

Benchmarking of existing national legal e-business practices

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Country report - Italy

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1. Italy

1.1 General information about the national legal system

Italy is a Constitutional Republic and a parliamentary democracy, based on a House of Representatives (*Camera dei Deputati*) and a Senate (*Senato della Repubblica*). It is divided into 20 administrative regions, some of which have had a limited degree of autonomy (legislative, governmental, fiscal) for many years. Originally, Italy was not a federal State, however a recent Constitutional reform voted by Parliament – which will be submitted also to popular vote in 2006 – may cause Italy to become a State similar to a Federal State for certain aspects (for instance, greater legislative powers granted to Italian Regions on some important subject-matters). The present report regards the whole territory of the Italian Republic.

In Italy there is not a standard way of implementing EU Directives into the national legal system. It often happens that the Parliament enacts a so-called “Community Act”, delegating the Government to adopt a number of Directives within a deadline and setting out the guidelines to do so. Usually, the provisions of a whole Directive are not simply copied onto national legislation, but they are inserted – and adapted, to the extent this is possible under the Directive – into national provisions. It may also happen that, whenever this is deemed appropriate, a single national statutory instrument implements more Directives or provisions thereof, either wholly or partially.

The Italian Civil Court system is structured as follows:

- the lowest courts are the Justices of Peace (“*Giudici di Pace*”), having a very limited jurisdiction (certain matters of lesser importance and small value);
- then we have the Courts of first instance (“*Tribunali*”), with an almost general civil jurisdiction; within these Courts we may have certain specialized chambers or judges (such as labour judges or intellectual property judges);
- the higher Courts are the Courts of Appeal (“*Courts of Appeal*”), located in major Italian cities so that their jurisdiction covers the whole national territory (which, in fact, for judicial purposes is divided in a number of Court of Appeal Districts);
- finally, the Supreme Court in Rome (“*Corte di Cassazione*”) represents the highest degree of civil (and criminal) jurisdiction.

Under Italian civil procedure no “*stare decisis*” or similar rule applies with regard to Court precedents. On the other hand, it would be incorrect to say that Court precedents have no strength at all. In fact, case law is always cited by lawyers in Court and by the same Courts in their judgements but, obviously, the strength of a prior judgement depends, mainly, on the type of Court that issued that judgement. In other words, judgements by the Supreme Court or by a Court of Appeal are more likely to be taken in consideration rather than judgements of a small Court of first instance. This does not exclude that a particular judgement – regardless of the Court that issued it – may be significant in a certain case because it fits particularly well with the facts or legal arguments of the case, or because it provides the interpretation of a recently enacted provision of law, or because it is particularly well reasoned.

Civil proceedings in Italy are structured along a series of hearings, the number of which depends mainly on the complexity of the case and on the number of means of evidence admitted by the Court (such as witness evidence to be heard, expert witnesses carrying out technical examinations, etc.). In principle, documents may be admitted as written evidence and may be filed by the parties, but their admissibility and relevance for the outcome of the action is evaluated only by the Court, with wide discretionary powers.

Before any controversy arises, the parties may agree, by way of an arbitration clause inserted in a contract, to entrust an arbitrator or a panel of arbitrators to settle a controversy, in order to avoid resorting to ordinary civil jurisdiction.

The Italian Civil Procedure Code provides for two different kinds of arbitration and namely:

- the ritual arbitration ("arbitrato rituale"): such procedure follows the rules set forth by the Code for ordinary civil proceedings and ends with a decision issued by the arbitrators which is enforceable and may be appealed against, like ordinary civil Court judgements;
- the non-ritual arbitration ("arbitrato irrituale"): the arbitrators are entitled to decide autonomously the procedure of the arbitration proceedings and issue the decision, which will be binding the parties on a contractual basis.

As to Court conciliation, the Code of Civil Procedure provides that in the first stage of ordinary civil proceedings the Court attempts to lead the parties to a settlement. If successful, this may lead either to an agreement that is entered into before the Court or to a settlement out of Court, with the action being waived accordingly by the parties.

Finally, with or without the assistance of respective counsel, and before or after the commencement of an action, the parties may settle a dispute by making reciprocal waivers, usually entering into a private settlement agreement.

2. Electronic signatures

2.1 National legislation and administrative practices

The enactment in Italy of legislation concerning electronic signatures dates back to 1997, when the Government issued Act n. 59/1997, the so-called "Bassanini Act". Article 15 of this Act established the legal validity of electronic documents drafted both by public and private entities. The main aim of this measure – and of other regulations issued to execute the same – was to reduce the length of administrative formalities and procedures.

Subsequently, on 28 December 2000, the Decree of the President of the Republic n. 445 (hereinafter the "Decree") was issued, aiming at refining procedures for the electronic administration of public services. This measure, nevertheless, did not implement the Directive 1999/93/EC on a Community framework for electronic signatures (hereinafter the "Directive").

In fact, it was only with the Legislative Decree of 23 January 2002, n. 10 that the Directive's principles were formally incorporated into the Italian legal system, even though the said Decree has now been formally revoked and fully substituted by Legislative Decree of 7 March 2005, n. 82, a comprehensive collection of legal provisions called the "Digital Administration Code" (hereinafter the "DA Code").

The DA Code was aimed at reorganizing and codifying the fragmented rules and principles concerning the administration of public and private services through digital tools. In theory, the contents of the Decree – regarding the administration of public services – should have been substantially included in the DA Code, but in practice these legislative measures coexist and are far from being merged. Therefore, for many aspects the Italian legal system regarding the administration of electronic services for private and public purposes is based on these two distinct statutory instruments.

The DA Code, which is the current legislative measure implementing the Directive, mentions three kinds of electronic signatures and namely:

(a) the electronic signature: a set of electronic data, attached or connected through a logical connection to other electronic data, used for the purpose of digital authentication;

(b) the electronic qualified signature: an electronic signature obtained through a particular information procedure establishing an unambiguous connection to the signatory and an unambiguous information authentication; this signature is created with tools over which the signatory has an exclusive control and is linked to the data to which the signature is referred, thus allowing to detect whether the signature has been modified or not. Moreover, this signature is based on a qualified certificate and is created through a secure signature creation device, that is the same tool used to create the electronic signature;

(c) the digital signature: a particular kind of electronic qualified signature based on a binary system of asymmetric couple of keys, of which one is private – reserved to the signatory – and the other is public and reserved to the addressee of the communication. Through this system, the latter is allowed to verify the origin and the integrity of the electronic document.

Compared to the first measure that implemented in Italy the Directive – i.e. Decree 10/2002, which strictly reflected the Directive's contents and provided for only two definitions (electronic signature and advanced electronic signature) – the DA Code specifies more in detail the definitions of the electronic signatures, introducing the third kind of digital signature under (c) above. In this way, the DA Code overcomes the Directive's structure by taking in more sophisticated technological tools probably not commonly known, used or tested at the time when the Directive was being drafted.

In fact, the definition under (b) – albeit with a different name – corresponds to the definition of "advanced electronic signature" originally provided for by the Directive.

The DA Code also refers to other aspects of electronic administration of public and private services, such as the electronic identity card and/or the national services card – which allows citizens to access different kinds of social services via the internet – which are not specifically regulated by the Directive.

The scope of application of the DA Code

Some provisions of the DA Code apply both to public and private entities, while others refer only to the former and are meant to discipline specifically public administration offices' practices and procedures.

The provisions applicable also to private citizens and entities are those connected with electronic documents, signatures, payments and with the creation, management, storage and transmission of electronic documents.

Legal effects of electronic signatures

Electronic signatures are now considered within the Italian legal system to be equivalent to written signatures. Article 21 of the DA Code states that the electronic document duly signed with electronic signature may be admitted as written evidence. Courts will discretionally decide – as they do for ordinary written documents – whether to allow it or not as evidence, depending, among other possible specific circumstances, its objective characteristics of quality and security.

The electronic document, signed with a digital signature or with a qualified electronic signature, has the same effects of a written private document filed as evidence within judicial proceedings according to article 2702 of the Italian Civil Code, unless the signatory provides evidence that he/she has no connection at all with the document.

Court cases¹ – not many until now – have conferred to electronic signatures the same legal value of written signatures. In particular, by a decree dated 15 December 2003 the Court of Cuneo granted an injunction for payment accepting as evidence an e-mail message with a so-called "light" electronic signature, i.e. a simple, non-qualified nor electronic, signature of the sender at the bottom of the message. The Court based its decision on the fact that the sender, in order to send the e-mail, has to make a validation procedure, by inserting his username and password.

Most judgements in Italian case law on this subject relate to the exhibition of electronic documents which have been admitted as evidence within the proceedings only if signed by way of electronic signatures².

Generally speaking, not all electronic documents are admitted as evidence, but only those signed with an electronic signature, which somehow guarantees the integrity and the authenticity of the origin of the documents themselves. In this regard, it has been noted³ that, in comparison to written signatures, digital ones grant the further advantage to preserve the original document (which cannot be anyhow revised once it has been created and transmitted) and to guarantee its origin.

¹ Decree of the Court of Bari 20/01/2004; Decree of the Court of Cuneo 15/12/2003.

² T.A.R. (Regional Administrative Tribunal) of Calabria Catanzaro, sez. II, 9 February 2005, n. 98; Consiglio di Stato (Higher Administrative Court), Atti normativi, 7 February 2005, 11995; Court of Cassation, labour chamber, 6 September 2001, n. 1945.

³ RENATO BORRUSO, "Il documento informatico, la firma elettronica e la firma digitale alla luce delle ultime norme" ("The electronic document and the electronic and digital signatures in light of the latest provisions of law"), in *Giustizia Civile*, 2004, vol. 3, p. 143 and ff.

The issue of qualified certificates

Both the electronic qualified and the digital signatures under (b) and (c) above are based on qualified certificates assuring that the electronic document signed with the electronic signature is linked to the signatory. Such certificates are issued by public or private entities in conformity with the requirements provided for by EU and national legislation.

Within the Italian system there are two categories of Certification Service Providers: (a) Qualified Certification Service Providers (hereinafter "QCSP") and (b) Registered Qualified Service Providers (hereinafter "RQSP").

QCSP

According to article 27 of the DA Code, QCSP have to meet certain requirements regarding their reliability from the organizational, technical and financial view point. They also have to employ qualified personnel as well as use sophisticated technical tools and adopt proper measures in order to avoid the infringement of electronic documents and any violation of privacy rules.

Prior to the beginning of certification activities, QCSP have to declare to the National Centre for Information within the Public Administration (hereinafter "CNIPA") the meeting of said requirements. This communication is a kind of notice which does not imply any authorization from CNIPA. Obviously, the latter may carry out controls in order to verify the accuracy of the information provided therein.

RQSP

According to article 29 of the DA Code, certification service providers may be registered in CNIPA's rolls upon their request. Qualified certificates issued by either a registered or non-registered Certificate Service Provider are identical, even though registration in CNIPA's rolls gives more reliability and security to the public.

Data concerning the RQSP operative within the Italian territory are listed in CNIPA's website⁴.

Legal certainty of electronic documents and electronic signatures

Within private industry and services sectors – such as banks and insurance companies – there is still some reluctance connected to the use of electronic documents and signatures even though, as explained above, Italian Courts are inclined to admit as evidence electronic documents and electronic signatures. This is quite surprising, considering also that four of the major Italian banks are RQSP. Hopefully the Bank of Italy (Banca d'Italia, the Italian central bank) will intervene in order to change this attitude⁵.

A different approach has been registered within the Public Administration practices, which have been digitalized almost completely. For example, the administrative offices of the "Carabinieri" (a Police force) and of Regione Lombardia (one of the most important Italian regions) have fully digitalized their operative systems through what has been called a "paperless operation"⁶.

⁴ www.cnipa.gov.it.

⁵ Comment from Ing. Giovanni Manca – Responsible for the Standard Office and Information Technologies of CNIPA.

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Another significant example of the wide use of electronic documents and signatures within the public administration activities is the notification to be filed with the Italian Privacy Authority by subjects dealing with personal data: the law provides that this notification has to be filed through electronic document signed with digital signature.

Electronic identity cards (hereinafter "electronic ID")

Electronic ID is widespread in Italy. It is envisaged that by 2009 all citizens will be provided with it. In this regard, though, it is worth noticing that the insert of electronic signature within the electronic ID is not mandatory but merely optional for the citizens who wish to take advantage of this possibility⁷.

It is hard to foresee whether the electronic signature may become mandatory for all electronic IDs in the future. In fact, costs for electronic IDs bearing the electronic signature of the citizens are currently divided between the municipalities concerned and the citizens themselves, who are therefore requested to contribute with 31.00 € against the 5.00 € necessary to obtain a simple electronic ID.

In light of the above, it may be said that the system of electronic ID combined with electronic signatures is unlikely to become mandatory in the future, much depending on the new Italian Government's approach.

2.2 Cross border regulatory issues

According to article 21, par. 4, of the DA Code the same provisions concerning the legal effects of the electronic documents and signatures apply to documents and signatures based on a qualified certificate released by certification service providers with offices in a non-EU State, provided that: such service provider meets all reliability requirements provided for by the Directive and national legislation; the qualified certificate is granted by a EU-based service provider meeting the aforementioned requirements; the qualified certificate or the service provider is recognized within the Italian territory under any bilateral and/or multilateral treaty enforceable between the EU and other third countries or International Organizations.

From a legal and theoretical view point the interoperability among different countries of electronic signatures and documents is granted by the provision mentioned above. Nevertheless, in practice no transactional exchange of electronic documents may take place in light of the different technological tools employed from State to State for the correct use of said documents.

It is foreseeable that in the future there will be standard procedures and/or devices which will allow the circulation of documents. For the moment, therefore, the free circulation of electronic documents and signatures is prevented not by legal barriers but, rather, by technical obstacles⁸.

⁷ Article 66 of the Code.

⁸ Comment from Ing. Giovanni Manca - Responsible for the Standard Office and Information Technologies of CNIPA.

3. General elements of electronic contract law

3.1 National legislation and administrative practices

- Directive 97/7/EC on the protection of consumers in respect of distance contracts has been implemented in Italy by Legislative decree n. 185/1999;
- Directive 99/44/EC on certain aspects of sale of consumer goods and associated guarantees was implemented in the Italian legal system by Legislative decree n. 24/2002. The latter introduced articles 1519 *bis* and following of the Italian Civil Code concerning the sale of consumer goods, which have been subsequently repealed and replaced by Legislative decree n. 206/2005, also known as the Consumers' Code, which recognises fundamental rights to consumers, information rights and sanctions for sellers in
- Directive 18/6/EC on pricing indications has been implemented in Italy by Legislative decree n. 84/2000, which has enacted rules concerning the correct way to indicate pricing;
- Directive 2000/31/EC concerning certain legal issues relating to information society services with particular regard to electronic commerce in the EU internal market, has been implemented in Italy by Legislative decree n. 70/2003, which has properly introduced the relevant European provisions in the Italian system;
- Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market, amending Directive 97/7/EC, has not been implemented yet (please note that Act n. 29/2006, entered into force on January 25, 2006, has delegated the Italian Government to adopt within 18 months from the entry into force of the said Act legislative decrees implementing the provisions of the above mentioned Directive).

General principles of Italian "ordinary" contract law on conclusion of contracts may be summarized as follows:

- an agreement is entered into when the offering party has knowledge of the other party's acceptance and an acceptance which does not conform with the original offer must be considered as a new contractual offer; acceptance must reach the offering party within the deadline set by the latter or within the deadline ordinarily necessary according to usages or by the nature of the transaction (Section 1326 Italian Civil Code);
- when, upon request from the offering party or according to the nature of the transaction or the usages, the contract is to be performed without a prior acceptance, the contract is entered into at the time when and in the place where performance commenced (Section 1327 Italian Civil Code);
- a contractual offer may be revoked as long as the agreement is not entered into, while acceptance may be revoked provided that revocation is known by the offering party before acceptance is known; revocation of an offer is ineffective if the offering party had undertaken to maintain the offer valid for a certain period (Sections 1328 and 1329 Italian Civil Code);
- Offers, acceptances and revocation thereof, as well as any contractual declaration addressed to a person, are presumed to be known upon delivery at the latter's address, unless the latter proves that it was impossible, not for his fault, for him to know the declaration (Section 1335 Italian Civil Code);

- a contractual offer aimed at entering into a contract by which only the offering party undertakes obligations may not be revoked since it is known by the party to which it is directed (Section 1333 Italian Civil Code).

With legislative decree n. 70/2003, the Italian legislator has implemented EC Directive n. 2000/31 concerning certain legal aspects of information society services, stressing above all the aspects concerning electronic commerce. Such decree has also implemented the rule established under the aforesaid Directive, which is based on the "internal market", i.e. the creation of a coordinated and ruled space within which the control on services activities is made by the "Country of establishment" of the person performing the service and is aimed at ensuring free carrying out of on-line services within the EC by implementing uniform rules for electronic commerce which, by its own nature, is without borders. Another goal is the reduction of production costs together with the improvement of the possibility of choice as well as the quality of products. The main fields of harmonization are: (i) commercial information and communications; (ii) electronic conclusion of contracts; (iii) liability of the person carrying out services; (iv) the establishment rule. Certain exemptions are provided by domestic law and they mainly deal with matters ruled under a specific legal discipline.

Art. 2 of legislative decree n. 70/2003 defines information society services as *"any service usually performed against a consideration, taking place at distance, electronically and upon individual request of a service receiver"*.

There are three provisions of legislative decree n. 70 on electronic commerce regarding self-discipline, in a sort of soft law implementation: a) art. 18 ("Conduct Codes") provides voluntary elaboration of conduct codes by both professional and consumers' associations. Such codes must be electronically available and drafted in Italian and another European language and must be forwarded to the European Commission and to the Italian Ministry of Productive Activities; b) art. 19 concerns rules relating to the disputes arising out of electronic commerce with regard to "ADR" solutions also employing electronic devices ("cyber arbitration"); c) art. 20 ("Cooperation") provides the institution by the Ministry of Productive Activities of a national contact point entrusted with the task of making available on Public Administration's web sites all services receivers and suppliers of the information society.

The draft of the code created by experts working groups of AIIP, ANEE and ANFOV (associations representing, respectively, Internet providers, National Electronic Press and National Video Information Suppliers) has been presented to consumers' associations. The main disciplinary principles of such code are: identification and anonymity; general liability principles; human dignity, minors, public order protection principles; fundamental freedom rights and private life protection; industrial and intellectual property protection; consumers' protection within the electronic commerce. The same code provides other sanctions and application rules.

Other behaviour codes relating to electronic commerce have been developed by associations Federcomin, AIIP-ANFOV-ASSOPROVIDER and Chambers of Commerce. Such codes are valid and enforceable only for the entities that have expressly accepted them.

3.1.1 *Electronic invitation to make an offer, submission of an offer and acceptance of an offer*

Under Italian law an on-line contract, like ordinary contracts, consists of the meeting of an offer and an acceptance, the contract being effective at the time the proposing party has knowledge of the other party's acceptance (Art. 1326 Civil Code). Also, an acceptance which does not correspond exactly to a prior proposal simply is to be deemed a new proposal.

Therefore, a membership/subscription form available on the website of an e-marketplace, containing the terms and conditions of the underlying contractual relationship, must be accepted by a user in order to produce a binding agreement.

When an "offer to the public" is complete in its essential elements (such as the price, the main characteristics of the object of the agreement and the main terms and conditions), it constitutes a valid offer pursuant to Art. 1336 of the Italian Civil Code. On the other hand, where an offer is not complete in its essential elements, it must be considered as a mere "invitation for a proposal", and any response thereto will not constitute an acceptance, but rather a new proposal itself, which will require a further conforming acceptance by the other party.

In the first case – offer to the public – a simple "point and click" on the electronic acceptance module provided in the website, generally together with the indication of a credit card identification code for payment purposes, will be sufficient. In fact, under Italian law also a material conduct by the party, in light of the context, may be considered as a valid contractual declaration of acceptance of an offer.

Therefore, we may have an offer by a party on the website of an e-marketplace, and an acceptance in the conduct of another party that clicks on the "accept" option available on the website, possibly also indicating the details for the payment by credit card or by other means.

Another way to enter into an on-line agreement is also by exchange of e-mails. According to Articles 1326 and 1335 of the Civil Code – and adapting these "traditional" contract law provisions to the online context – the agreement will be considered stipulated when the acceptance has reached the other party's e-mail box (and in this case, European and national provisions concerning electronic signature will apply).

With regard to the application of ordinary contract law to the electronic context, Directive 2000/31/EC takes into consideration both B2B and B2C electronic contracts and the Italian legislator has accordingly extended the Civil Code discipline on contracts to on-line contracts, providing in article 13, par. 1 of legislative decree n. 70/2003 that the provisions regarding the stipulation of contracts may also be applied in the event that the receiver of the service forwards its own order by electronic means and, in an on-line context, order and receipt are considered received when the parties to whom they are addressed, have the possibility to access them (article 1335 of the Italian Civil Code establishes a presumption of knowledge of any contractual declaration upon delivery of the same to the address of the recipient; this is used to determine the time of the contract conclusion, whereas the place of execution is usually the place where the offering party has its actual address, even though that is different from the one of its server).

As to written confirmation of contract information and with reference to art. 5 of directive 97/7/EC on distance selling, art. 4 of legislative decree n. 185/1999 provides that the consumer must receive confirmation in writing, or on a lasting data storage device accessible for the consumer, regarding all information concerning the fundamental elements of the contract before or at the time of the performance of the contract. Those information must include modalities and conditions of exercise of the right of withdrawal, geographical address of the supplier where all complaints may be sent, information on assistance and commercial guarantees, withdrawal conditions in the event that the duration of the contract is on an open-term or longer than one year. These provisions do not apply to services which are performed by means of distance communication, if such services are supplied in a sole instance and invoiced by the communication device operator.

Moreover, Art. 12 of Legislative Decree 70/2003 (which implemented in Italy Directive 2000/31) provides that the operator of the e-marketplace shall indicate clearly to the potential contracting party information regarding the agreement being stipulated (among which: the various technical phases of the finalization of the agreement, any code of conduct to which the operator adheres and how to view the relevant terms, the languages available for the contract). This obligation may be derogated from upon the agreement of the parties (provided that these are non-consumers).

As for e-commerce, both for European and national legislation aimed at protecting the consumer, it is possible to distinguish B2B from B2C transactions. The distinguishing criterion between these categories is based on the qualification as consumer of the subject to whom the commercial offer is addressed. From a legal standpoint, a consumer is an individual acting for purposes other than professional or commercial ones, who is generally considered to be "weaker" than a business or professional or company. Therefore, depending on the qualification of the subject to whom the offer is addressed, the contents of the information to be disclosed will change: of course, the identification of the addressee of an offer is more difficult in an e-marketplace.

Art. 11 of legislative decree n. 70/2003 provides for the exclusion from the scope of the same decree of: contracts relating to the institution or transfer of rights concerning real estate other than for tenancy; contracts legally requesting the intervention of judiciary bodies, public powers or professions implying the exercise of public powers; guarantee contracts entered into by persons acting for purposes other than their commercial, corporate or professional activities; contracts governed by family or inheritance law.

Other Directives in the area of electronic contract conclusion that have been implemented in Italy are:

Directive 1993/13/EC on unfair terms in consumer contracts has been implemented by Act n. 52/1996, which has introduced articles 1469 *bis* and following in the Italian Civil Code (subsequently replaced by the recent Consumers' Code);

Directive 1998/6/EC on pricing of products, as already mentioned, has been implemented by legislative decree n. 84/2000, thus introducing requirements to be complied with for consumers;

Directive 2005/29/EC on unfair B2C commercial practices in the internal market and amending previous directive 97/7/EC, has not been implemented yet.

At present there are judgements concerning ordinary commercial relationships in a B2C context which are favourable to consumers' rights, above all in the matter of unfair clauses. Moreover, electronic contracts are deemed valid under Italian law provided that all legal requirements on contracts and all provisions concerning both unfair terms and conditions offered by the seller are acknowledged by the offeree/consumer before its acceptance and all requirements on information rights are respected.

3.1.2 Information obligations in relation to electronic contract conclusion

The Milan Chamber of Commerce (one of the most important Chambers in Italy) has collected and made available the practices commonly adopted in on-line contracts between suppliers and consumers. This significant collection shows a substantial compliance with legislative provisions on electronic contracts. In particular, as required by law on information obligations, we find the supplier's practice to allow the receiver of the service to print the contractual conditions in order to be reviewed and kept; the compliance with the obligation to make immediately available as such all commercial information (as set forth by art. 8 of legislative decree n. 70/2003); the possibility to be granted to the consumer to have access, directly and permanently, to the general contractual conditions, with no need of initiating the order procedure for this purpose; the availability for the consumer of information on security procedures adopted for contracting on-line and for the use of on-line security systems; the availability for the consumer of a direct contact to which complaints or requests for assistance can be addressed.

As to national legal provisions regarding the identification of the country of origin of the goods sold on-line, it is possible to mention articles 4 and 5 of legislative decree n.185/1999, which has implemented directive 97/7/EC on written confirmation of contract information and on the right of withdrawal that must be communicated to the supplier at its own geographical address. The consumer is entitled to withdraw from any distance contract with no penalties and without any just cause, within 10 working days from the day of receipt of goods or from the conclusion of the service contract. Anyway, the right of withdrawal may be exercised by delivering, within the aforesaid term, a communication in writing at the physical/geographical address of the supplier's offices by means of a registered letter.

Moreover, as far as provisions concerning the use of specific language, legislative decree n. 24/2002 (implementing Directive 99/44/EC) states that warranties in favour of the consumer must be in Italian; legislative decree n. 70/2003 (implementing Directive 2000/31/EC) provides that all conduct codes must be drafted in both Italian and English, and Legislative decree n. 185/1999 provides that individual information in favour of the consumer must be in Italian.

3.1.3 Standard terms and unfair clauses

Articles 1341 and 1342 of the Italian Civil Code, which do not relate specifically to e-commerce, provide for general contractual rules regarding the effectiveness of standard terms and certain types of clauses that are deemed to be particularly burdensome for one of the parties.

Art. 1341 provides that general contractual terms and conditions (hereinafter "T&Cs") drafted by one of the parties are effective against the other party if the latter, at the time of the agreement, was aware of them or should have been aware of them by using ordinary care. Therefore, the contracting party must be made aware of the contents of the terms and conditions drafted by the other party prior to entering into the contract. In an on-line context this

is usually obtained by “forcing” or “helping” the party to view the terms on the screen and click on an “accept” option or similar mechanism, prior to accepting to enter into the agreement. On the other hand, if T&Cs are indicated in a hidden part of the website or are not easily or immediately accessible for the potential contracting party, they may be considered ineffective against the latter.

Moreover, the second paragraph of Art. 1341 provides that certain types of clauses which are considered, in light of their nature, particularly burdensome for the contracting party (e.g. limitations of liability, withdrawal clauses, limitations of contractual freedom or of the possibility to raise exceptions, jurisdiction clauses) must be accepted by way of a specific acceptance in order to be effective. Such specific acceptance, in a traditional paperwork context, is usually made by way of an additional signature by the contracting party, placed at the bottom of the contract below the first signature.

In an on-line context, this means that contracting parties may be required to accept twice (with a double-click on the above mentioned “accept” option or another similar manner) in order to validly accept these burdensome clauses.

Under Art. 1342, such double acceptance for burdensome clauses is also required for agreements entered into by filling in standard forms drafted by one of the parties.

In Italy we have a number of provisions regarding unfair trade practices specifically aimed at the protection of consumers, most of which have implemented EU legislation. We refer to provisions on burdensome contractual clauses (Articles 1469-*bis* and following of the Civil Code, which have been recently replaced by legislative decree n. 206/2005, commonly known as “The Consumers’ Code”), provisions on the sale of consumer goods (Articles 1519-*bis* and following of the Civil Code), provisions on contracts entered into by consumers outside commercial premises (Legislative Decree no. 50/1992).

Should a contract contain unfair terms and clauses which have not been accepted and accordingly undersigned by the consumer, the law provides that those clauses are null and void, whereas the remaining part of the contract is still valid (art. 36 of the Consumers’ Code). The nullity of such clauses is in favour of the consumer solely and may be ascertained directly by the Courts.

Moreover, any contractual clause that, by providing the application to the contract of a non-EU country legislation, has the effect to deprive the consumer of the protection ensured to it by the Consumers’ Code, is void and null if the contract shows a close connection with the territory of a EU Member State.

Since the above mentioned provisions do not apply to transactions not involving consumers, they do not apply to B2B e-markets. Unfair trade practices between commercial operators are usually governed by general principles on unfair competition conduct, which apply whenever it is possible to establish a relationship of competition between two subjects.

The consumers' representative associations and the Chambers of Commerce (which are available to assist parties both before and after the stipulation of the contract) are entitled to take collective legal actions against businesses or their representative associations that recommend the use of unfair general contract conditions, and to request Courts to forbid the use of conditions the unlawfulness of which has been ascertained. Such action may also be taken in cases of urgency, within precautionary proceedings and before an ordinary action. In the event the business does not comply with the order of the Court forbidding the use of unfair conditions, the business may be condemned to pay penalties.

The above mentioned action is general and preventive, whereas the individual action of the consumer is a specific remedy, available after the conclusion of the contract and aimed at ascertaining the unfairness of the clauses inserted in the contract. In the event the clauses are ascertained to be unfair, the consumer may request the Court to declare that the clauses concerned are ineffective and the consumer may claim damages deriving from the other party's conduct.

The demand for an alternative settlement system for disputes arising out of unfair clauses and conditions within the contracts with consumers has made Italian legislation introduce new procedures in the traditional judiciary system (the so-called Alternative Dispute Resolution, already offered by the National and International Chamber of Commerce of Milan). Also, Directive n. 2000/31/EC has introduced alternative ways of solution for disputes (*cyber conciliation*, like the service named "resolve on-line" offered by the Arbitration Chamber of Milan) and the relevant provision has been implemented in the Italian legislation by art. 19 of legislative decree n. 70/2003.

3.1.4 *Choice of law and forum*

Relevant Conventions and Treaties on the law and forum applicable to contracts and the related implementing Italian legislation include:

- the Rome Convention dated June 18, 1980, ratified in Italy by Act n. 975/1984 and referred to in the Italian Act on Conflicts of Laws n. 218/1995;
- Directive 2000/31/EC concerning certain legal aspects relating to information society services with particular regard to electronic commerce in the internal European market, has been implemented in Italy by Legislative decree n. 70/2003;
- the 1968 Brussels Convention, ratified in Italy by Act n. 804/1971;
- EC Council Regulation n. 44/2001 (to some extent replacing the Brussels Convention) which includes e-products in its definition of goods and services;
- United Nations Convention of Wien dated April 11, 1980 concerning international sale of goods contracts, ratified in Italy by Act n. 765/1985.

The issue of the law applicable to contracts with an international element (such as, for instance, the nationality of one party) must be resolved in accordance with the Rome Convention dated June 18, 1980, ratified in Italy by Act n. 975/1984 and referred to in the Italian Act on Conflicts of Laws, n. 218/1995.

The Convention provides, as its fundamental criterion, for the parties' freedom of choice of the applicable law, a principle which has also been confirmed by Legislative decree n. 70/2003 on electronic commerce.

In contracts concluded by consumers, the Convention of Rome limits the freedom of choice of the applicable law by the parties, expressly establishing the prohibition to exclude the protection guaranteed to the consumer by the mandatory provisions of the Country in which the latter has stable residence.

Mandatory provisions on protection of consumers with stable residence in Italy mainly regard the right of withdrawal for the consumer (Legislative decree n. 50/1992); furthermore, legislative decree n. 185/1999 (in compliance with Directive 97/7/EC) provides for the impossibility for consumers to waive their rights even if they have agreed with the application to the contract of a law other than Italian law.

In the absence of a choice by the parties, the Rome Convention employs the criterion of the closest connection with the contract (with a presumption in favour of the country where the party carrying out the characteristic performance is resident or has its offices). Such criterion is also applicable to electronic transactions. As for the Italian legal system, the provisions of Directive 97/7/EC are mandatory (also according to art. 11 legislative decree 185/1999 and to the new Consumers' Code).

As far as Italy is concerned, it is unlikely that a dispute involving an Italian commercial operator envisages the jurisdiction of a country other than Italy. Should it be the case, the provisions of Regulation n. 44/2001, and in particular, articles 15 and 16, which provide for the jurisdiction of the Country where the consumer resides, would apply (especially if the consumer is the defendant, according to art. 14). If the terms of an electronic contract indicate a specific forum derogating to the consumer's natural forum, the validity of such clause must be considered in the light of mandatory provisions on consumers' protection.

According to Italian law, a clause derogating to the ordinary forum may be deemed burdensome under art. 1341 of the Italian civil code, as explained above.

Another criterion used to establish the Italian jurisdiction is the *lex loci* one: in fact, in the event that the contractual obligation must be performed in Italy, also the relevant judicial proceedings may take place in Italy (according to art. 5, 1 paragraph of the Brussels convention). In the event of services performed on-line, the place of performance of the service can be either the place where the buyer's or seller's server is located. Once again, if the defendant is an Italian consumer, territorial jurisdiction is mandatory and is granted to the courts of the place where the consumer has its residence or domicile (art. 14 of legislative decree 185/1999 and art. 12 of legislative decree n. 50/1992).

Possible uncertainties in the construction of some rules on conflicts of laws and the possibility that the reference to various connection criteria, applied to on-line contracts, may lead to the potential involvement and application of more legal systems, suggests that further clarifications, also in relation to the growing globalization of e-commerce, are advisable in order to simplify its complexity (like, for instance, the Master Law of 1996 on e-commerce provided by UNCITRAL – United Nations Commission on International Trade Law).

3.2 Cross border regulatory issues

Specific limitations to the conclusion of e-commerce contracts in the Italian legal system may be inferred from legislative decree n. 70/2003, implementing Directive 31/2000/EC. In fact, art. 5 of the decree provides that the circulation of a specific service of the information society originating from another member State may be limited by the judiciary authority or by administrative supervisory bodies or independent authorities for reasons of public order, public health protection, public security and protection of consumers, including investors.

It has to be remarked that it could be difficult for small sized companies to consider and review the provisions of e-commerce contract law in force in other States.

4. Electronic invoicing, payment and other matters related to execution of electronic contracts

4.1 National legislation and administrative practices in the fields of electronic invoicing, payment and delivery

4.1.1. Electronic invoicing

EC Directive 2001/115/EC of 20 December 2001 (hereinafter the "Directive") has been implemented in Italy through Legislative Decree 20 February 2004, no. 52 (hereinafter the "Decree") and Ministerial Decree of 23 January 2004, which are integrated by the explanatory Circular no. 45/E of 19 October 2005 issued by the National Tax Authority ("Agenzia delle Entrate").

We are not aware of particular problems arisen in connection with the implementation of the Directive. On the contrary, the introduction of a proper discipline regarding the treatment of electronic invoices (issuance, transmission and storage) provided Italian companies with significant advantages, such as, for instance, the saving of an average 27.00 € per invoice⁹.

In execution of the Directive, the Decree amended articles 21, 39 and 52 of the Decree of the President of the Republic 633/1972 (hereinafter "DPR 633/1972") – concerning the institution and regulation of V.A.T. – thus modifying the previous discipline.

In this regard, the most significant innovations concern the following aspects:

(a) The subjects issuing the invoice

Customers or other third parties – different from the seller and/or the entity providing any kind of service – now have the option to issue electronic or paper invoices. In this case, the issuing entity must be noted on the invoice since they are considered debtors of the VAT payment (so called "reverse charge").

⁹ Bruno Dei – Pier Roberto Sorignani, *Fatturazione e archiviazione elettronica ("Invoicing and electronic storage")* IPSOA 2004, p. 20.

(b) The content of the invoice (mandatory data)

The Decree took in the minimum requirements introduced by the Directive in order to standardize the contents of the electronic invoices all over the EU.

Beside the number and date of issuance, the invoice has to bear all necessary data (i.e. data of the fiscal representative, permanent location of the company for non resident entities, amount of VAT) also in relation to the customer or third party – different from the seller or from the entity providing the service – issuing the invoice as per (a) above.

Even in its previous version, Article 21 of DPR 633/1972 introduced the obligation to certify, through the issuance of invoices, all taxable operations such as the transfer of goods and performance of services carried out by entities located within the Italian territory and the importation carried out by any other entity. In case of non-taxable operations which are relevant for VAT purposes, such exemption needs to be noted on the invoice.

Article 21, as amended, does not impose the obligation to sign the invoice. Nevertheless, electronic invoices must be duly signed with qualified electronic signatures. Such precaution is required in order to grant authenticity to the origin of the document and the integrity of its contents.

The invoice may be drafted also in a foreign language, and the relevant amounts may be indicated in a currency other than Euro, provided that the amount of the tax to be paid must be indicated in Euro and that the invoice is translated into Italian upon request by the Financial Administration.

(c) Timing and modalities of the issue of invoices

Invoices may be issued either in the electronic or other formats. Nevertheless, in the former case invoices must be duly signed with electronic qualified signature (as mentioned under (c) above). Even their transmission may be carried out by regular mail service or electronic transmission tools such as e-mail, EDI system, telefax, modem, etc., in these latter cases only upon the previous consent of the addressee of the invoice, which consent may be communicated in writing and/or orally. With reference to the timing of the issue, according to paragraph 4 of article 21 of DPR 633/1972 as amended, the invoice may be issued at the same time of the contract performance (i.e. at the same time of payment and delivery of the purchased items or performance of the services).

In case of purchase of items whose delivery is documented by a transportation receipt identifying the subjects involved in the transaction, the invoice may be issued within the 15th day of the month subsequent to the delivery or shipment. Such invoice must also indicate the date and number of the transportation documents.

Also, it is possible to issue a sole invoice concerning several performances addressed to the same customer.

(d) The storage of electronic invoices in a foreign country with whom international treaties are effective in this regard.

4.1.2 *Electronic payment*

Directive 97/7/EC of the Parliament on the protection of consumers in respect of distance contracts (hereinafter "Directive on distance contracts") has been implemented in Italy firstly with Legislative Decree of 22 May, 1999, no. 185 which has now been repealed by Legislative Decree 6 September 2005 n. 206 – the Consumers' Code (hereinafter the "Code") – while Directive 2002/65/EC concerning the distance marketing of financial services to consumers (hereinafter "Directive on distance financial contracts") has been implemented with Legislative Decree of 19 August 2005, no. 190 (hereinafter "D. Lgs. 190/2005").

Articles 51 and following of the Code regulate all kinds of distance contracts, except for those concerning financial services, which fall within the scope of application of D. Lgs. 190/2005.

Both the above national statutory instruments strictly reflect the contents and structure of the above mentioned EC Directives, introducing an accurate system in order to grant appropriate protection for consumers carrying out distance transactions.

In this regard, the measures at issue introduce specific provisions concerning the supplier's obligation of disclosure to consumers of all relevant information on the details of the transaction (including, but not limited to, the data of the supplier of the item and/or service, costs, withdrawal rights in favour of the consumer).

Both the Code and D. Lgs. 190/2005 introduce the supplier's obligation to disclose information in order to allow consumers to acknowledge terms and conditions of the transaction before the same is concluded.

Moreover, consumers may not waive any rights reserved to them by these protective rules.

Payment with card

1) Distance contracts regulated by the Code

According to article 56 of the Code, the consumer may pay the items purchased and/or the services obtained with a card, if such modality of payment is foreseen in the contractual general conditions. In case of evidence of fraudulent use of the card by the supplier or by any other third party unlawfully using the card, the card issuer must credit to the consumer the sum unlawfully taken. The card issuer will then have the right to charge said sum on the supplier.

In this regard, therefore, the risk connected with e-commerce transactions is entirely borne by the supplier who will respond for the consumer's damages. As a matter of fact, the Italian legislator's intent is to appoint suppliers as warrantors of the security of electronic transactions since they are the main subjects taking advantages from this kind of operations.

In light of the above, the adoption of security measures becomes important not only in order to protect consumers – also in conformity with the provisions set forth by Legislative Decree 196/2003, the Privacy Code – but also in order to avoid any liability as a consequence of fraudulent uses of tools of electronic payment.

2) Financial distance contracts regulated by D. Lgs. 190/05

As to payment with cards, article 13 of the D. Lgs. 190/2005 allows the payment of distance financial services with credit or debit cards, or with any other means of payment indicated in the contract as possible modalities of payment.

As mentioned above for the other kinds of distance contracts, in case of excess in respect of the agreed price and/or in case of fraudulent use of the card by the supplier or by a third party, the card issuer must credit the amount on the consumer's account provided that the latter gives evidence of the fraudulent use and/or of the exceeding amount. As above, the entity issuing the payment card has the right to debit on the supplier the sums that it had to repay to the consumer.

Provided that electronic signatures and documents are considered legal evidence, the card issuer has to prove that the transaction has been authorized, duly registered, accounted for, and that the same has not been anyhow manipulated with the use of technical devices or in any other way.

Furthermore, article 13 imposes on the financial service provider the adoption of the security measures in conformity with the instructions given in this regard by the Bank of Italy ("Banca d'Italia").

Consumers' right to withdraw

1) Principles applicable to distance contracts regulated by the Code

According to article 64 of the Code, consumers can exercise their right to withdraw, for any reason, free of charge and with no penalty within 10 working days from (i) the delivery of the goods to the consumer, in case of purchase of goods, (ii) the stipulation of the contract, in case of supply of services, provided that all obligation of information to consumers - pursuant to article 52 of the Code - have been satisfied, otherwise the term of 10 days will start elapsing since the date on which the said obligations have been satisfied, within three months from the conclusion of the contract.

In case the supplier does not comply with the aforementioned information obligations in conformity with article 57 (concerning unsolicited supply), article 52, first paragraph letters (f) and (g) (concerning information to consumers connected respectively with the right of withdraw and the timing and modalities of the restitution of the goods in case of withdrawal) and article 53 (regarding the written confirmation on the information concerning the transaction that the supplier has to provide to consumers) may exert their right to withdraw within 90 days from the delivery of the purchased goods or the performance of the service.

Withdrawal has to be communicated in writing to the supplier by registered letter with return receipt. Such communication may also be sent by e-mail or telefax or telex provided that receipt of the same is confirmed within the following 48 hours. Moreover, if expressly mentioned in the general terms and conditions, the right to withdraw may be exercised with no prior notice but simply through the restitution to the supplier of the purchased item within 10 working days as indicated above.

The only costs borne by the consumers will be those related to the restitution of the item, if this is expressly provided for by the contract.

In case the withdrawal is exercised according to the legal requirements, the supplier has to reimburse the consumer the price paid within 30 days from the communication of withdrawal. Any clause limiting the reimbursement obligation in favour of the consumer as a consequence of the exercise of the right to withdraw is void.

Consumers are not allowed to withdraw from the agreement in the following cases:

- supply of food and beverages home delivered to consumers;
- supply of services concerning lodging, transportation, restaurant industry, spare time activities, if the supplier undertakes to supply the service/items on a prescheduled time and date;
- supply of services, if performance has started, with the prior consent of the consumer, before the term of 10 days has elapsed;
- supply of services or items whose price is connected to market fluctuations, over which the supplier does not have any control;
- supply of tailored items or anyhow personalized items or that for their nature cannot be placed otherwise;
- supply of packages of audio-visual items or information software that have been opened by the consumers;
- supply of newspapers and other magazines;
- services regarding gambling activities or bingo.

2) Principles applicable to financial services distance contracts (D. Lgs. 190/2005)

According to article 11 of the Decree, consumers may exercise their right to withdraw for any reason, free of charge and with no penalty within 14 days from the conclusion of the contract or from the date on which the consumer receives all information concerning the contractual conditions in conformity with article 10 of the Decree, if such information is provided in a different moment. Such term is extended to 30 days for distance contracts regarding life insurance or individual retirement plans.

Withdrawal has to be communicated to the supplier in writing by way of registered letter with return receipt.

The right to withdraw is not applicable to the following cases:

- certain financial services, the price of which is connected with financial market fluctuations over which the supplier has no control and which may occur during the term for the exercise of the withdrawal;
- travel insurance policies or similar for the duration of one month;
- contracts of mandatory civil insurance for damages deriving from the vehicles circulation, after the insured event occurred.

Sanctions

Protection of consumers introduced by the EC Directives and the relevant implementing Italian legislative measures is granted by an articulated system of sanctions.

1) Distance contracts regulated by the Code

According to article 62 of the Code, the supplier will incur the pecuniary administrative sanction in the range of € 516.00 – 5,165.00 in the following cases:

- violation of the Code provisions concerning information obligations in favour of consumers;
- any kind of opposition to the exercise of the consumers' right to withdraw or any deceitful information concerning the same right;
- failure to reimburse to the consumers the sum paid by the latter.
- The amount of the above mentioned fines is doubled in particularly severe cases – which have not been expressly identified by legislation – or in case of repetitive conduct (i.e. if the unlawful conduct has been perpetrated at least twice in one year).

2) Financial contracts regulated by D. Lgs. 190/2005

Article 11 of the Directive on financial distance contracts – concerning the sanctions for the supplier – has been implemented by article 16 of the D. Lgs. 190/2005 which appears to be particularly favourable to investors.

Article 16, in fact, not only introduces heavier administrative sanctions (compared to the ones provided for distance contracts regulated by the Code) in the range of € 5,000.00 – € 50,000.00 for any violation by the supplier of the Decree's provisions.

Moreover, while the Directive suggested to the Member States that in case of specific violations by the supplier the consumer should have been granted the possibility to cancel the contract free of charge and without incurring any penalty, article 16 of the Decree states that the contract is void if the supplier prevents somehow the consumer to exercise its right to withdraw or does not refund the customer of the sum unduly paid, or violates any of the information obligations set forth by the law. The consumer, therefore, is not required to accomplish any particular formality in order to terminate the contract: the contract is void and such invalidity may be enforced directly by the consumer.

There are two particular aspects that the Code introduced in addition to the regulation provided for by the Directive.

The National Council of Consumers and Customers and the actions aimed at protecting consumers' and customers' collective interests

Article 136 of the Code introduced the National Council of Consumers and Customers (hereinafter the "Council") which is appointed by the Ministry of Productive Activities and remains in office for three years. Such entity promotes consumers' protection by evaluating new legislative reforms and coordinates national and regional policies in connection with the matter at issue.

The Council may invite to attend its meetings representatives of the national consumers' associations registered within the Ministry of Productive Activities in conformity with article 137 of the Code.

Moreover, article 139 of the Code introduced the possibility for any of the national consumers' association as above identified to start an action in order to protect consumers and customers' collective interests. This innovation is quite striking for the Italian legal system that is not familiar with class actions' procedures.

4.1.3 *National legislation concerning guarantee of conformity with the contract*

As mentioned above under 3.1., Directive 1999/44/EC was implemented at first by Legislative Decree 24/2002, which introduced articles 1519 *bis* and following of the Italian Civil Code, subsequently repealed by Legislative Decree 6 September 2005 n. 206, the so-called Consumers' Code (hereinafter the "Code").

The Code strictly reflects the Directive's provisions as to the remedies reserved to consumers in cases of non-conformity of the goods, the terms under which the vendor's liability may be challenged and defects of the purchased items denounced.

Furthermore, article 132, last paragraph, of the Code provides that consumers shall start any judicial action aimed at claiming the defects that were not intentionally hidden by the vendor within 26 months from the delivery of the item. All the rights reserved to consumers as provided for by article 130, second paragraph, (i.e. the right to request, alternatively, the reparation or substitution of the good, for a price reduction, or for the termination of the agreement) may always be enforced provided that the defect has been denounced within two months from its discovery and before the expiry of the above mentioned term of 26 months.

4.2 Cross border regulatory issues

We are not aware of any legislative measure implemented in Italy aimed at preventing the legal validity of electronic invoices sent by enterprises in other Member States.

In our opinion, Italian enterprises are well aware of the possibilities to obtain payments from foreign customers through cross-border electronic payments to their own bank account in Italy.

5. General assessment

5.1 Main legal and administrative barriers to e-business

As already mentioned in the relevant section of this questionnaire, at the present time the wide diffusion of electronic documents incoming from abroad is prevented by significant technical difficulties, rather than legal ones. Therefore, since it is certain that the circulation of electronic documents may significantly help international commercial transactions, it is possible to envisage that in the future countries will endeavour to overcome the said technical difficulties (i.e. interoperability of technical systems for electronic signatures).

With specific reference to EC Regulation no. 2560/2001, it can be argued that the majority of Italian companies is perfectly aware of the provisions provided thereto and of the possibility of carrying out cross borders economic transactions. In this regard, Legislative Decree no. 180 of 24 June 2004 introduced a system of sanctions to be inflicted for the violation of the aforementioned regulation's provisions.

5.2 Awareness about national authorities in charge of solving legal problems

We are aware of the existence of two European Consumer Centres Network¹⁰ in Italy (established in accordance with the provisions of the Code), one located in Bolzano and the other in Rome. However, we may presume that access to these Centres and information regarding the same are not very easily available, since they are not clearly indicated on the website of the Ministry of Productive Activities (as it would be required by the Code).

Said centres are selected by the Government and are appointed with the prior approval of the Commission, but they are far from being considered as National Authorities.

Their role is to address consumers to the appropriate system of dispute resolution.

In this regard, it is worth to draw attention on the recent "*Online Dispute Resolution*" implemented by the Milan Chamber of Commerce which innovates significantly with respect to the other online dispute resolution's methods because it may concern any kind of dispute and not only those necessarily connected with e-commerce transactions.

Legal and administrative best practices in e-business

In our opinion, the degree of security gained by electronic marketplaces (with particular reference to important and popular websites where many B2C transactions are currently finalized every day) and generally felt by the public of consumers, constitutes undoubtedly an encouraging factor for the future development of an ever increasing daily use – also by consumers – of electronic means such as electronic signature and electronic payment, regardless of the method used.

¹⁰ More information on the described Centres may be found at the following url: www.euroconsumatori.org.

ANNEX 1: e-Business national legislation

- Decree of President of the Republic 633/1972¹¹;
- Act n. 50/1992¹²;
- Act n. 52/1996¹³;
- Act n. 59/1997 ("Bassanini Act")¹⁴;
- Legislative Decree n. 185/1999 of 22 May 1999¹⁵;
- Legislative Decree n. 84/2000¹⁶;
- Decree of the President of the Republic n. 445 of 28 December 2000¹⁷;
- Legislative Decree n. 24/2002¹⁸;
- Legislative Decree n. 196/2003 (the "Privacy Code")¹⁹;
- Legislative Decree n. 70/2003²⁰;
- Legislative Decree n. 52/2004²¹;
- Ministerial Decree of 23 January 2004²²;
- Legislative Decree n. 180/2004²³;
- Legislative Decree n. 82 of 7 March 2005 (the "Digital Administration Code")²⁴;
- Legislative Decree n. 190 of 19 August 2005²⁵;
- Legislative Decree n. 206 of 9 September 2005 (the "Consumers' Code")²⁶;
- Act n. 29/2006²⁷.

¹¹ "Istituzione e disciplina dell'imposta sul valore aggiunto".

¹² "Attuazione della direttiva (CEE) n. 577/85 in materia di contratti negoziati fuori dei locali commerciali".

¹³ "Disposizioni per l'adempimento di obblighi derivanti dall'appartenenza dell'Italia alle Comunità europee – legge comunitaria 1994".

¹⁴ "Delega al Governo per il conferimento di funzioni e compiti alle regioni ed enti locali, per la riforma della Pubblica Amministrazione e per la semplificazione amministrativa".

¹⁵ "Attuazione della direttiva 97/7/CE relative alla protezione dei consumatori in materia di contratti a distanza".

¹⁶ "Attuazione della direttiva 98/6/CE relative alla protezione dei consumatori in materia di indicazione dei prezzi offerti ai medesimi" (repealed by the so called "Consumers' Code").

¹⁷ "Testo Unico delle disposizioni legislative e regolamentari in materia di documentazione amministrativa".

¹⁸ "Attuazione della direttiva 1999/44/CE su taluni aspetti della vendita e delle garanzie di consumo".

¹⁹ "Codice in materia di protezione dei dati personali".

²⁰ "Attuazione della direttiva 2000/31/CE relative a taluni aspetti giuridici dei servizi della società dell'informazione nel mercato interno, con particolare riferimento al commercio elettronico".

²¹ "Attuazione della direttiva 2001/115/CE che semplifica ed armonizza le modalità di fatturazione in materia di IVA".

²² "Modalità di assolvimento degli obblighi fiscali relativi ai documenti informatici ed alla loro riproduzione in diversi tipi di supporto".

²³ "Disposizioni sanzionatorie per le violazioni del regolamento CE n. 2560 del 2001, relativo ai pagamenti transfrontalieri in euro".

²⁴ "Codice dell'Amministrazione Digitale".

²⁵ "Attuazione della direttiva 2002/65/CE relativa alla commercializzazione a distanza di servizi finanziari ai consumatori".

²⁶ "Codice del Consumo, a norma dell'articolo 7 della legge 29 luglio 2003, n. 229".

²⁷ "Disposizioni per l'adempimento di obblighi derivanti dall'appartenenza dell'Italia alle Comunità europee – Legge comunitaria 2005".