

DISTANCE CONTRACT REGULATIONS TIGHTENED

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In order to comply with Hungary's obligation relating to the harmonization of laws in the field of consumer protection set forth in the Europe Agreement concluded between Hungary and the EU, Hungary has issued Governmental Decree 17/1999 (II. 5.) (hereinafter referred to as: "Decree") on so-called "distance contracts" in compliance with the provisions of EC Directive 97/7/EC ("EC Directive").

SCOPE OF APPLICATION

A "distance contract" means any contract concluded between a supplier and a consumer, which contract falls within the supplier's scope of activity concerning the sale of goods or the provision of services in case, for the purpose of the contract, the supplier makes exclusive use of one or more means of distance communication. Electronic mail is specifically listed - among other things - in the Decree as a means of "distance communication". *The Decree applies to contracts which are concluded between consumers and Hungarian business entities or foreign undertakings via their branch office in Hungary, with the exception of contracts relating to financial services, insurance, investment services, construction, sale of immovable property as well to sales effectuated at auctions.*

PROVIDING INFORMATION

The Decree sets forth that the supplier using the Internet as a means of distance communication for commerce purposes is obliged to provide the consumer with certain information in due time prior to the conclusion of the contract, thus enabling the consumer to obtain a full knowledge of the identity of the supplier, the main characteristics of the goods or services, cost of delivery, payment arrangements, validity period of the offer, etc.

The consumer shall receive confirmation in writing or in another durable form relating to some of the above-mentioned information in due time *before or at the latest as of the conclusion of the contract* (not exactly in line with the EC Directive which requires in due time during the performance or at the latest at time of delivery). The following must also be provided through the same means of communication:

- written information on the conditions and procedures for exercising the right of withdrawal;
- geographical address of the place of business of the supplier to which the consumer may address complaints;
- information on after-sales services and the guarantees; and
- conditions for canceling the contract, where the contract has an unspecified duration or a duration exceeding one year.

In addition, Hungary has enacted a regulation placing the burden of proof on the supplier concerning compliance with the information providing requirements and time limits.

RIGHT OF WITHDRAWAL

As means of a considerable protection for the consumer, the Decree sets forth the consumer's right of withdrawal without a penalty and without the need to provide any reasons, similar to the terms and conditions set forth in the EC Directive except, that an *eight* working day period starting as of the receipt of the goods or in the case of services, as of the conclusion of the contract, is allowed for the exercise of the right of withdrawal. If the supplier does not comply with its obligation concerning the providing of written information, the consumer shall exercise its right of withdrawal within 3 month after the receipt of goods or the conclusion of the service contract.

Where the right of withdrawal has been exercised by the consumer, the supplier shall reimburse the sums paid by the consumer as soon as possible and in any case within 30 days. The only charge or deduction that may be made to the consumer is the cost of returning the goods. However, the supplier may claim compensation for damages resulting from any non-ordinary use of the product.

SUMMARY

In the course of the evaluation and application of the Decree, it has to be kept in mind that the rights of a consumer pursuant to an on-line purchase transaction are more substantive than the rights arising from ordinary business transactions. *Consequently, the provisions of this Decree should be taken into consideration while designing and operating a website in Hungary if the contracts concluded via the website shall fall within the Decree's scope of application.*

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