extent of the consequences arising. In the event of doubt, liability shall be shared equally by all parties.

## Article 122

### *(Negligence by injured party)*

1. In the event of the injured party contributing to damages by negligence, compensation shall be assessed in accordance with the provisions of Article 1227 of the Civil Code.
2. Compensation shall not be due if the injured party was aware of the defect in the product, the hazards arising therefrom and any negligence in wittingly exposing himself thereto.
3. In the event of damage to property, the owner of the property shall have the same rights as any injured party.

## Article 123

### *(Payment of damages)*

1. Compensation for the following damages may be paid in accordance with the provisions of this Title:
  - a) damages caused by death or personal injury;
  - b) damages to or the destruction of any item of property other than the defective product itself, provided that it is normally destined for private use or consumption and thus principally used by the injured party.
2. Damage to property may only be compensated insofar as it exceeds € 387.

## Article 124

### *(Liability exemption clauses)*

1. Any agreement which *a priori* exempts from or limits liability to any injured party pursuant to this Title shall be void.

## Article 125

*(Expiry)*

1. The right to compensation shall expire three years from the day on which the injured person was or should have been aware of the damage, the defect, and the name of the person liable.
2. If damages worsen, the expiry term shall not commence before the day on which the injured person was - or should have been - aware of damages serious enough to justify instigating legal procedures.

Article 126

*(Forfeiture)*

1. The right to compensation expires ten years after the day on which the producer or importer into the European Union distributed the product that caused damage.
2. Forfeiture of this right shall only be prevented by instigating legal procedures, unless the case is discharged, by an application to be admitted to a list of creditors during a procedure of settlement with creditors or by recognition of rights by the party liable.
3. Any act preventing the forfeiture of rights vis-à-vis one of the persons liable has no effect on the others.

Article 127

*(Liability pursuant to other statutory instruments)*

1. The provisions of this Title shall not affect any rights which an injured party may have under other statutory instruments.
2. The provisions of this Title shall not apply to damages arising out of nuclear accidents as covered by Law no. 1869 of 31 December 1962, as amended.
3. The provisions of this Title shall not apply to products distributed prior to 30 July 1988.

TITLE I

*Legal guarantee of conformity and commercial guarantees for consumer goods*

CHAPTER I

*Sale of consumer goods*

Article 128

*(Scope of application and definitions)*

1. This Chapter covers certain aspects of sales contracts and guarantees for consumer goods. For such purposes, sales contracts are equated to contracts for exchange and supply as well as work and material contracts and all other contracts intended to supply consumer goods to be manufactured or produced.
2. For the purposes of this chapter:
  - a) consumer goods shall mean any tangible movable item, whether or not it requires assembly, with the exception of:
    1. goods sold by way of execution or otherwise by authority of law, including those sold by the authority of notaries public;

2. water and gas where they are not put up for sale in a limited volume or set quantity;
  3. electricity;
- b) seller shall mean any natural or legal, public or private person who, under a contract pursuant to Paragraph 1, sells consumer goods in the course of his trade, business or profession;
  - c) further conventional guarantee: shall mean any undertaking by a seller or producer to the consumer, given without extra charge, to reimburse the price paid or to replace, repair or handle consumer goods in any way if they do not meet the specifications set out in the guarantee statement or in the relevant advertising;
  - d) repair: shall mean, in the event of lack of conformity, bringing consumer goods into conformity with the contract of sale;
3. The provisions of this chapter shall apply to the sale of second-hand consumer goods taking into account the period of past use, limited to defects not deriving from normal use of the item.

#### Article 129

##### *(Conformity with the contract)*

1. The seller shall be required to deliver goods to the consumer, in conformity with the contract of sale.
2. Consumer goods are presumed to be in conformity with the contract if, where appropriate, the following circumstances exist:
  - a) they are fit for the purposes for which goods of the same type are normally used;
  - b) they comply with the description given by the seller and possess the qualities of goods which the seller has held out to the consumer as a sample or model;
  - c) they show the quality and performance which are normal in goods of the same type and which the consumer can reasonably expect, given the nature of the goods and taking into account any public statements on the specific characteristics of the goods made about them by the seller, the producer or his representative, particularly in advertising or on labelling;
  - d) they are fit for any particular purpose for which the consumer requires them and which he made known to the seller at the time of conclusion of the contract and which the seller has accepted, also implicitly;
3. There shall be deemed not to be a lack of conformity if, at the time the contract was concluded, the consumer was aware, or could not reasonably be unaware of, the lack of conformity, or if the lack of conformity has its origin in materials or instructions supplied by the consumer.
4. The seller shall not be bound by the public statements pursuant to Paragraph 2, subparagraph c) when, even in the alternative, he can prove that:
  - a) he was not, and could not reasonably have been, aware of the statement in question;
  - b) by the time of conclusion of the contract the statement had been suitably corrected in such a way that it could have been known to the consumer;
  - c) the decision to buy the consumer goods could not have been influenced by the statement.
5. Any lack of conformity resulting from incorrect installation of the consumer goods shall be deemed to be equivalent to lack of conformity of the goods if installation forms part of the contract of sale of the goods and the goods were installed by the seller or under his responsibility. This shall apply equally if the product, intended to be installed by the consumer, is installed by the consumer and the incorrect installation is due to a shortcoming in the installation instructions.

#### Article 130

*(Consumers ' rights)*

1. The seller shall be liable to the consumer for any lack of conformity which exists at the time the goods were delivered.
2. In the case of a lack of conformity, the consumer shall be entitled to have the goods brought into conformity free of charge by repair or replacement, in accordance with Paragraphs 3, 4, 5, and 6, or to have an appropriate reduction made in the price or the contract rescinded with regard to those goods, in accordance with Paragraphs 7, 8 and 9.
3. At his discretion, the consumer may request the seller to repair or replace the goods, free of charge in either case, unless the remedy requested is impossible or disproportionate.
4. For the purposes of Paragraph 3, one of the remedies shall be considered disproportionate if it imposes costs on the seller which, in comparison with the other remedy, are unreasonable, taking into account:
  - a) the value the goods would have if there were no lack of conformity;
  - b) the significance of the lack of conformity, and
  - c) whether the alternative remedy could be completed without significant inconvenience to the consumer.
5. The repairs or replacements shall be completed within a reasonable time and without any significant inconvenience to the consumer, taking account of the nature of the goods and the purpose for which the consumer required the goods.
6. The costs referred to in Paragraphs 2 and 3 refer to costs that are essential to make the goods conform, in particular with reference to the costs incurred for delivery, labour and materials.
7. At his discretion, the consumer may require an appropriate reduction of the price or have the contract rescinded in one of the following situations:
  - a) repair or replacement are impossible or disproportionate;
  - b) if the seller has not completed the remedy within a reasonable time or replaced the goods within the appropriate time pursuant to Paragraph 6;
  - c) the replacement or repair carried out previously caused significant inconvenience to the consumer.
8. When determining the amount of the reduction or the sum to be refunded the use of the goods is taken into account.
9. After reporting the lack of conformity, the seller may offer the consumer any other available remedy, with the following effects:
  - a) if the consumer has already requested a specific remedy the seller is obliged to implement it, with the necessary consequences in relation to the running of the reasonable time pursuant to Paragraph 6, unless the consumer accepts an alternative remedy;
  - b) if the consumer has not already requested a specific remedy the consumer shall accept the offer or reject it by choosing another remedy pursuant to this Article.
10. If the non-conformity is of only minor importance, for which it is impossible or disproportionate to complete the remedies of repair or replacement, the consumer is not entitled to rescind the contract.

Article 131

*(Right of redress)*

1. Where the final seller is liable to the consumer because of a lack of conformity resulting from an

act or omission by the producer, a previous seller in the same chain of contracts or any other intermediary, the final seller shall be entitled to redress, unless agreed otherwise or unless such right is waived, against the person or persons liable in the chain of contracts.

2. If the final seller has fulfilled the remedies required by the consumer, he may take action of redress, within one year from completing the performance, against the party or parties responsible to obtain reimbursement of the sum given.

#### Article 132

##### *(Time limits)*

1. The seller shall be held liable under Article 130 where the lack of conformity becomes apparent within two years as from delivery of the goods.
2. The consumer loses the rights provided for by Article 130 Paragraph 2 if he does not inform the seller of the lack of conformity by no later than two months after the date on which he discovered it. This notification shall not be required if the seller has acknowledged the existence of the lack of conformity, or has concealed it.
3. Except where proven otherwise, it shall be assumed that the defects arising by six months after the delivery of goods already existed on that date, unless this presumption is incompatible with the nature of the goods or the nature of the lack of conformity.
4. Actions intended to enforce the lack of conformity not hidden by the seller with fraud shall in any event lapse after twenty-six months from delivery of the goods. Consumers who have been summoned to perform the contract may in any event enforce their rights under Article 130, Paragraph 2, provided that the lack of conformity was notified within two months from discovery thereof, and prior to the expiry of the period referred to in the foregoing sentence.

#### Article 133

##### *(Conventional guarantee)*

1. The conventional guarantee binds the offeror under the conditions indicated in the declaration of guarantee or the associated advertising.
2. The offeror shall ensure that the guarantee states at least:
  - a) that the consumer has legal rights pursuant to this subsection and that the guarantee does not affect such rights;
  - b) set out in plain intelligible language the contents of the guarantee and the essential particulars necessary for making claims under the guarantee, including the duration and territorial scope of the guarantee and the name and address of the guarantor.
3. At the request of the consumer, the guarantee shall be made available in writing or feature in another durable medium available and accessible to him.
4. The guarantee shall be drafted in Italian in print no smaller than the print for any other languages.
5. Should a guarantee infringe the requirements of Paragraphs 2, 3, and 4, the validity of this guarantee shall in no way be affected; the consumer may still avail himself of the guarantee and require that it be honoured.

#### Article 134

##### *(Binding nature of provisions)*

1. Any contractual term or agreement concluded with the seller before the lack of conformity is brought to the seller's attention which directly or indirectly waives or restricts the rights resulting from this Paragraph shall not be binding upon the consumer. Invalidity may only be enforced by the

consumer and may also be established by the courts.

2. In the case of second-hand goods, the seller and consumer may limit the duration of liability pursuant to Article 132, Paragraph 1 to a period of time of no less than one year.
3. Any contractual term that provides for the legislation of a non-EU country to be applied to the contract shall have the effect of depriving the consumer of the protection granted under this Paragraph, if the contract has a close link with an EU Member State.

#### Article 135

*(Protection provided by other provisions)*

1. Consumers' rights under other statutory instruments shall not be limited or repealed by the provisions of this Chapter.
2. In all matters not covered by this Title, the provisions of the Civil Code in relation to sales contracts shall apply.

### PART V CONSUMERS' ASSOCIATIONS AND ACCESS TO JUSTICE

#### TITLE I

##### National consumers' associations

#### Article 136

*(National Council of Consumers and Users)*

1. The Ministry for Productive Activities has set up the National Council of Consumers and Users, hereinafter to be referred to as the "Council."
2. The Council, which uses the facilities and staff of the Ministry of Productive Activities to carry out its work, is composed of the representatives of the consumers' and users' associations listed on the register referred to at Article 137 and of a representative appointed by the Conference pursuant to section 8 of Legislative Decree no. 281 of 28 August 1997. It is chaired by the Minister of Productive Activities (or a person appointed thereby). The Council is appointed by Orders from the Prime Minister (President of the Council of Ministers), after proposals from the Ministry of Productive Activities, and shall remain in office for a period of three years.
3. The Council invites representatives from recognised Environmental Protection Associations and National Consumer Co-Operative Associations to its meetings. Representatives from bodies and organs with the functions of regulating or standardising the market, of the economic and social sectors concerned, competent public authorities, and experts in the subjects under consideration may also be invited to attend.
4. The Council is responsible for:
  - a) expressing opinions, where required, on the features of regulations concerning the rights and interests of consumers and users;
  - b) formulating proposals in relation to the protection of consumers and users, also with reference to EU programmes and policies;
  - c) promoting studies, research programmes and conferences on the problems of consumption and the rights of consumers and users, and the control of the quality and safety of products and services;

- d) drawing up programmes for the distribution of information to consumers and users;
- e) encouraging initiatives designed to improve consumers' and users' access to justice in order to settle disputes;
- f) encouraging all forms of alignment and co-ordination between national and regional policies in relation to the protection of consumers and users, also taking action intended to promote the widest possible representation of the interests of consumers and users in relation to local autonomies. To this end, the chairman shall convene an annual planning session in which the chairmen of the representative bodies of the consumers and users of the Regional Authorities and the Autonomous Provinces of Trent and Bolzano shall be entitled to participate;
- g) establishing relations with similar public or private bodies from other countries and the European Union;
- h) notifying the Department for Public Administration at the Prime Minister's Office (President of the Council of Ministers) of any difficulties, hindrances or obstacles in relation to implementing the provisions regarding simplification of the procedures or documentation in public authorities. The notifications shall be checked by said Office, also through the Public Administration Inspectorate and the Legislative Office dealing with legislative and administrative matters and the simplification of laws and procedures.

#### Article 137

##### *(List of national consumers ' and users ' associations)*

1. The Ministry of Productive Activities keeps a list of all consumers' and users' associations.
2. Inclusion on the list is subject to the following requirements, which are proved by presenting documentation conforming to the directions and procedures established by an Order from the Ministry of Productive Activities:
  - a) the Association must have been founded at least three years previously, via a public or private certified deed, and shall possess sections regulating a democratic system with the sole aim of protecting consumers and users, and shall not operate for the making of profit;
  - b) a list of members shall be kept, updated annually, with an indication of the fees paid directly to the association for statutory purposes;
  - c) the number of members shall not be less than 0.5 per mille of the population of Italy, and shall be present in at least five regions or autonomous provinces, with a number of members no lower than 0.2 per mille inhabitants in each region, to be certified by a self-executed affidavit provided by the legal representative of the association in accordance with the procedures referred to at Articles 46 *et seq* of the Consolidated Act of Legislative and Regulatory Directions concerning Administrative Documentation, pursuant to Presidential Decree no. 445 of 28 December 2000;
  - d) a statement of the income and expenditure shall be drafted each year, indicating the fees paid by the members, and the keeping of accounts in conformity with the legislation in force concerning accounting for non-registered associations;
  - e) continuous activities must have been carried out during the three previous years;
  - f) its legal representatives shall not have been convicted of any offences in relation to the association's activities, and said representatives shall not be businessmen or directors of manufacturing or service companies, in whatever form they are established, for the same sectors in which the association operates.
3. Consumers' and users' associations shall be forbidden from undertaking any promotional or commercial advertising activities relating to goods or services produced by third parties and any shared interests with production or distribution companies.

4. The Ministry of Productive Activities shall be required to update the list annually.
5. The list referred to in this Article may also include associations of consumers and users operating exclusively in those areas where constitutionally recognised linguistic minorities reside, if they are in possession of the requirements pursuant to Paragraph 2, subparagraphs a), b), d), e), and f), and provided that the number of members is no less than 0.5 per mille of the inhabitants of the region or autonomous province in question, to be certified by a self-executed affidavit provided by the legal representative of the association in accordance with the procedures referred to at Articles 46 *et seq* of the aforementioned Consolidated Act, pursuant to Presidential Decree no. 445 of 2000.
6. The Ministry of Productive Activities shall be required to notify the EC Commission of the list pursuant to Paragraph 1, and to include the bodies pursuant to Article 139, Paragraph 2, and the relative updates to enable registration on the list of the bodies entitled to file injunctions to protect the collective interests of consumers, held by the European Commission.

#### Article 138

##### *(Incentives and contributions)*

1. The incentives and contributions provided for by Law no. 416 of 5 August 1981, as amended, concerning the regulation of publishing houses and special rules on publishing are extended, in accordance with the procedures and the grading scale criteria defined by the relevant Prime Ministerial Decree, to the publishing activities of the associations registered on the list pursuant to Article 137.

#### TITLE II

##### *Injunctions and access to justice*

#### Article 139

##### *(Entitlement to act)*

1. The associations of consumers and users registered on the list pursuant to Article 137 are entitled to act to protect the collective interests of consumers and users. In addition to the provisions of section 2, said associations are entitled to act if there is an infringement of the collective interests of consumers envisaged by the subjects governed by this code, as well as the following statutory instruments:
  - a) Law no. 223 of 6 August 1990, and Law no. 122 of 30 April 1998, concerning the exercise of television activities;
  - b) Legislative Decree no. 541 of 30 December 1992, as amended by Legislative Decree no. 44 of 18 February 1997, and Law no. 352 of 14 October 1999, concerning the advertising of pharmaceuticals for human consumption.
2. Independent Italian public organisms and organisations recognised in another Member State of the European Union, registered on the list of entities entitled to take action for an injunction to protect the collective interests of consumers, published in the EU Official Journal, may act, pursuant to this Article and in accordance with the procedures pursuant to Article 140, against actions or behaviour which is damaging to consumers in that country, affecting all or part of a Member State.

## Article 140

### (Procedure)

1. The parties referred to at Article 139 are qualified to act to protect the collective interests of consumers and users by applying to a Court for:
  - a) a prohibition order against actions damaging to the interests of consumers and users;
  - b) suitable measures to remedy or eliminate the damaging effects of any breaches;
  - c) orders to publish measures in one or more national or local daily newspapers where publicising measures may help to correct or eliminate the effects of any breaches.
2. Prior to instigating legal proceedings, associations pursuant to Paragraph 1 and parties referred to at Article 139, Paragraph 2 may begin a conciliation procedure at the Chamber of Commerce, Industry, Trade and Agriculture competent for the local area, pursuant to Paragraph 2, subparagraph 4 a) of Law no. 580 of 29 December 1993, as well as the other organisms dealing with out-of-court settlements in relation to consumption in accordance with Article 141. The procedure shall in any event be defined within sixty days.
3. The conciliation report, signed by the parties and the representative of the organism dealing with the out-of-court settlement, shall be filed for approval in the registry of the Court at the place in which the conciliation proceedings were conducted.
4. The Court, with a single judge sitting, having established the formal regularity of the report, shall order it to be made enforceable. The approved conciliation report shall represent an enforceable instrument.
5. In any event, actions pursuant to Paragraph 1 may only be brought two weeks after the date on which an association requested the person considered responsible to cease the behaviour which is damaging to consumers and users, by recorded delivery (with notification of receipt).
6. The person or persons required to cease damaging behaviour pursuant to Paragraph 5 (or the person or persons summoned pursuant to Paragraph 1) may begin the conciliation proceedings pursuant to Paragraph 2 without prejudice to any legal proceedings which have been (or are to be) instigated. If the conciliation proceedings have a favourable outcome, even during the enforcement stage, this shall be assessed for the purposes of cessation of the issue under dispute.
7. In the order that concludes the proceedings pursuant to Paragraph 1, the Court shall set a deadline for compliance with the obligations set out in the Order, and in the event of non-compliance, shall order (at the request of the party who instigated the proceedings or another party) the payment of a sum of money of between € 516 and € 1,032 for each instance of non-compliance or each day of delay, commensurate with the gravity of the breach. In the event of non-compliance with the obligations contained in the Conciliation Report pursuant to Paragraph 3, the parties may apply to the Court by means of proceedings held in Chambers so that, having ascertained non-compliance, it may order payment of said sums of money. Such sums of money shall be paid into State funds to be re-allocated by an order of the Ministry of the Economy and Finance to a fund to be set up as part of a special basic budgetary section of the Ministry of Productive Activities to finance initiatives for the benefit of consumers.
8. Where there are justified grounds of urgency, the action for an injunction shall be conducted pursuant to Articles 669-bis to 669-quaterdecies of the Civil Procedure Code.
9. Save for the regulations on pending proceedings, joinder of actions and related or consolidated proceedings, the provisions pursuant to this section do not preclude the rights of consumers who have been damaged by such infringements to take individual action.
10. For the associations pursuant to Article 139 the action for injunction provided for by Article 37 in relation to unfair terms in contracts concluded with consumers shall be exercised pursuant to this section.

11. Sole jurisdiction of administrative judges in relation to public services pursuant to Article 33 of Legislative Decree no. 80 of 31 March 1998 is not affected.
12. The conciliation procedures of the Communications Guarantee Authority referred to at Article 1, Paragraph 11, of law no. 249 of 31 July 1997 are not affected.

Article 140 bis

*(Class action)*

1. The homogeneous, individual rights of consumers and users – as set forth in paragraph 2 – can also be enforced through class action as provided for by this article. To this end, each class member can individually, or through associations to which they grant power or committees in which they participate, take action to assess liability and claim an order to pay damages and repayments
2. The action enforces:
  - a) the contractual rights of a number of consumers and users who find themselves in the same situation in relation to the same company, including the rights relating to contracts underwritten in accordance with Articles 1341 and 1342 of the Civil Code;
  - b) identical rights due to final consumers of a given product in relation to its manufacturer, even in the absence of a direct contractual relationship;
  - c) identical rights to payment of damages due to these consumers and users and deriving from unfair commercial practices or anti-competitive behaviour.
3. Consumers and users who wish to avail of the enforcement referred to in this Article can join class action without a counsel for the defence. Joining class action entails discontinuation of any individual restitutory or remedial action based on the same title, except for terms indicated in paragraph 15. An adhesion contract shall indicate both the address for service and the constitutive elements of the asserted right with its probative documentation. This contract shall be then lodged at the registry, even by the plaintiff, by the date referred to in paragraph 9, letter b). According to articles 2943 and 2945 of the Civil Code, the prescription shall take effect on the date of notification of the request and, for those who joined later, after lodgement of said adhesion contract.
4. The claim is submitted to the Court located in the capital of the Region in which the company is based; however, the court of Turin has jurisdiction over the Region of Valle d'Aosta, the Court of Venice over the Regions of Trentino-Alto Adige and Friuli-Venezia Giulia, the Court of Rome over the Marche, Umbria, Abruzzo and Molise, and the Court of Naples over Basilicata and Calabria. The court shall handle the lawsuit as a unified bench.
5. The claim is put forward with a writ of summons, notified also to the office of the Public Prosecutor at the Court in charge, who may only intervene for the judgment on admissibility.
6. Upon first hearing, the Court shall decide by order on the admissibility of the claim; however, it may suspend judgment when there is an ongoing inquest before an independent Authority on the facts which are relevant to the decision, or a trial before the administrative judge. The claim shall be declared inadmissible if clearly unfounded or there is a conflict of interest, if the judge does not recognise the identity of the individual rights which are enforceable according to paragraph 2, and when the proposing party seems incapable of adequately protecting the class's interests.
7. The order that determines admissibility is subject to claim before the Court of Appeal in the peremptory

time limit of thirty days from either its disclosure or notification, whichever occurs first. The Court of Appeal decides on the claim by order in closed session no later than forty days from the lodgement of the appeal. The appeal of the Court order upholding a motion does not suspend the proceeding before the Tribunal.

8. The judge settles the expenses in the inadmissibility order, also according to Article 96 of the Code of Civil Procedure, and orders the most appropriate form of public notice by and at the expenses of the unsuccessful party.
9. The Court sets the terms and methods of the most appropriate form of public notice in the order with which it admits the action, so that those belonging to the class can join promptly. Public notification is a condition for the prosecution of the claim. By the same order the court shall:
  - a) determine the characteristics of the individual rights involved in the judgment, specifying the criteria according to which individuals seeking to join are included in the class or must be regarded as excluded from the lawsuit;
  - b) establish a peremptory time limit that does not exceed one hundred and twenty days from the deadline for public notification. By this date, the adhesion contracts shall be lodged at the registry, even by the plaintiff. A copy of the order is sent by the registry to the Ministry of Economic Development which is in charge of further publication, including on its website.
10. The intervention of a third party is excluded under Article 105 of the Code of Civil Procedure is excluded.
11. The order with which the Court admits the action also determines the course of the procedure. In accordance with the principle of ‘audi alteram partem’, the fair, effective and prompt handling of the trial is thereby ensured. In the same or subsequent order, which can be modified or revoked at any time, the Court shall prescribe measures aimed at preventing undue repetitions or complications in the presentation of evidence or arguments; it burdens the parties with the form of public notification which it considers necessary to protect the members; it regulates the preliminary investigation in the manner that it deems most appropriate and disciplines any other procedural matter, except for any formality which is not essential to the debate.
12. If the Court grants the claim, it shall issue a verdict by which – according to Article 1226 of the Civil Code - the final amounts due to those who have joined the act shall be paid, or shall establish the homogeneous calculation criterion to pay these sums. In the event of the approval of a class action moved against operators of public services or utilities, the court takes into account what is acknowledged in favour of users and consumers claiming damage in the relevant service charters which may have been issued. The sentence becomes enforceable one hundred and eighty days from publication. Payment of the amounts due which are issued during that period are exempt from any right or increase, even as regards the accessories of the law accrued after publication of the verdict
13. As required by the provisions of Article 283 of the Code of Civil Procedure, the court of appeal shall also take into account the total amount of the sum owed by the debtor, the number of creditors, and the related difficulties in returning undue payments if the appeal is accepted. Until judgment becomes final, the court may order that the total sum owed by the debtor should be lodged and remain bound in the manner deemed most appropriate.
14. The ruling establishes that the trial is also binding upon the members. It is made without any prejudice to the single action of those individuals who do not join collective action. No further class action can be put forward for the same facts and against the same company after the closing date for joining assigned by the judge under paragraph 9. Those proposals which are lodged within said deadline are automatically

combined as a matter of course if pending before the same court; alternatively, the judge next in charge orders the removal of the lawsuit from the register, issuing a peremptory time limit which does not exceed sixty days for readmission before the first judge.

15. Cancellations and transactions which occurred between the parties shall not affect the rights of the members who have not expressly agreed to them. These rights are reserved even in the case of extinguishment of judgment or early conclusion of the trial.

#### Article 141

##### *(Out-of-court settlement of disputes)*

1. In relations between consumers and professionals, the parties may begin proceedings (via the internet, if desired) to settle out of court to resolve disputes related to consumption.
2. The Ministry of Productive Activities, together with the Ministry for Justice, shall notify the European Commission of the list of organs dealing with out-of-court settlements on disputes related to consumption that conform to the principles of the Commission's Recommendation 98/257/EC of 30 March 1988, regarding the principles applicable to the organs responsible for the out of court settlement of disputes relating to consumption and the Commission's Recommendation 2001/310/EC dated 4 April 2001, concerning the principles applicable to organs dealing with out-of-court settlements which participate in the out-of-court settlement of disputes relating to consumption. The Ministry of Productive Activities, together with the Ministry of Justice, shall also ensure the further obligations connected to implementing EU Council Decision of 25 May 2000, 2000/C 155/01, relating to a European network of national organs for the out-of-court settlement of disputes related to consumption.
3. In all cases, organs dealing with out of court settlements of disputes pursuant to subsection 2 shall be considered to be those founded pursuant to section 4 of Law no. 580 of 29 December 1993 by the Chambers of Commerce, Industry, Trade and Agriculture.
4. Terms included in consumers' contracts regarding recourse to organs conforming to the provisions of this Article shall not be considered unfair.
5. Consumers may in no circumstances be deprived of their right to apply to Courts with jurisdiction in this area, irrespective of the outcome of any out-of-court proceedings.

#### PART VI

##### *FINAL PROVISIONS*

##### Article 142 *(Amendments to the Civil Code)*

1. Articles *1469-bis*, *1469-ter*, *1469-quater*, *1469-quinquies* and *1469-sexies* of the Civil Code shall be replaced by the following:

"Article *1469-bis*  
*(Consumers' contracts)*

The provisions of this Title shall apply to consumers' contracts, where not varied by the Consumer Code or other provisions that are more favourable to the consumer."

#### Article 143

*(Inalienable rights)*

1. Consumer rights given by the Code are inalienable. Any covenant in conflict with the provisions thereof shall not be enforceable.
2. If parties choose to apply any other law than that of Italy to a contract, consumers shall still be entitled to the basic protection afforded them by the Code.

Article 144

*(Updates)*

1. Any changes to legislation that affect the Code or the persons covered thereby shall be implemented through the express amendment, addition, repeal, or suspension of the specific provisions contained therein.

Article 145

*(Competence of Regional authorities and  
Autonomous Provinces)*

1. The provisions adopted by the regions and the autonomous provinces of Trent and Bolzano in exercising their statutory powers in relation to consumer education and information are not affected.

Article 146

*(Repealed legislation)*

1. The following statutory instruments have been repealed since this Code came into force:
  - a) Presidential Decree no. 224 of 24 May 1988, as amended by Legislative Decree no. 25 of 2 February 2001, implementing Directive 85/374/EEC, relating to the harmonising of legislative, regulatory and administrative provisions of the Member States in relation to liability for defective products pursuant to Article 15 of Law no. 183 of 16 April 1987;
  - b) Law no. 126 of 10 April 1991, as amended by Law no. 146 of 22 February 1994, containing regulations on consumer information;
  - c) Legislative Decree no. 50 of 15 January 1992, implementing Directive 85/577/EEC, in relation to contracts negotiated away from business premises;
  - d) Legislative Decree no. 74 of 25 January 1992, as amended by Legislative Decree no. 67 of 25 February 2000, implementing Directive 84/450/EEC, in relation to misleading and comparative advertising;
  - e) Legislative Decree no. 111 of 17 March 1995, as amended by Law no. 57 of 5 March 2001, implementing Directive 90/314/EEC, concerning "all-inclusive" travel packages, holidays and excursions;
  - f) Law no. 281 of 30 July 1998, containing the regulations of the rights of consumers and users, as amended by Law no. 340 of 24 November 2000, Legislative Decree no. 224 of 23 April 2001, and Article 11 of Law no. 39 of 1 March 2002, containing provisions for the fulfilment of obligations arising out of Italy's membership of the European Union - European Law 2001, without prejudice to the provisions of Article 7, with reference to the promotional activities of the National Council of Consumers and Users referred to at Article 136 and the incentives referred to at Article 138;
  - g) Legislative Decree no. 427 of 9 November 1998, implementing Directive 94/47/EC, concerning protection of the purchaser for certain aspects of contracts relating to the acquisition of the right of enjoyment of immovable property on a time-share basis;

- h) Legislative Decree no. 185 of 22 May 1999, implementing Directive 97/7/EC, relating to the protection of consumers with regard to distance contracts;
  - i) Legislative Decree no. 63 of 25 February 2000, implementing Directive 98/7/EC, which amends Directive 87/102/EEC, in relation to consumer credit;
  - j) Legislative Decree no. 67 of 25 February 2000, implementing Directive 97/55/EC, which amends Directive 84/450/EC, in relation to misleading and comparative advertising;
  - k) Legislative Decree no. 84 of 25 February 2000, implementing Directive 98/6/EC, relating to the protection of consumers in relation to price indications offered;
  - l) Legislative Decree no. 224 of 23 April 2001, implementing Directive 98/27/EC, relating to actions for injunctions to protect the interests of consumers;
  - m) Legislative Decree no. 172 of 21 May 2004, implementing Directive 2001/95/EC, relating to general product safety;
  - n) Legislative Decree no. 114 of 31 March 1998, Article 18, Paragraph 7 containing a review of the regulations relating to the commercial sector, pursuant to Article 4, Paragraph 4 of law no. 59 of 15 March 1997;
  - o) Legislative Decree no. 114 of 31 March 1998, Article 19, Paragraph 9, containing a review of the regulations relating to the commercial sector, pursuant to Article 4, Paragraph 4 of law no. 59 of 15 March 1997;
  - p) Paragraphs 4 and 5 of Article 125 of the Banking and Credit Consolidated Act pursuant to Legislative Decree no. 385 of 1 September 1993, as amended;
  - q) Articles *1519-bis*, *1519-ter*, *1519-quater*, *1519-quinquies*, *1519-sexies*, *1519-septies*, *1519-octies* and *1519-nonies* of the Civil Code;
  - r) Law no. 49 of 6 April 2005 amending Article 7 of Legislative Decree no. 74 of 25 January 1992, in relation to misleading advertisements published in the media.
2. The following have been repealed since this Code entered into force:
- a) Presidential Decree no. 903 of 23 August 1982, implementing Directive 79/581/EEC, relating to the price indications of food products for consumer protection purposes;
  - b) Legislative Decree no. 76 of 25 January 1992, implementing Directive 88/315/EEC, concerning price indications of food products for consumer protection purposes;
  - c) Legislative Decree of 27 January 1992, no. 78, implementing Directive 88/314/EEC, concerning the price indications of non-food products for consumer protection purposes;
  - d) Legislative Decree of 17 March 1995, no. 115, implementing Directive 92/59/EEC, relating to general product safety.

## ANNEX I

### *Financial services within the meaning of Article 51, Paragraph 1, subparagraph a):*

investment services;

insurance and reinsurance operations;

banking services;

operations relating to pension funds;

services regarding dealings in futures or options.

Such services include in particular:

investment services referred to in the annex to Directive 93/22/EEC; services of collective investment undertakings;

services covered by the activities subject to mutual recognition to which the Annex of Second Directive 89/646/EEC applies;

operations covered by the insurance and reinsurance activities referred to:

in Article 1 of Directive 73/239/EEC;

in the Annex to Directive 79/267/EEC;

in Directive 64/225/EEC;

in Directives 92/49/EEC and 92/96/EEC.



**(provided for by Article 107, Paragraph 3)**  
**(reproduces Annex II to the directive 2001/95/EC)**

*PROCEDURES FOR THE APPLICATION OF RAPEX AND GUIDELINES FOR NOTIFICATIONS*

1. The system covers products as defined in Article 3, paragraph 1, subparagraph e), that pose a serious risk to the health and safety of consumers. Pharmaceutical products provided for in Parliament and Council Directives 2001/83/EC of 11 November 2001 and Parliament and Council Directives 2001/82/EC of 6 November 2001 shall not be covered by RAPEX.

2. RAPEX is essentially aimed at a rapid exchange of information in the event of a serious risk. The guidelines referred to in point 8 define specific criteria for identifying serious risks.

3. Member States notifying under Article 12 shall be required to provide all available details. In particular, the notification shall contain the information included in the guidelines referred to in point 8 and at least:

- a) information enabling product identification;
- b) a description of the risk involved, including a summary of the results of any tests/analyses and of their conclusions which are relevant to assessing the level of risk;
- c) the nature and the duration of the measures or action taken or decided on, if applicable;
- d) information on supply chains and distribution of the product, in particular on destination countries.

Such information shall be transmitted using the special standard notification form and by the means envisaged by the guidelines referred to in point 8.

When the measure notified pursuant to Article 11 or Article 12 seeks to limit the marketing or use of a chemical substance or preparation, the Member States shall provide as soon as possible either a summary or the references of the relevant data relating to the substance or preparation considered and to known and available substitutes, where such information is available. They shall also be required to communicate the expected effects of the measure on consumer health and safety, together with an assessment of the risk carried out in accordance with the general principles for the risk evaluation of chemical substances as referred to in Article 10, subsection (4) of Council Regulation (EEC) no. 793/93 dated 23 March 1993, in the case of an existing substance or in Article 3 (2) of Council

Directive 67/548/EEC dated 27 June 1967, in the case of a new substance. The guidelines referred to in point 8 shall define the details and procedures for the information requested in that respect.

4. When a Member State has informed the Commission, in accordance with Article 12, paragraph (1), subparagraph 3, in relation to a serious risk before deciding to adopt measures, it shall inform the Commission within 45 days whether it confirms or modifies this information.

5. The Commission shall be required, in the shortest time possible, to verify the conformity with the provisions of the Directive of the information received under RAPEX and may, when it considers it to be necessary and in order to assess product safety, carry out an investigation on its own initiative. In the case of such an investigation, Member States shall supply the Commission with the requested information to the best of their ability.

6. Upon receipt of a notification referred to in Article 12, the Member States are requested to inform the Commission, at the latest within the set period of time stipulated in the guidelines referred to in point 8, of the following points:

- a) whether the product has been marketed in their country;
- b) what measures concerning the product in question they may be adopting in the light of their own circumstances, stating the reasons, including any differing assessment of risk or any other special circumstance justifying their decision, in particular lack of action or follow-up;
- c) any relevant supplementary information they have obtained on the risk involved, including the results of any tests or analyses carried out.

The guidelines referred to in point 8 shall provide precise criteria for notifying measures limited to Italy and shall specify how to deal with notifications concerning risks which are considered by the Member States not to go beyond its territorial limits.

7. Member States shall immediately inform the Commission of any modification or lifting of the measure(s) or action(s) in question.

8. The Commission shall prepare and regularly update, in accordance with the procedure laid down in Article 15, subsection (3), guidelines concerning the management of RAPEX by the Commission and the Member States.

9. The Commission may inform the national contact points regarding products posing serious risks, imported into or exported from the Community and the European Economic Area.

10. Responsibility for the information provided lies with the notifying Member State.

11. The Commission shall ensure the proper functioning of the system, in particular classifying and indexing notifications according to the degree of urgency. Detailed procedures shall be laid down by the guidelines referred to in point 8

