

EU Consumer Law Acquis Compendium

Legislation

Hungary (HU) Nr. 7 EN



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Full name and/or number of the statute (in original language):

17/1999. (II. 5.) Korm. rendeletera távollevők között kötött szerződésekről

Translation of the name:

Government Decree No. 17/1999. (II.5.) on Distance Contracting

Reference in Official Journal (if appropriate):

Magyar Közlöny 1998/8 (II.5.)

Date of coming into force:

01.03.1999

Subsequent amendments:

last amendment 01.03.1999

Text:

Government Decree No 17/1999 (II. 5.)

on Distant Contracting

By virtue of the authority conferred in Article 55(e) of Law CLV of 1997 on Consumer Protection (hereinafter referred to as the 'CPL'), the Government hereby issues the following Decree:

Article 1

(1) This Decree shall apply to contracts concluded between business organisations or the branch offices in Hungary of foreign-based companies (both hereinafter referred to as 'business organisations') on the one hand and consumers on the other concerning the provision of services or sale of goods by business organisations making exclusive use of one or more means of distance communication (distant contracting).

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(2) This Decree shall apply to contracts falling within its scope unless separate legislation provides otherwise.

(3) This Decree shall not apply to:

a) contracts relating to financial services, auxiliary financial services, insurance and insurance brokerage, investment services and auxiliary investment service activities, or to contracts concluded with voluntary mutual insurance funds and pension funds;

b) sales via vending machines;

c) contracts concluded with organisations providing public telephone services by public pay-phones;

d) building contracts;

e) contracts for acquiring the ownership of real property or acquiring other rights in connection with real property, except for lease contracts; and

f) contracts concluded at auction.

(4) Only Article 7(2) and (3) and Articles 8 to 11 may apply to contracts on everyday home delivery of consumer goods, while Article 9 alone may apply to travel contracts and to contracts concerning the acquisition of the right to time-share use of property.

(5) For the purposes of this Decree, 'means of telecommunication' shall refer to devices that make it possible for contractual declarations to be made at a distance without the presence of the contracting parties. Such devices include addressed and unaddressed pre-printed matter, standard letters, press advertisements with order forms, catalogues, telephones, automatic calling devices, radios, videophones, videotex (microcomputers with screens) with keyboard or touch-screens, electronic mail (e-mail), facsimiles and televisions.

Article 2

(1) In good time before entering into a contract, the business organisation shall inform the consumer of the following:

a) the registered name (name), registered head office (place of residence) and registration number of the business organisation, determined in a separate rule of law, as well as its tax identification number and telephone number;

b) the essential features of the subject of the contract;

c) the price, including other payment obligations relating to the price;



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- d) delivery costs, as necessary;
 - e) the arrangements for payment, delivery or performance;
 - f) the right to withdraw from the contract (Articles 4 and 5);
 - g) the cost of using the means of distance communication, where it is calculated other than at the basic rate;
 - h) the period for which the offer remains valid; and
 - i) the minimum duration of the contract in the case of contracts for the supply of products or services to be performed permanently or recurrently.
- (2) Pursuant to the obligation laid down in Paragraph (1), the business organisation shall provide unambiguous, plain and accurate information appropriate to the means of telecommunication used.
- (3) If the business organisation offers to conclude a contract with the consumer over the telephone, it shall inform the consumer at the beginning of the telephone conversation at least of its registered name (name), registered head office (place of residence), telephone number and, especially, of its intention to conclude a contract.

Article 3

- (1) The business organisation shall provide the consumer with written information or other documents confirming the verbal information (hereinafter referred to as 'written information') on the contents of Article 2(1)(a) to (f) of this Decree in good time before the signing of the contract or during performance of the contract at the latest.
- (2) In addition to those stipulated in Paragraph (1), the written information shall include the following:
- a) the conditions, procedures and consequences of exercising the right of withdrawal pursuant to Article 4, including the provisions of Article 4(5), those of Article 6 and Article 7(3), as well as the case in which the consumer is not entitled to termination pursuant to Article 5 of this Decree;
 - b) the address of the premises (branch office) or other unit of the business organisation where consumers may address their complaints;
 - c) the warranty (guarantee) conditions and the provision of any after-sale services (spare parts, repairs);
 - d) the possibility of terminating the contract where it is of unspecified duration or a duration exceeding one year.

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(3) The provisions of Paragraphs (1) and (2) shall not apply to services which are performed through the use of a means of distance communication where they are supplied on only one occasion and are invoiced by the operator of the means of distance communication (telecommunication company). Nevertheless, even in these cases, the consumer must be informed of the address of the business organisation, pursuant to the provisions of Paragraph (2)(b).

Article 4

(1) The consumer shall be entitled to withdraw from the contract without giving any reasons within eight working days.

(2) The consumer may exercise the right of termination as of the date he/she receives the product or, in the case of service provision, as of the execution of the contract, provided that the business organisation fulfilled its obligation to provide the information pursuant to Article 3.

(3) If the business organisation fails to provide the information pursuant to Article 3, the consumer may exercise his/her right of termination within three months of the date of receipt of the product or, in case of a service provision, of the day of concluding the contract.

(4) If the consumer is informed pursuant to the provisions of Article 3 within a period of three months as specified in Paragraph (3), the period of eight working days for the consumer to terminate the contract shall commence on the date on which the information was received.

(5) The business organisation shall reimburse the amount paid to it by the consumer immediately or within 30 days of the date of termination at the latest. The consumer shall bear expenses incurred in returning products following withdrawal from the contract. Consumers shall bear no other costs, but the business organisation shall nevertheless be entitled to claim damages for improper use of the products.

Article 5

(1) Unless the parties have agreed otherwise, the consumer may not exercise his/her right of withdrawal pursuant to Article 4:

a) for the provision of services if, with the consumer's consent, the business organisation has started to provide the contracted service before the end of the eight-day termination period;

b) if the price of a product or the fee payable in consideration of a service is affected by fluctuations of the financial market and hence not fully controlled by the business organisation;

c) for the supply of goods made to the consumer's specifications or clearly personalized or

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which, by reason of their nature, cannot be returned or are liable to deteriorate or expire rapidly;

d) for the supply of audio or video recordings or computer software which were unsealed by the consumer;

e) in contracts for the distribution of newspapers, periodicals and magazines;

f) in gaming agreements.

Article 6

(1) If the price of a product or the fee payable for a service is either fully or partially covered by a loan granted by the business organisation [Article 2(d) of the CPL], exercise of the right to withdraw from the contract pursuant to Article 4 also terminates the loan agreement.

(2) The consumer shall not be obliged to cover losses incurred by the business organisation on termination of the consumer's loan agreement, nor may the business organisation require the consumer to pay any interest or other costs. If, however, the loan agreement contains explicit stipulations to the contrary, specifying the amount and the elements of the loss, the business organisation shall be entitled to claim compensation provided that it has met its obligations to provide information pursuant to Article 3.

(3) Paragraphs (1) and (2) shall apply where the price of a product or the fee paid for a service is fully or partially covered by a consumer loan granted by a third party (pursuant to Point 5 of Section III of Annex 2 to Law CXII of 1996 on credit institutions and financial enterprises) provided that the aforementioned consumer loan agreement is based on a preliminary agreement between the business organisation and the financial institution. The business organisation must immediately inform the financial institution if the consumer terminates the agreement.

Article 7

(1) Unless the parties have agreed otherwise, the business organisation shall be obliged to meet the stipulations of the contract, in accordance with the terms and conditions thereof, within 30 days of receiving a request to this effect from the consumer.

(2) If the business organisation fails to meet its contractual obligations because the product(s) specified in the contract are unavailable or because it is unable to provide the service(s) ordered by the consumer, it shall immediately inform the consumer and, without delay but within 30 days at the latest, shall reimburse the sum paid to it by the consumer. Meeting this obligation shall not release the business organisation from other consequences of breaching the contract.

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(3) If the business organisation provides a substitute product or service in accordance with the contract, all costs arising from the return of the product in exercising the right of termination shall be borne by the business organisation pursuant to Article 4. The business organisation shall provide the consumer with accurate and clear information about the system of meeting expenses and of providing alternative goods or services.

Article 8

(1) The business organisation may not demand any consideration from the consumer for products or services that the consumer has not ordered.

(2) The absence of an explicit statement by the consumer shall not provide grounds for assuming that the consumer has tacitly accepted the business organisation's offer.

Article 9

(1) The consumer's explicit consent shall be required for the business organisation to conclude a contract by fax or by an automatic calling device.

(2) Unless a separate legal act provides otherwise, if the consumer does not expressly object, the business organisation may use direct contact telecommunication devices, except for those falling within the scope of Paragraph (1).

Article 10

The onus shall be on the business organisation to prove that it has provided the information specified in this Decree, met the provisions on deadlines, and obtained the consumer's consent pursuant to Article 9.

Article 11

(1) The consumer may not waive his/her rights as specified in this Decree.

(2) Departures from the provisions of this Decree may only be allowed to the benefit of the consumer.

Article 12

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(1) This Decree shall enter into force on 1 March, 1999. Its provisions shall be applied to contracts concluded after the effective date of this Decree.

(2) As of the effective date of this Decree, the words “within eight days” in Article 4(1) and (2) of Government Decree No. 44/1998 (III. 11.) on doorstep selling shall be replaced by “within eight working days”.

(3) Pursuant to the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Hungary, of the other, signed in Brussels on 16 December 1991 and Article 3 of Law I/1994 promulgating that Agreement, the provisions of this Decree concerning distant contracting comply with Directive No. 97/7/EC of the European Parliament and the European Council on the Protection of Consumers.

Viktor Orbán

Prime Minister