

E-Commerce - Buy online



By the



European Consumer Center Italy - Bolzano Office Via
Brennero, 3
I-39100 Bozen
Phone +39-0471-980939
Fax +39-0471-980239
www.euroconsumatori.org
info@euroconsumatori.org

European Consumer Center - ECC-Net Italy Central Office
Viale degli Ammiragli 91
00136 Rome - ITALY
Tel. +39-06-44238090
Fax +39-06-44170285
www.ecc-net.it
info@ecc-netitalia.it

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The Internet and digital technologies change our world – in every area of life and economy. All consumers can embrace the digital revolution and thus take advantage of the possibilities offered by the digital world.

In fact, in order to take advantage of and take advantage of these possibilities, a further fundamental ingredient is necessary: to be well informed. Only an informed consumer can shop safely online. And therefore only a few precautions are often necessary, which should be used before the final click, in order to avoid problems or to know how to deal with them. This brochure intends to offer the basic information to legally protect yourself when shopping online, as well as a whole series of useful tips to avoid bitter awakenings.

1. What does "E-Commerce" mean?

E-commerce is a word that has its origin in the English language. In Italian "**Electronic Commerce**" it means **e-commerce**. It is part of the **E-Business** and includes electronic commerce in general: advertising, the sale of goods and services on the Internet. A typical example of E-commerce is online shopping, to which this brochure is dedicated.

1.1. the legal discipline

The legislative changes, due to the entry into force on 13 June 2014 at European level of the Consumer Directive 2011/83/EU, form the legislative framework, which regulates electronic commerce and which led to the modification of articles 45-67 of the Code of Italian consumption (legislative decree 206/05). This title governs the so-called distance contracts, which are characterized by being concluded without the presence of the parties.



ATTENTION: the rules on remote commerce only apply to contracts stipulated between a professional operator and a consumer (the so-called **consumer contracts**), therefore not for those stipulated between individuals or professionals!

This information turns out to be of particular importance when the online buyer wants to assert his right of withdrawal and the right of guarantee in relation to an online purchase between a private individual (as is usually the case on sales platforms).

1.2. Information obligations for operators

Before concluding the contract, the consumer must receive the following information from the company (Article 49 of the Consumer Code):

- the identity of the entrepreneur
- postal address, telephone and fax number as well as e-mail address;
- the essential characteristics of the good or service;
- the price of the goods or service inclusive of all taxes, additional costs for delivery as well as additional expense items;
- the methods of payment, delivery and execution, as well as the terms within which the company undertakes to deliver the goods or service;
- the existence or exclusion of the right of withdrawal (or right of withdrawal), the conditions, terms and procedure for its exercise such as the withdrawal form;
- if applicable, the indication that in case of withdrawal the consumer must bear the costs of returning the goods;
- the duration of the contract or the conditions for canceling permanent or automatically renewed contracts;
- indication of the existence of the legal guarantee; if applicable, the possibility of taking advantage of an out-of-court procedure, to which the company is subject and the access conditions.



ATTENTION: the EU Regulation n. 524/2013 provides that from 15 February 2016 consumers who have encountered problems related to an online purchase can contact the new online ODR platform for the resolution of disputes, made available by the European Commission. **Starting from the same date, each online sales site must also provide consumers with the link to the ODR platform, as well as the related information on the possibility of using it in the event of disputes.**

This information must be clear and understandable and must be communicated in a manner appropriate to the means of communication used.

If the information is transmitted on a durable medium (such as paper, DVD or by e-mail) it must be legible.

2. Internet shopping

2.1. Before your purchase

Before making your online purchase, you should take a look at the Internet site: does the site contain the company's contact details (postal addresses, telephone numbers, email address) as well as the general conditions of the contract? If this should not be the case, then you should distance yourself from the purchase. Furthermore, it is advisable to carefully read the general conditions of the contract: do they contain information on the payment methods, the right of withdrawal, as well as the legal and commercial guarantee? If this is not the case, then you should contact the company. If you get no response or it turns out to be completely unsatisfactory, you should think carefully about your purchase. **Compare** even in advance **prices** of the desired object with those of other Internet sites. **Caution** in front of **particularly advantageous offers**: companies usually have nothing to give away! You probably will not get the goods or it will be counterfeit goods.

Before buying, enter the company name in Internet search engines. Often you will find notes from other users, describing their own positive or negative experience with the seller.

Further advice/information can be found in the chapter "***Safe online shopping tips***".

2.1.1. Conclusion of the contract

If the activation of a button via mouse click is required for the order, the button must be clearly legible and marked with the words "paid order" or another similar unambiguous expression - otherwise the consumer is not contractually bound. Through this click, the buyer undertakes to purchase the product or service and consequently is obliged to pay.

! ATTENTION: the contract for the consumer is already binding by clicking on the "buy" button (or similar), even if the payment has not yet taken place. Thus, for example, in payments by credit card, whose data is often entered at the end of the procedure necessary to forward the order. Should this payment procedure be interrupted for any reason - because the data entered are not accepted or are not considered correct - this does not mean that the contract has not been validly concluded. In such cases you should contact the company as soon as possible!



ATTENTION: The law does not necessarily require an immediate confirmation of the order. This can also occur at the time of delivery of the goods. For this reason, do not trust that, due to failure to confirm the order, the contract has not been concluded, because by clicking on the "buy now" button or similar, the contract is already concluded and consequently the payment obligation arises.

2.1.2. Terms of payment

In principle there is the option to pay **both before and after the delivery of the goods**: while deferred payment obviously represents the method most appreciated by the buyer, who thus does not have to worry if the goods arrive late, the vast majority of sellers instead expect payment to take place in advance. It often happens that not only the payment following delivery, but also the contextual one - by cash on delivery - is explicitly excluded by the operators.

Please note that the contract is already concluded by clicking on the "buy" button (or similar), even if payment is only made after delivery.

A company cannot charge the consumer any costs for the use of payment methods, other than the expenses, that derive from the use of these payment methods.

We therefore present a brief overview of the most common payment methods among those who buy on the Internet:

a) credit card

Payment is made by communicating the credit card number, the name of the holder and the expiry date shown on the card; the indication of the security code may also be requested. Unlike pre-paid cards, classic credit cards have embossed numbers.

Payment by credit card gives you the opportunity to use the so-called Chargebacks. Things?

The CD. "***Chargebacks***" consists in the crediting, by the credit card company, of the sum contested by the consumer. Thus, in the event of unauthorized or inaccurate debits (e.g. in cases of abuse, double debits or the debit of an amount greater than the authorized one), you can contact your bank and your card issuer directly of credit to request the reversal

of the debit and therefore demand the return of the unduly charged sums. The Italian legislator has established with the legislative decree n. 11/2010 that, as soon as you notice an unauthorized charge, you should contact your bank and the credit card company. In any case, this notification must be made within 13 months of the debit.

Resort to **Chargebacks** is also an excellent solution to recover the price paid for goods that are never delivered, and even in the event that the seller is insolvent or the company is declared bankrupt - this to avoid having to chase your money for months .

Since credit card details are sensitive data, you should only enter them on reputable sites. Credit card information should only be transmitted via secure connections; these can be recognized by the abbreviation **https://** or from the padlock at the bottom right of the screen frame.

Check your credit card statements regularly and in the event of unauthorized debits, contact your bank and credit card company immediately.



IMPORTANT: In the event of loss or theft, you must block your credit card immediately, as it can be misused!

Prepaid card

The prepaid card works like a classic credit card, with the difference that only the ceiling loaded on the card can be used.

The advantage over credit cards is that any abuse is limited to the amount loaded on the card. For this reason it is advisable to load the card with limited credit.

The so-called is also possible with prepaid cards **Chargebacks**, i.e. the reimbursement of the sum to the consumer. However, in these cases the procedure can be more complicated and a refund is not always granted. Furthermore, in most cases there is a deductible to be paid by the consumer.

b) cash on delivery

Cash on delivery is paid in cash upon delivery of the goods to the address indicated by the recipient. Here, on the one hand, there is the advantage of not

pay attention to the payment when you decide to exercise the withdrawal before the delivery; on the other hand, however, you must expect to be at home when the courier comes to deliver, and to have the necessary cash for payment. Finally, the cash on delivery method involves a surcharge, and is not always foreseen by online suppliers.

c) wire transfer

Through a bank transfer, the consumer makes a payment in favor of the supplier company, by going to the counter of his own bank or through online banking. In case of an international transaction, two codes are required, the **IBAN**(= international account number) of the recipient and the bank code **BIC**(also called **SWIFT**) of the receiving bank. Pay particular attention to the correctness of the data, especially the IBAN, so that you (and not the bank) have to bear the risk in case of false data. If, for example, the amount of money is credited to the account of the wrong recipient due to an incorrect IBAN, then it may no longer be possible to get the money back.



ATTENTION: An IBAN number does not necessarily correspond to a current account, as it can be linked to a prepaid card, the holder of which may not be identifiable. It can be useful to check an IBAN code through Internet sites such as for example www.ibancalculator.com, in order to find out if the data can unequivocally correspond to a bank account.

You should also consider that with a bank transfer you usually do not have the possibility of getting the money back, in case you have stumbled upon a scammer.

OUR ADVICE: in the case of transfers to countries outside the European Union, it is advisable to first inquire at your bank about the commissions applied, in order to avoid unpleasant surprises once the transfer has been made.

d) Invoice

With this payment method, payment takes place after delivery of the goods; the invoice is usually enclosed with the goods. Since the trader bears the risk, such a payment method is often not even possible.

e) PayPal

PayPal is a company which, under its name, carries out an online payment service. Until July 2015 it was a company part of Ebay.

¹More information on the right of withdrawal in the relevant paragraph.

If you want to pay via PayPal, you must first open a PayPal account; in this case you must communicate the details of your bank account or your credit card. The payment itself takes place through an email address and a password. Enter both and PayPal gets the job of debiting your credit card or checking account and transferring it to the seller.

Since no credit card or bank account information is disclosed to the seller with this payment method, the security risk is small.

PayPal-Buyer Protection: The buyer can request it if he has not received the goods or if they do not correspond in any way to the description. If a buyer protection claim is successful, PayPal refunds the buyer the purchase price including shipping costs.



ATTENTION: For example, vouchers, motor machines, industrial machines, items that have been custom-made are not covered by PayPal buyer protection.

Further information on buyer protection can be found on the PayPal website

2.2. After online purchase

2.2.1. Goods delivery (art. 61 et seq. of the Consumer Code)

The seller must deliver the goods or service **within 30 days of the order date**, unless a different delivery date has been agreed. If the company fails to deliver within the deadline, the consumer invites the company again to deliver within a further period, appropriate to the circumstances. Once this too has elapsed, without the goods or services having been delivered, the consumer can dissolve the contract and has the right to request compensation for damages.

If the company expressly refuses to deliver or if it is an essential term (for example a wedding dress for the wedding date), the consumer does not have to indicate a new term; in these cases he can immediately withdraw from the contract and is entitled to compensation for damages.

After receiving the ordered goods, it is advisable to immediately check their integrity and compliance with what has been ordered, as well as, depending on the case, their proper functioning. If any element is missing or malfunctions or errors are found,

riori of delivery, a claim against the seller must be made as soon as possible. The method to follow is to write a registered letter with acknowledgment of receipt. Further information on the guarantee can be found in the chapter "Warranty".

If the goods are already damaged upon delivery, obtain written confirmation from the carrier and accept the goods "with reserve" (note this in writing on the supplier's delivery receipt) or refuse acceptance altogether. Necessarily indicate the reason for the reservation or refusal (for example damaged package). You are under no obligation to accept damaged goods. Document the defects through photos and/or a video recording.

Particularly if you have ordered fragile goods, you should accept them with reservations, even if the package appears to be in an intact state from the outside: sometimes transport damage is not visibly recognizable from the outside. Otherwise the company can raise objections in the event of a complaint.

Advise: Document the opening of the package, especially in the case of fragile goods, by means of photographs and/or a video recording; in this way, in the event of a dispute, you will have evidence at your disposal.

Transfer of risk in delivery(Article 63 Consumer Code)

The risk for loss or damage to the goods is transferred to the consumer only when he, or a third person appointed by him, physically takes possession of the goods.

The risk already passes upon delivery of the goods from the supplier to the consumer, if the latter has chosen the courier and the latter has not been advised by the company.

Delivery of unordered goods

The Art. 66-*quinquies* of the Consumer Code provides that the seller is not authorized to deliver goods or a paid service without having received an order from the consumer. For this good or service the consumer does not have to pay. A lack of response can never be considered as consent!

Delivery of wrong goods

Furthermore, the company cannot deliver goods or services other than those ordered, unless the buyer declares his agreement before the conclusion of the contract or at the time of conclusion of the contract. This also applies if the goods or services have an equivalent or higher value.

type letter(Granting of an additional deadline for delivery): <http://www.euroconsumatori.org/82040d82685.html>

2.2.2. Right of withdrawal (art. 54 et seq. of the Consumer Code)

In cases where the consumer does not have the opportunity to try and see the goods directly (as for example in orders placed by telephone, catalogs or even online), the European legislator guarantees the right to rethink the purchase decision taken. The same goes for online shopping. Therefore the consumer can, after delivery of the goods and of course also before, withdraw from the purchase free of charge.

What is the right of withdrawal?

The right of withdrawal allows you to rethink the purchase that has already been made. In distance contracts and thus also in ordering and concluding contracts on the Internet, the legislator provides for this right of withdrawal at European level, which can be exercised without having to state reasons.

Regulatory provisions

At European level, the fundamental provisions as well as the withdrawal in distance contracts, were unified from June 2014 with the introduction of the Consumer Directive 2011/83/EU: in the whole **EU area** the valid term for exercising the right of withdrawal is **14 calendar days** (previously in Italy it was 10 working days). In the event that an entrepreneur does not inform a consumer correctly about his right of withdrawal, the deadline for exercising it is **12 months** starting from the expiry of the original 14-day term and consequently can be extended up to a period of time of 12 months and 14 days.

How to exercise the right of withdrawal?(art. 54 of the Consumer Code)

To communicate the wish to exercise this right, the consumer can use the standard letter, which must be made available by each company on its website, or make another **express written statement in any form** (for example by registered letter, email or fax).

The model letter for withdrawal can be found on our homepage under "model letters".



ATTENTION: The **burden of proof** of the actual receipt of the declaration is the responsibility of the **consumer!** For this, a confirmation of receipt is important, even if this takes place automatically. Otherwise a declaration sent by recorded delivery with acknowledgment of receipt should be considered. The simple **return of the goods** without a corresponding declaration of withdrawal **is not** considered to be valid **withdrawal** valid by contract.

Conformity of the goods in exercising the right of withdrawal(Art. 57/2 Consumer Code):

The consumer is authorized, before exercising the withdrawal, to verify the conformity of the goods, the characteristics and the functions. In concrete terms, this means that he can treat the goods in the same way as he could in a shop before the purchase and in this context no decrease in value can be attributed to him.

Return of goods and costs(Article 57 of the Consumer Code)

Normally the consumer has to bear the direct costs for the return, unless the seller guarantees, in his general terms and conditions, a free return of the goods. The return must be made at the latest within 14 days from the date on which the withdrawal was exercised.

Refund of the purchase price(Article 56 of the Consumer Code)

The company must reimburse all payments made by the consumer, without delay and at the latest within 14 days from the day on which it was informed of the withdrawal, and in any case only after the goods have been sent back by the consumer.

Model Letter - Standard Withdrawal Form <http://www.euroconsumatori.org/82040d82686.html>

Cases of exclusion of the right of withdrawal (Article 59 of the Consumer Code)

The consumer cannot exercise the right of withdrawal in the following cases:

- contracts for the provision of services, if the service has been completely fulfilled and the company's performance had begun with the prior express authorization of the consumer and with the awareness of the loss of the right to exercise the withdrawal in case of complete fulfillment of the service by of the company;
- in the case of goods or services whose price is linked to fluctuations in financial market rates;
- goods made to measure or personalized according to the customer's needs or which, by their nature, cannot be returned or are liable to deteriorate rapidly (for example made-to-measure garments in the textile industry);
- audiovisual products (e.g. CDs, DVDs, etc.) or sealed computer software, once opened by the consumer;
- newspapers, periodicals and magazines with the exception of subscription contracts for the delivery of such publications;
- provision of services in the housing sector for purposes other than residential purposes- vi, transport of goods, car rental, transport of food and beverages; as well as provision of services in relation to leisure activities, where a specific term or period for fulfillment is foreseen in the contract.



ATTENTION: Please refer to this exclusion, among other things, in the frequent cases of online hotel bookings or the purchase of tickets for events! This means that you cannot withdraw from an online hotel reservation free of charge, even within 14 days, unless this possibility is granted by the hotel.

The aforementioned list also mentions **public auctions** as a reason for exclusion. However, the European Commission establishes within an orientation activity, that online auctions do not fall within this exclusion reason and consequently, in order to bid for goods at auctions on online platforms, consumers have a **right of withdrawal**, since the buyer cannot be personally present and the seller cannot be a private person.

For a complete list, please refer to Art. 59 of the Consumer Code.

In addition to the categories of contracts just mentioned, it is possible that even for the contracts mentioned in Article 47 of the Consumer Code, which provide for the exclusion of all rights provided by distance contracts, the right of withdrawal cannot be exercised. Here is their list:

- some contracts for the provision of social and health services;
- gambling contracts including lotteries, gambling in online casinos and betting (here we refer to the ban on domestic participation in foreign lotteries – more information can be found on our website www.euroconsumatori.org);
- contracts on financial services;
- certain contracts relating to property rights or their construction;
- travel packages (this includes the entire sector of online reservations for travel packages);
- timeshare contracts (further information can be found on our website);
- contracts for periodic deliveries of food and beverages;
- passenger transport contracts (e.g. online reservations for train or bus tickets).

For the complete list, please refer to Art. 47 of the Consumer Code.

It is part of the information obligations of the seller / offerer, to inform the consumer, that the provision of the service or the goods does not provide for the right of withdrawal.

2.2.3. the legal guarantee (Article 128 and following of the Consumer Code)

The entire scope of the legal guarantee has been regulated throughout the European Union through Directive 44/1999/EU, implemented in our country by the Consumer Code (Articles 128-135). The coverage offered by the legal guarantee covers the minimum duration of 2 years throughout Europe, with extensions even beyond this duration in some European countries. It must always be enforced against the person who sold the product.

Unlike the various forms of commercial guarantee, which the consumer contractually accepts at the time of purchase, the legal guarantee does not represent a service voluntarily granted by the commercial operator, but an **inalienable right**. What does it mean? It means that if a contract were to contain a clause that excludes or limits the duration of the legal guarantee (for example, bringing it to six months), this clause would automatically be void. However, the nullity can only be asserted by the consumer, and can be detected ex officio by the Judge (art. 134 of the Consumer Code).

What about the legal guarantee?

The object of the guarantee are the **consumer goods**, therefore any movable property, with the exception of the following:

- all goods that are sold on the basis of forced sale or other method decided by the Judicial Authority;
- water and gas, when they are not contained in delimited packages or are decanted in a determined quantity;
- electricity.

When and how should the presence of faults or defects be communicated?

The Italian legislator has established that any defects or flaws must be reported in writing to the seller (by registered letter with acknowledgment of receipt) within **2 months** from the discovery. If you notice a defect within the first **6 months** from delivery of the goods, the defect is assumed to already exist at the time of delivery. In this case, the seller will eventually have to prove the opposite, i.e. that the defect arose at a later time.

If, on the other hand, a defect is noticed only after the first 6 months of purchase, it is the consumer who must demonstrate that he has not tampered with or treated the purchased good incorrectly (**reversal of the burden of proof**). These are normally rather difficult demonstrations, unless you start a legal procedure and resort to an expert - with the consequent costs.

When can we speak of a defect?

A defect, or lack of conformity, consists in the non-compliance of the goods with the description given by the seller (for example a new product is ordered from the factory, but a used product is delivered; or the product is new, but has different characteristics), or in the fact that the goods are not suitable for the originally guaranteed use, or even in an element that leads to a significant depreciation of the purchased goods (art. 129 of the Consumer Code).

How to eliminate the defect?

The consumer can basically decide for himself whether to ask for the product to be **fixed** or rather **replaced**, unless one of the two solutions is impossible or excessively expensive compared to the other. We speak of "excessive onerousness" when the defect could be remedied with a small repair; in this case it would be disproportionate to expect the seller to replace the goods. Another matter is when the repair does not lead to the promised results or is performed inadequately.



ATTENTION: the practice is that the consumer allows the seller two attempts to repair the defective goods. Only after these attempts is generally expected the replacement of the product.

How long can the repair take?

The Consumer Code (art. 130) provides that the repair must take place within a **reasonable term**; the same goes for replacement. What does it mean **reasonable term** it is not easy to say, also because there is a lot of room for interpretations, different from time to time if formulated by the consumer or by the entrepreneur. Precisely for this reason it is advisable – especially when a long wait is expected – to immediately set a deadline for the return or replacement of the defective goods.

Does the consumer have to pay something for the repair?

The art. 130 of the Consumer Code expressly provides that the consumer does not have to bear any expense for shipping, repair work or the materials used.



ATTENTION: compliance with the provisions relating to "shipping costs" is scarcely considered by operators, especially in the case of cross-border purchases.

In which cases can the consumer demand a reasonable price reduction or termination of the contract?

- When the repair or replacement proves impossible or excessively expensive;
- when the seller has not organized the repair or replacement within a reasonable time;
- when attempts at repair or replacement have caused considerable inconvenience to the consumer.

What does the regulation provide for used goods?

The warranty period in Italy is one year, as is usually agreed between the parties (art. 134). With regard to the deadlines for notifying the defect and the burden of proof, the same regulation provided by the legislator for new goods applies.

! IMPORTANT: Keep the receipt or invoice carefully (for safety, also make a copy) so that you can prove the date of purchase and thus be able to make use of the guarantee right. The receipt also contains information about the seller and the purchase price. If you paid by debit card or credit card, the date of purchase can be verified through the payment receipt or account statement.

! ATTENTION: the provisions of the law on the legal guarantee only concern contracts concluded between consumers and professional operators!

Model letters to use to assert your rights in terms of warranty:

www.provincia.bz.it/verbraucherberatung/Detail_i.aspx?CASE_ID=1079

www.provincia.bz.it/verbraucherberatung/Detail_i.aspx?CASE_ID=1099

2.2.4. the commercial guarantee (contractual and good functioning guarantee)

The commercial warranty represents **avoluntary commitment** of the **producer**, which he regulates and organizes as he sees fit. Moreover, it is the producer who is responsible for what he himself has promised the consumer. Unlike the legal guarantee, the commercial one is not governed by law: it can happen then that it is

offer for one year, which presents certain limitations or which is subject to compliance with particular formalities.

Lately many consumers buy commercial guarantees (for a fee) to be insured in case of damage, especially when it comes to the purchase of electronic devices.

Is it worth making a paid commercial guarantee?

A useful guarantee can be recognized on the basis of particular distinctive signs:

- the duration exceeds that established by law (therefore at least 2 years);
- consumers must not provide evidence of the existence of a defect, especially not after the first 6 months;
- a replacement device is offered during the repair or replacement;
- the complaint procedure is simple and without many hitches;
- the seller or manufacturer organizes the redelivery and assumes all costs arising from the inspection, repair or replacement;
- all damages are included, even those caused by water, accidental breakage or oxidation.

Main differences between legal guarantee and commercial guarantee

legal guarantee	commercial guarantee
duration: at least 2 years governed by the law mandatory services not to be renounced equal for all according to the free law unlimited not modifiable by the seller	duration: varies, often 1 year governed by contract services offered voluntarily optional infinite variations at the choice of the manufacturer possible costs may be limited to individual components modifiable by the manufacturer

2.3. Online shopping abroad

A distinction must be made between purchases within the EU and purchases in other foreign countries. Within the EU, consumer rights have been largely standardized and the consumer is protected by high standards, while in third countries such consumer-friendly laws often do not exist.

Consider that for purchases from third countries, there are no consumer organizations

bulls who can support you in asserting their rights if problems arise (for example due to language).

In the case of purchases from third countries – unlike purchases within the EU, the goods are subject to duty. Since these costs are not included in the purchase price, it is up to the consumer to inquire at the Italian customs agency (

www.agenziadoganemonopoli.gov.it), taking them into account before making a decision and proceeding with the purchase. Any increase in shipping costs may also affect the price. These are stated on the seller's website in the delivery conditions.

3. If a minor buys on the Internet

Contracts concluded online by minors can usually be declared void, as the minor does not yet have the **ability to act**. The parents therefore have the right to request the return of the sums paid and thus terminate the contract.

! ATTENTION: however, in the event that the minor hides or falsifies his real age through **deceptive behaviors**, this principle does not apply!

Moreover, transactions and purchases conducted on the Internet do not in any way allow direct contact between the seller and the buyer, making it practically impossible to control the data transmitted - even of age. The seller can and must of course rely on the information provided by the consumer. It becomes completely impossible when it turns out that the minor has used another name and means of payment, such as a credit card, in the name of an adult. In such cases we are faced with an evident deception, and therefore the obligation to pay for what has been purchased remains.

If then the purchase is no longer rescindable (for example in cases where the right of withdrawal is not foreseen), the parents are directly responsible for the operations carried out and the relative consequences, on the basis of the so-called "**culpa in educating**" (obligation of parents to educate their children).

3.1. online games, downloads and so-called In-App purchases

Free downloadable game applications are very attractive, especially for young people. However, paid extras are often offered within these games.

These in-app purchases are characteristic of many free download games and are called "freemium titles".

These amounts are charged directly to your phone balance or credit card.

The attention of the European Commission has also been drawn to this. The commitment is to find a legal regulation in this regard.

In the event that such charges should occur, and the amount is deducted directly from the telephone balance, then the injured party, or correspondingly the party's legal guardian, should contact their operator and request an immediate refund of the amount charged .

In the event that payment was made by credit card, then the legal guardian must immediately contact the game operator. In some cases, these managers make manuals available on the so-called "parental sites", through which you can get in touch with the manager and request the revocation of the purchase made by the minor.

These in-app purchases, so-called "freemium titles", can be blocked to prevent the child from activating paid services in the first place. Of course, the risk of misuse by third parties increases considerably if you already enter your credit card data.

You are now aware of your rights and of the problems that may arise in making use of them.

Despite this, there are many traps online that one can fall into.

4. Watch out for traps!

The consultancy work has highlighted 3 main categories of initiation of contractual relationships:

- a) spontaneous/unsolicited contact
- b) contact upon request
- c) purchase of counterfeit goods (careless purchase)
- d) scam

a) Spontaneous/unsolicited contact(spam, fishing and phishing, e-mails of alleged winnings)

Sooner or later it happens to all Internet users: an unusual message appears in the e-mail box, according to which either you are the lucky winner of hundreds of thousands of euros or dollars (winning e-mail), or **you receive a reminder for non-payment**(whether it's an online purchase or a phone bill).

These are the so-called e-mails from *phishing-fishing*.

Of course, it is not a question of real winnings, but of astute inventions, through which one tries to **extort a few thousand euros from naive people**, in view of an imminent much higher gain.

In the case instead of presumed accounts in arrears, the focus is on obtaining a very large number of **personal data** (hence the definition "phishing", composed of p(ersonal) fishing) directed into the hands of criminal gangs, which can use them for the **illegal data trafficking, identity theft** etc.. Access to such data is achieved through attachments and links. Consumers are tricked into opening them for more information on payments still to be paid and are thus trapped.

Do not react to winning e-mails: do not share personal data and bank details under any circumstances, do not send copies of your identity card and never, ever pay!

Also in the case of payments to be paid, it is advisable to avoid opening attachments and links if the sender is not clearly identifiable and there is not really an open account to be paid.

b) Contact on request

This mainly refers to purchase and sale requests from the consumer (especially on sales platforms).

As for these offers, which are activated through online ads, there are particular categories that have proved to be particularly risky and subject to scams:

offers for **vacation homes, rental homes**, as well as the **purchase of used cars and cell phones**. In these cases skepticism and prudence should prevail, stay away from paying an advance and not trust the reasons why the goods are sold at such a bargain price.

In these cases the contracting party is often a **private individual and not an entrepreneur**.

In the case of purchase from private individuals, it is usually not possible to exercise the rights previously discussed, such as the right of withdrawal or the right of guarantee. These only apply to contracts between a consumer on the one hand and an entrepreneur on the other. This means that it is usually not possible to return the goods if you change your mind, as the buyer has no right of withdrawal. Even a possible defect cannot be compensated thanks to the guarantee.

Of course it is even more difficult to be able to identify the seller in these cases. It therefore becomes essential to take all possible precautions to protect yourself in the best possible way against possible scams. Methods of payment that are not 100% secure (see chapter on the subject "**Terms of payment**") are to be avoided and any request for payment of an advance by the seller must be absolutely refused.

c) Purchase of counterfeit goods(careless purchase and purchase of goods of suspicious origin)

Anyone who purchases or accepts products which, based on their quality, marketing methods or unfair price, give rise to suspicion of a violation of the rules concerning origin, provenance and intellectual property, is liable to prosecution according to current legislation.

The consumer can take precautions even before the purchase, in order not to fall into traps and perhaps even risk fines:

if the desired branded item, which can usually only be purchased in authorized shops, is offered on unofficial online portals, then it is most likely counterfeit and illegal goods.

In these cases you should desist from the purchase, because, in addition to dealing with low quality goods, this can also lead to other negative consequences:

first you can be accused of **recipeif** if you buy products, even though you know that they are counterfeit or stolen goods. In the event that, on the basis of the low price of the goods, their quality or conditions of sale or on the basis of any other element, it can be assumed that **the goods come from a crime(eg. theft or forgery)** or that it is most likely counterfeit, and is bought anyway, the consumer can in the worst case be sentenced to a prison sentence of between 2 and 8 years and a fine of between 516.00 and 10,329.00 euros.

If, on the other hand, acting with **lightness**, you buy goods of dubious or suspicious origin, you can risk a prison sentence of up to 6 months or a fine of at least 10.00 euros ("purchase of goods of suspicious origin"). To this can be added administrative penalties of an amount equal to 100.00 euros up to an amount of 7,000.00 euros.

d) Fraud

What if the seller has clearly duped you?

If you are clearly the victim of an online scam, we suggest you go to the police immediately to file a complaint.

In Italy, the Postal Police, a special unit of the State Police, deals with crimes committed online (***www.commissariatodips.it***). In particular, however, with regard to cross-border purchases, even the police cannot intervene decisively.

Even reporting the facts, it is very difficult to provide the necessary evidence to prove the seller's guilt and thus be able to recover your money. It is therefore essential that every consumer takes precautions from the outset when it comes to online purchases, precisely to avoid nasty surprises.

5. Tips for safe online shopping

Below are some useful tips to avoid unpleasant situations and scams on the Internet, collected and elaborated over time by the consultants thanks to their experience:

- **Staybeware of particularly advantageous offers:** usually an entrepreneur never gives anything away! You will probably not receive any product or a counterfeit product will be delivered to you.
- **Check if the seller is an entrepreneur or a private individual.** The laws concerning distance selling only apply to contracts concluded between an entrepreneur and a consumer. Only in this case you have the right to guarantee and withdrawal.
- Make your purchases only on sites that you know or **find out about the seller**. The more information you are able to get about the seller, the better.
- **The website should contain the following information:**
 - company contact details such as address, telephone number, e-mail address;
 - essential characteristics of the goods;
 - price, including taxes and shipping costs;
 - payment details;
 - information regarding the right of withdrawal;
 - legal and contractual conditions of guarantee.
- - **Typebefore purchasethe company name in Internet search engines.** You can often find negative or positive reviews from other consumers about their experiences with this company. This information can help you decide whether or not to proceed with the purchase.
- - Read carefully the**General Terms and Conditions**before starting the purchase.

- **Just one click** to conclude the contract, even if the goods or services are paid for only after delivery.
- **Know what you are buying.** Not being able to inspect the object of desire, it is important to examine in detail all the information available on the product (technical details, measurements, etc.) and in doubtful cases, request further data from the seller.
- **Print all documents related to the purchase** and keep them carefully. If necessary, take screenshots during the ordering process.
- For what concerns **payment**, we recommend – if possible – not to pay by prepayment (bank transfer, credit card). Since the goods are only delivered at a later date, the risks in those cases are high. However, it is often not possible to pay after delivery (e.g. by cash on delivery, invoice).
- **Are the payment methods really secure?** An IBAN number does not necessarily have to correspond to a current account but can also be assigned to a rechargeable credit card, the holder of which may not be identifiable. It can therefore be useful to first check the IBAN number on a web page, such as www.ibancalculator.com, to make sure that the data corresponds to a real bank account.
- The **credit card payment** offers the possibility to request a payment reversal through a **Chargebacks** (further information can be found in the chapter “**Terms of payment**”). It's a good idea to check subsequent months' statements for unjustified charges. If you notice any irregularities, immediately contact your credit card company and your bank.
- Self **the goods are already damaged at the time of delivery**, obtain written confirmation from the courier and accept it only with reservations or refuse it. In fact, you are not obliged to accept the damaged goods. Immediately indicate the reason for the reservation or refusal (e.g. damaged goods). Take photos or videos to document the damage or defect.
- In case the **casings is damaged** at the time of delivery, accept the goods only with reservations or refuse them completely. Absolutely indicate the reasons for the refusal or reserve (e.g. damaged package).
- **Check immediately after delivery**, that the goods are functional, complete and correspond to the product description. If this is not the case, complain immediately by registered mail with acknowledgment of receipt.
- Clarify in advance, **who is responsible for bearing the costs in the event of a return** and how much these amount to.
- Regarding **icomplaints**, it is not obligatory to send them by registered mail with acknowledgment of receipt, even if it is advisable.

Small precautions, a bit expensive, but useful to avoid problems.

6. How to assert one's rights?

First you must contact the seller and describe the problem. Sometimes oral communication is enough to solve the problem. However, a written complaint is preferable in order to be able to provide evidence at a later date that the seller had promised, for example, a replacement for the defective goods.

In the event that the seller does not propose a resolution or proposes an unsatisfactory one, you can contact a **consumer protection organization**. If the complaint is of a national nature (consumer and seller are residents or are based in Italy), the list of all recognized consumer protection organizations present in Italy can be found on the website www.tuttoconsumatori.org. If your complaint concerns a company based in the EU (including Norway and Iceland), then you can contact our Center directly. The **network of European Consumer Centres (ECC-Net)** is committed to finding amicable solutions for cross-border complaints within the borders of the EU (including Norway and Iceland).

If, despite the intervention of a consumer protection organization or the European Consumer Centers network, the problem cannot be solved, you have the option of contacting a **ADR Center (Alternative Dispute Resolution)**. These are organisms of **extrajudicial mediation**, who support the parties in resolving the dispute (mediation), propose a solution themselves (conciliation) or decide arbitrarily (arbitral tribunal).

ADR bodies are quick, unbureaucratic and low-cost: it is not necessary to be represented by a lawyer.

In most ADR negotiations, the physical presence of both parties is expected, which makes this procedure difficult to implement in cases where the goods subject to the complaint have been purchased abroad or online from distant companies. In these cases, a special type of ADR can be used, namely the **ODR (Online Dispute Resolution)**. There **ODR procedure** it works similarly to the traditional conciliation procedure, with the difference that this can be started comfortably from the home computer. An example of an ODR body in Italy is RisolviOnline, the online conciliation service of the Milan Arbitration Court based in the Milan Chamber of Commerce. An example of an ODR body in Germany is the "Online-Schlichter" (online conciliator), which specializes in disputes arising from contracts concluded on the Internet.

From 15 February 2016, consumers who have encountered problems related to an online purchase can contact the new ODR online platform for resolution

of disputes, made available by the European Commission. Starting from the same date, each online sales site must also provide consumers with the link to the ODR platform, as well as the related information on the possibility of resorting to it in the event of disputes. For more information on the ODR platform, visit our website www.euroconsumatori.org.

Further information on complaints can be found in our brochure "Guide to complaints for consumers" and on our website www.euroconsumatori.org.

What can I do if I cannot reach an agreement with the entrepreneur out of court?

In this case, you have the option of filing a complaint through the **European procedure for cross-border small claims** (European Small Claims Procedure – ESCP).

However, a fundamental prerequisite is that the company is based in an EU member country and that the value in question does not exceed an amount of 2,000 euros. If you have ordered a mobile phone from a German website, it has not been delivered to you, nor will you be reimbursed for the amount paid, you can therefore activate the European Small Claims Cross-Border Claims Procedure. However, if the company is based in Italy, a consumer, also residing in Italy, cannot make use of this option. In this case, after having exhausted all the extrajudicial procedures, you just have to assert your rights through an ordinary legal procedure.

The European Cross-Border Small Claims Procedure is fast, low-cost and effective.

It is fast, as there are short deadlines for the whole procedure. It works on the basis of standardized forms and is done in writing (except for cases where the court deems an oral negotiation necessary).

It is low cost, as it does not require the presence of lawyers. The administrative costs associated with the procedure are also respectively small. They vary in the different Member States between 15 and 200 Euros.

It is effective, as the final judgment of the proceedings is recognized in another EU member state and must be enforced without the need for further declarations of enforcement and without the recognition being able to be contested. In the event that the counterparty does not implement the sentence, however, the intervention of a lawyer will be necessary.

More information on the European Cross-Border Small Claims Procedure is available on our website www.euroconsumatori.org.

7. Some useful links:

European Consumer Centre, Bolzano office:

www.euroconsumatori.org

South Tyrol Consumer Protection Center:

<http://www.verbraucherzentrale.it/>

European Consumer Centers Network (ECC-Net): http://ec.europa.eu/consumers/solving_consumer_disputes/non-judicial_redress/ecc-net/index_en.htm

List of consumer associations recognized in Italy: [http://](http://www.tuttoconsumatori.org)

www.tuttoconsumatori.org

Consumer Code (Legislative Decree 206/2005):

<http://www.codicedelconsumo.it/p1.html>

ODR platform set up by the European Commission: [http://](http://ec.europa.eu/consumers/odr/)

ec.europa.eu/consumers/odr/

Risolvionline ODR body: [http://](http://www.risolvionline.com/)

www.risolvionline.com/

Competition and Market Authority (Antitrust): [http://](http://www.agcm.it/)

www.agcm.it/

Police post:

<https://www.commissariatodips.it/>

Type letters

Model letter - Additional deadline in case of late delivery [http://](http://www.euroconsumatori.org/82040d82685.html)

www.euroconsumatori.org/82040d82685.html

Model letter - Standard withdrawal form [http://](http://www.euroconsumatori.org/82040d82686.html)

www.euroconsumatori.org/82040d82686.html

Model letter to exercise the so-called right of withdrawal. "prolonged": [http://](http://www.provinz.bz.it/verbraucherberatung/Detail_i.aspx?CASE_ID=1279)

www.provinz.bz.it/verbraucherberatung/Detail_i.aspx?CASE_ID=1279

Standard letters for the legal guarantee: [http://www.provinz.bz.it/](http://www.provinz.bz.it/verbraucherberatung/Detail_i.aspx?CASE_ID=1079)

[verbraucherberatung/Detail_i.aspx?CASE_ID=1079](http://www.provinz.bz.it/verbraucherberatung/Detail_i.aspx?CASE_ID=1079) [http://www.provinz.bz.it/](http://www.provinz.bz.it/verbraucherberatung/Detail_i.aspx?CASE_ID=1099)

[verbraucherberatung/Detail_i.aspx?CASE_ID=1099](http://www.provinz.bz.it/verbraucherberatung/Detail_i.aspx?CASE_ID=1099)



European Consumer Center
Bolzano office
Via Brennero 3
39100 Bozen
Phone +39-0471-980939
Fax +39-0471-980239
www.euroconsumatori.org
info@euroconsumatori.org

Main office for Italy: ECC-
Net Italy
European Consumer Center
Viale degli Ammiragli 91
00136 Rome - ITALY
Phone +39-06-44238090
Fax +39-06-44170285
www.ecc-netitalia.it
info@ecc-netitalia.it



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Development - DGAMTC



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of Bolzano