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# Development of electronic commerce in the Spanish olive oil sector: Regulations and guarantees

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**Abstract.** In a context of profound crisis, online markets in Spain have experienced an important and almost steady growth of the volume of e-commerce, both in the field of B2B as well as in B2C. However, available statistics show that this growth of the online business is not taking place with the same intensity in all sectors. On the contrary, the agro-food sector in Spain, and the olive sector in particular, is lagging behind regarding the use of the Internet as a marketing channel. This situation is not related to technical constraints but to the fact that companies underutilize the technologies set up for commercial purposes, do not see the internet as a channel to sell perishable products or consumers' perception of lack of security. The Internet offers solutions to some of the problems related to the features that shape the cooperative sector in Spain, such as poor marketing of packed products for the end consumer, little bargaining power with big retailers and confusion and lack of information among consumers when making buying decisions. The evolution of the online market highlights the growing awareness within the olive oil sector of the advantages offered by the commercial use of the Internet. This adds to the efforts made to increase the users' perception of safety in the transactions processed and settled through the Internet. In view of the protective EC regulation concerning consumers and users of distance contracts, we believe that progress will be made within the EU regarding the exponential growth of electronic commerce as a consequence of the correct defence of their economic interests which, undoubtedly, entails greater confidence of users and consumers in this commercial system.

**Keywords.** Confidence – Consumers' information – Consumers' protection – Contact with consumers – Marketing – Web 2.0.

## *Développement du commerce électronique dans le secteur oléicole espagnol : réglementations et garanties*

**Résumé.** Dans un contexte de profonde crise, les marchés en ligne en Espagne ont connu une croissance importante et presque régulière du volume de commerce électronique, à la fois entre entreprises et d'entreprise à particulier. Toutefois, les statistiques disponibles montrent que cette croissance des entreprises en ligne n'est pas également forte dans tous les secteurs. Au contraire, le secteur agroalimentaire en Espagne, et en particulier le secteur oléicole, est à la traîne pour ce qui est de l'utilisation de l'internet comme canal de commercialisation. Cette situation n'est pas liée à des contraintes techniques mais au fait que les compagnies utilisent peu les technologies disponibles à des fins commerciales et n'envisagent pas l'internet comme canal de vente de produits périssables, ou à la perception sécuritaire défailante qu'en ont les consommateurs. L'internet offre des solutions à certains des problèmes liés aux caractéristiques du secteur coopératif en Espagne, tels qu'une faible commercialisation de produits emballés destinés au consommateur final, peu de pouvoir de négociation avec la grande distribution et une confusion et un manque d'information chez les consommateurs lors de la prise de décision d'achat. L'évolution du marché en ligne montre une prise de conscience grandissante du secteur oléicole concernant les avantages découlant de l'utilisation commerciale de l'internet. Ceci s'ajoute aux efforts faits pour augmenter la perception croissante des usagers concernant la sécurité des transactions effectuées et réglées à travers l'internet. Au vu de la réglementation protectrice de la Communauté européenne concernant les consommateurs et les usagers de contrats à distance, nous pensons que des progrès seront réalisés au sein de l'UE favorisant une croissance exponentielle du commerce électronique comme conséquence d'une bonne défense de leurs intérêts économiques ce qui, indubitablement, entraînera une plus grande confiance des usagers et consommateurs vis-à-vis de ce système commercial.

**Mots-clés.** Confiance – Information chez les consommateurs – Protection des consommateurs – Rapport avec les clients – Commercialisation – Web 2.0.

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## I – Introduction

It was in 2008 when the worsening of Spain's main macroeconomic indicators became noticeable. For the first time, after a period of 15 years of economic growth, at the end of 2008 the onset of technical recession in Spain was confirmed and today, four years later, far from seeing the end, their consequences compounded and spread, not only in the economic but in the political and social sphere as well. Focusing on the economic front, from the point of view of demand, in 2011 the domestic components increased their negative contribution to the GDP, consumer expenditure having the greatest negative contribution of the domestic demand, with a decrease of 0.7% in comparison with the previous year (Junta de Andalucía, 2011).

This general context contrasts with that of the online market, where an important and almost steady growth of the volume of electronic commerce has been reported in our country, both in the case of B2B as well as in B2C. Thus, in accordance with Instituto Nacional de Estadística (INE, 2012), in 2011 the turnover generated by this format amounted to 187,596 million euro, with an increase of 11.7% year-on-year. Sales through electronic commerce accounted for 13.7% of total sales made by Spanish companies. According to the information provided by the Telecommunications Market Commission (2011), which collects information about electronic commerce transactions settled using credit cards in Spain and which is, thus, closer to the online consumption reality, during the fourth quarter of 2011, electronic commerce in Spain reached a turnover of 2,401.4 million euro, an increase of 25.7% in comparison with the same quarter in 2010; the total number of operations amounting to 36.9 millions. The turnover accumulated in 2011 of electronic commerce in Spain reached a record figure of 9,200.7 million euro, an increase of 25.7% compared to 2010.

However, the available statistics show that this growth of the on-line business is not taken place with the same intensity in all sectors. According to the ePyme 2011 report by Fundetec (2012), Spain's agro-food sector is lagging behind in comparison with the rest regarding the use of the Internet as a sale channel. Although in 2011 around 90.7% of the agro-food companies had a website, 23 points higher than in 2010, only 7.3% of them sold their products on the Internet. Compared with the rest of the sectors analysed, the agro-food sector uses the internet to sell to a much lesser extent.

However, the previous data hide the outstanding effort made by the sector entrepreneurs in 2011 to modernize their businesses, incorporating more ICT products and services in order to encourage competitiveness at this time of economic crisis. Thus, according to Fundetec (2012), 99.5% of the sector companies have internet access, being the second sector with higher level of penetration of this communication channel. It is also the sector that has made the greatest effort to increase its presence on the Internet via website in the 2010-2011 period, with a spectacular increase of 23.5 percentage points in only one year. Other indicators regarding the use of services channelled through this communication network (email, relations with suppliers and clients, bank operations, dealings with the administration, etc.) also reflect a marked growth in the past year.

The previous information indicates that the gap between the agro-food sector and the rest in matter of e-commerce figures cannot be attributed to technical deficiencies, but to a poor utilization of the technology set up for commercial purposes. The main reason pointed out to explain this situation is the "existence of products that are not suited to be sold on the internet" (Fundetec, 2012). However, a growing number of companies are overcoming this obstacle of having perishable products and offer multiple solutions to firms and consumers, ranging from purchasing on an online supermarket, to buying directly from producers with no intermediaries or daily discounts on gourmet products. In many cases, they have been able to gain advantages from a sales channel that uses no intermediaries and thus offers fresher products or products that are difficult to access in other channels and on many occasions with lower price margins,

which is an interesting option for consumers. Regarding demand, the opportunities afforded by having this type of consumer in this channel should be taken into account. These consumers have a very specific profile, they are young, have a higher education level and better purchasing power. The new applications that shape the so-called web 2.0, mainly social media, provide much more information about these consumers' needs and their opinions of the products aiming at complying with such needs.

Research conducted in Spain on the olive oil sector shows that it fully shares the characteristics of the agro-food sector: high ICT infrastructure provision, presence on the internet, but reduced usage of it as an online marketing channel<sup>1</sup>.

It should be pointed out that the use of the internet offers important potential advantages to the activity of any company, which become more evident in the oil sector, mainly composed of networked cooperatives, which in the case of Spain share the features of the Mediterranean Cooperative Model, that is, highly scattered companies with low turnover (CCAIE, 2006).

The above-mentioned characteristics bring out problems that have been traditionally present in the development of the oil sector, among which we can highlight poor marketing of packed consumer products, low bargaining power with big retailers and the confusion and disinformation faced by consumers when making buying decisions. At present, Internet is presented as one of the possible solutions to overcome such deficiencies and a growing number of oil companies are capitalizing on these advantages. Focusing on the developments within the commercial sphere, the objective of this paper is twofold: on the one hand, to analyse to what extent the olive oil sector is making use of the Internet in order to address the deficiencies that have traditionally accompanied its development: the confusion among consumers regarding the product attributes and the difficulty to reach the final client, both on the domestic market as well as abroad; on the other, to identify the latest regulatory developments aimed at providing legal certainty for the parties involved in online transactions and which respond to one of the main obstacles faced by this type of trade: the user's lack of confidence. In order to attain these objectives, this paper is structured in the following manner: following this introduction, the next section will analyse the main areas where the olive oil sector can use the Internet to solve some of the main problems that are currently hampering its development; the third section will review the current situation and latest developments within the legal framework which is aimed at introducing legal certainty and security in online trade transactions; the paper finishes by summarizing the main conclusions.

## **II – Advantages of the internet in the olive oil sector**

### **1. Communication with stakeholders**

The environment where the oil companies work involves facing an increasingly open market, with more sophisticated clients who demand a greater diversity of choices and who are more sensitive to the information directly related to the quality of the end product and the externalities derived from the production process. The increasing awareness of consumers towards environmental degradation and the social impact of the companies' actions (European Commission, 1999) are reflected on their buying decisions and consumption habits over the last two decades<sup>2</sup>. Aspects such as compliance with Social Corporate Responsibility<sup>3</sup>, organic

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<sup>1</sup>See, among others, Mozas *et al.* (2007) and Moral *et al.* (2012).

<sup>2</sup>Several studies such as that of Foretica (2006) show that there is a lack of communication concerning a well-structured and conditioned SCR according to different socio-cultural strata of consumers, which prevents the general public from having access to this information and limits the dissemination of the concept of responsible consumption. And this, despite its growing impact on the consumers' buying decisions. Thus, the report by Foretica (2008) illustrates that 82.4% of citizens show a clear preference for products and companies having a good image concerning SCR, provided that price conditions are at least identical. Likewise, a study carried out by the Confederation of Consumers and Users (2008) shows how

products or the features of the socio-economic environment where products are produced (designations of origin) are increasingly taken into account, not only by consumers but by the rest of the *stakeholders* as well (share-holders or members, workers, suppliers and the society in general) who will judge business actions and, whether they accept them or not, will influence in the permanence and sustainability of the companies (Berbel *et al.*, 2007).

The consumers' higher demand for information can hardly be satisfied with labels that are already crowded with advertising and a sea of information required by the changing European, domestic and regional legislation, which in some cases has to be included in the different co-official languages, thus resulting in inconvenient formats which consumers find difficult to understand. Besides, olive oil consumers have traditionally faced disinformation regarding varieties, quality and properties of this product.

The disinformation and confusion faced by consumers when buying virgin olive oil can be overcome with services provided through the internet, among which the social media and websites can be highlighted, since they can become a fundamental element in the communication strategy of the companies of this sector. As Baourakis *et al.* (2002) pointed out, Internet is the best information channel for products such as organics, due to the huge amount of information related to the product features that is needed by consumers in order to make a purchase decision. The possibility of having a bidirectional flow of information between the company and consumers through the social media or websites makes the internet a space that can be used as a PR tool, as an advertising instrument to promote sales and is essential in developing relationship marketing initiatives aimed at keeping customers loyal (Rodríguez, 2006). As noted by Evans and Wurster (1997), this greater wealth of information is more useful when the products to be marketed have a strong connotative context, as is the case with some organic or DO agro-food products. Besides, it is important to stress that one of the biggest benefits of the Internet as a promotion channel is its low cost, offering small companies, which are dominating the production of agro-food products, the same possibilities to be on national and international markets as the larger ones (Baourakis *et al.*, 2002). In fact, authors such as Stockdale and Standing (2004) pointed out that these companies are the ones who can really take full advantage of the speed and flexibility of virtual environments because of their smaller size.

The potential of the Internet as a communication channel has not gone unnoticed by the sector and many websites have mushroomed where a lot of emphasis is placed on informing about the organic nature of the product, its socially responsible production and the singularities of the economic and social environment where they are produced. Thus, there are many companies in this sector providing stakeholders with information about their compliance with the social corporate responsibilities and even the compliance of other firms they have business dealings with (e.g. Mandicplace)<sup>4</sup>. In the case of *organic products*, in order to face some of the main obstacles related to the decreased demand in Spain<sup>5</sup>, companies in the sector (e.g. Oro del

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having information on a company's social and environmental performance could be used by many consumers (75% of the respondents) in the buying process.

<sup>3</sup>In the oil sector, the prevailing business model, the cooperative, is inherently socially responsible, and decisions are made democratically taking into account business, social and cultural arguments.

<sup>4</sup>See as an example, the online gourmet shop Mandicplace (<http://www.mandicplace.com>), where a selection of the best olive oils from Spain is offered. According to the website, the company selects its suppliers based on similar corporate values such as social actions, environmental awareness and corporate social responsibility (the use of renewable energies, organic farming, nature preservation, recovery of traditional methods and cultures, and social and labour insertion). Besides, MandicPlace donates 0.5% of their annual sales to any health- (cancer) or education-related causes or social actions in developing countries.

<sup>5</sup>That is, the existing price differential between organic and conventional food products, the poor distribution –scarcity of points of sale and supply assortment– and, lastly, the consumer lack of knowledge and confusion regarding this type of food products which, on occasions, is a source of distrust (Schmid *et al.*,

Desierto) use the web as a sales channel to avoid the costs associated to intermediaries, offer an accessible and close channel to clients and provide sufficient information on the qualities of the product. On the other hand, in view of the growing interest of consumers in the place of origin (cultural, socio-economic, traditions, environment, etc.)<sup>6</sup>, the Internet also offers the possibility to detail and inform in a friendly manner about the reputation of a product marketed under a designation of origin. There is a growing number of companies (e.g. Cerespain) who, aware of this fact, offer information about their DO products, including olive oil.

## 2. Marketing on the domestic market

Over the past decades, a substantial change has taken place in the agricultural sector, that has resulted in a change from a production-oriented to a market-driven agriculture. Thus, one of the characteristics that traditionally defines the olive sector is the poor participation of producers in the marketing of their products, which has prevented them from retaining an important part of the revenues generated in the marketing process. At present, agrofood marketing has become the fundamental pillar upon which the necessary and inevitable modernization of agriculture is based.

Within the above-mentioned context, the use of the Internet as a giant virtual centre with no specific physical location or timetable, as a means to market production, opens up great opportunities for SMEs too, offering certain advantages in comparison with traditional means. According to Rosello (2003) the web, as a tool for promoting and communicating with clients, allows for reduced promotion costs, avoids physical movement, offers the possibility to constantly update the catalogue of products, encourages the interaction with final clients, provides immediate information on the demand requirements, can reach the whole world, or is used to assess the repercussion of the promotions by controlling the number of visitors and their origin. There is a growing number of companies who avoid intermediary costs and benefit from the previous advantages by selling on the Internet (e.g. OlivaOliva.com)<sup>7</sup>.

## 3. Exports

One of the challenges faced by the Spanish olive sector, which accounts for near 46% of the world's olive oil production<sup>8</sup> (International Olive Council, 2011), is the marketing of its products on foreign markets. Indeed, although the statistics indicate that Spain is the main exporting country of olive oils (United Nations, 2011), it should be noted that around 80% of this oil is sold in bulk (Torres, 2008), other countries, mainly Italy, benefitting from the added value generated in the packing process and selling to international markets under an Italian brand<sup>9</sup>. In this paradoxical context, Internet, as a channel of information, promotion and sales that facilitates

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2007; Tsakiridou et al., 2008; Roitner-Schobesberger *et al.*, 2008, Hamzaoui and Zahaf, 2008; Padel and Foster, 2005; Radman, 2005; Vega, 2011).

<sup>6</sup>Some studies (Espejel *et al.*, 2007) have shown the importance attached by consumers to the place of origin, the land, the climate, and know-how of a given geographical area, since together with the strict controls applied to these products by the Supervisory Councils, they are seen as a sign of quality and safety.

<sup>7</sup>An example of these online sale initiatives is found in OlivaOliva.com (<http://www.olivaoliva.com>) which supplies the product directly from oil mills located in 16 provinces in Spain to the consumer's home, with no intermediaries, and in many cases pack-to-order to guarantee freshness.

<sup>8</sup>According to the IOC (2011) world olive oil production amounted to 3,024,000 tons in the past season for which there are total (provisional) data available (2009/2010). Of this, 2,245,500 tons, 74.25%, corresponds to the production of the European Union. Spain is a leading producer in the EU contributing 1,396,300 tons in the above-mentioned season, 62% of the Community production.

<sup>9</sup>In 2010, Spain exported 420,233 tons of olive oil to Italy, 50% of total olive oil exports (Ministerio de Industria, Comercio y Turismo, 2011). According to the IOC, the production of olive oil in Italy in the 2009/10 season was 460,000 tons. The Italian olive oil sector satisfied a domestic demand in that season that amounted to 675,000 tons and a demand of 165,000 tons (IOC) from outside Europe.

contact with trading partners from all over the world, is an opportunity harnessed by Spanish companies to increase their portfolio of clients and sell abroad. This presence is realized either individually (e.g. Asoliva)<sup>10</sup> or taking advantage of platforms that support electronic markets where hundreds of companies from different countries interrelate in order to secure trade transactions (e.g. Ecospain)<sup>11</sup>. The evolution of the Internet towards the web 2.0 offers a new generation of electronic markets in the form of B2B social media (e.g. Grera.net), which include commercial functions of the traditional format of 2.0 tools to facilitate even more interrelations and contact with companies that are part of this network. It adds to traditional electronic markets, automated processes which on a periodical basis offer potential clients, suppliers, offers and quotations of their interest, at the same time as they offer more functionalities, such as in-house mail, working groups, business events, besides others such as assessment of other users.

### III – Internet contracts from a legal perspective

#### 1. Background

As mentioned above, electronic commerce has experienced a favourable evolution in the past years. Even at times of severe economic and financial crisis, and in areas where, at the beginning, the implementation of this commercial technique was more than questionable. Take for example the market for perishable products and especially agro-food products.

There are many reasons to justify the exponential evolution of electronic commerce, of which I should like to stress the consumers increasing confidence in purchasing on the Internet. Thus, a situation in which users are very reluctant to buy products or services on the internet has turned into exactly the opposite scenario. Indeed, the Internet appears as an additional (virtual) space, where you can find, 24 hours a day, an updated offer of products and services which are often sold at more competitive prices than on conventional markets.

The consumers' increased confidence in the internet is the result of a series of circumstances, and the adoption of a protective legal framework is specially significant, since it introduces legal certainty and security in commercial transactions, among others the information obligations planned for the pre- and post-contracting phases as established in Directive 2000/31/EC on the Information Society and electronic commerce.

Now, several years after the entry into force of this Directive and upon approval of Directive 2011/83/EU of the European Parliament and of the Council, of 25 October 2011, on consumer rights, we should like to examine the new legal framework in the EU regarding consumer protection in the area of contracts and, in particular, in the field of conclusion of distance contracts, whose application to electronic contracts is clear, the latter being a special type of the former. Indeed, it is an interesting analysis which will help to determine whether in the EU electronic commerce will be able to keep up this exponential growth in the coming years, or will eventually experience a recession due to the expected new level of consumer protection.

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<sup>10</sup>Examples of the use of the Internet to reach foreign markets are found in Asoliva.com, ASOLIVA (Spanish Association of Olive Oil Industries and Export Trade), private and non-profit entity which is currently made up of 59 olive oil exporting companies from several provinces in Spain, mainly Andalusia and Catalonia, whose sales outside Spain account for more than 95% of domestic olive oil exports and between 50 and 75% of exports of olive oil in bulk, depending on the season (See <http://www.asoliva.es>).

<sup>11</sup>An initiative in the field of electronic markets that should be highlighted is that of Ecospain (<http://www.ecospainb2b.com>), a wholesale market for companies to buy and sell certified organic products with no intermediaries. This portal can only be used by those Producers, Processors or Traders (hereafter organic suppliers) who have the corresponding organic certification issued by Spain's Regional Governments.

That said, bearing in mind this objective, it should be stressed that it is not our intention to examine the above-mentioned innovative regulatory instrument in depth. Indeed, in view of the short time and space available for this presentation, our study is more modest and aims to analyse only some provisions in this Directive devoted to consumer protection in the above-mentioned contracting context. It is an interesting study for two reasons; namely, because this set of rules enjoys preferential applicability even in areas where there are already specific rules (as is the case in telematic contracting). In this sense, the second section of Article 6(8), when establishing information obligations for distance contracting, mandates that "*without prejudice to the first subparagraph, if a provision of Directive 2006/123/EC or Directive 2000/31/EC on the content and the manner in which the information is to be provided conflicts with a provision of this Directive, the provision of this Directive shall prevail*"<sup>(12)</sup>.

Besides, the importance of this study relates to the fact that the contents of the Directive will pervade the legislative framework of EU countries, who will be obliged to implement it before 13 December 2013 <sup>(13)</sup>, and as a consequence both will be aligned and thus the level of consumer protection will be standardized across the Community territory in the field of distance contracts.

## **2. Levels of information to consumers**

### ***A. Information as a means of protection***

One of the means traditionally used by Community legislators to protect consumers in the market has been to increase the level of information about specific commercial offers. In fact it is a question of compensating for the information asymmetry that exists on the competing market by establishing the obligation for companies to provide consumers and users with the relevant information on the products and services offered, in such a way that they can make rational, responsible and economical choices, without wasting time and money.

Thus, Community legislators play a fundamental role in the area of distance contracting, especially in contracts using information technologies, since in this case contractual obligations arise without the simultaneous physical presence of the contracting parties, and without the opportunity to experience the subject matter of the contract first-hand. For this reason, through Directive 2000/31/EC, Community legislators have shown –as previously noted– a concern to provide a high level of relevant information for consumers in the area of electronic contracting.

Therefore, let us look at what information requirements are envisaged in the new regulatory instrument concerning telematic contracting.

### ***B. Information requirements envisaged in the new Directive***

After a careful reading of Directive 2011/83/EU, we can infer that Community legislators have imposed a rigid information obligation to good and service providers, when mandating in Article 6(1) that "*before the consumer is bound by a distance or off-premises contract, or any corresponding offer, the trader shall provide the consumer with the following information in a clear and comprehensible manner*".

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<sup>12</sup>Even when in the definition of scope in Article 3 mandates that "*if any provision of this Directive conflicts with a provision of another Union act governing specific sectors, the provision of that other Union act shall prevail and shall apply to those specific sectors*". (see Miranda Serrano L., "La Directiva 2011/83/UE sobre los derechos de los consumidores: una nueva regulación para Europa de los contratos celebrados a distancia extramuros de los establecimientos mercantiles", Cuadernos de Derecho y Comercio, 2012, in press).

<sup>13</sup>Although Article 28 of the Directive establishes, under the title "*transposition*", that "*Member States shall adopt and publish, by 13 December 2013, the laws, regulations and administrative provisions necessary to comply with this Directive*", it is true that Community legislators have established a new term for the entry into force and application of these internal provisions, when mandating later in the Article that Member States "*shall apply those measures from 13 June 2014*".

Then it is clear that the obligation to inform about the commercial offer is defined by legislators from a three-fold perspective; namely, by its timing, format and content. First of all, information shall be provided before the contractual relationship is established, because in this way, consumers will be able to make a rational decision about the contracting of goods or services.

Secondly, information shall be provided in a clear and evident way, so that target consumers (for whom such products and services are intended) can assimilate it easily. In this sense, two comments can be made. On the one hand, and in view of the linguistic diversity within the EU territory, Community legislators have allowed member States to introduce in their respective national legislations *"...language requirement regarding the contractual information, so as to ensure that such information is easily understood by the consumer ..."* [Art. 6(7), Directive]. On the other, the Directive mandates that the contractual information if provided on a durable medium shall be legible [Art. 8(1), Directive] and, in any case, with the confirmation of the contract concluded within a reasonable time, and at the latest at the time of the delivery of the goods or before the performance of the service begins [Art. 8(7), Directive].

Thirdly, this information shall necessarily refer to a series of points which allow consumers comprehensive awareness of several defining elements of the contract to be concluded, as well as the effects derived from its conclusion. For instance, the identifying data of the other contracting party, the subject matter of the contract, the payment and delivery method (indicating the date), the system for processing claims and its functioning or the definition of the withdrawal right itself. It is thus a wealth of data which, as legislation points out in Article 6(5) of the Directive, *"...shall form an integral part of the distance or off-premises contract and shall not be altered unless the contracting parties expressly agree otherwise"*.

### **3. The right of withdrawal as a protective tool for consumers**

Another means of protection envisaged by Directive 2011/83/EU in the field of contracts is represented by the recognition of the withdrawal right in favour of consumers and users, that is, the right to withdraw from a distance contract without having to refer to proper reason and only on condition that certain format, content and timing requirements are met as provided for in the legislation. As generally established in Article 9(1) when it mandates that *"...the consumer shall have a period of 14 days to withdraw from a distance or off-premises contract, without giving any reason ..."*. In any case, this wide recognition of the right of withdrawal contained in Article 9 should be systematically interpreted with Article 16 of the Directive, since, on the basis of several reasons, different assumptions are taken into consideration where this right has been directly eliminated. Consider, for example, *"the supply of goods or services for which the price is dependent on fluctuations in the financial market which cannot be controlled by the trader and which may occur within the withdrawal period"*; *"the supply of goods which are liable to deteriorate or expire rapidly"*; or *"the supply of sealed audio or sealed video recordings or sealed computer software which were unsealed after delivery"* [vid letters b), d) and i) of Article 16 of the Directive.

Thus, we will now present an outline of the new legal arrangements concerning the right of withdrawal established for distance contracts, and we will pay attention to the main elements defined in the Directive.

(i) **Withdrawal period:** As stated above the Directive establishes that consumers shall have a period of 14 days to exercise their right of withdrawal. It should be noted that this basic period may be extended if the trader omits the information for consumers the existence of this right. Thus, in this case, *"...the withdrawal period shall expire 12 months from the end of the initial withdrawal period ..."* [Article 10(1) of the Directive]. But, when does it begin? According to Article 9(2) of the Directive, the 14-day period starts the day on which the consumer acquires physical possession of the ordered goods, but in the case of multiple or compounded goods with deferred delivery, the day from which we start counting shall be the day the consumer

acquires physical possession of the last lot or piece. Conversely, in the case of contracts for regular delivery of goods during a defined period of time, the withdrawal period shall expire after 14 days from the day on which the consumer acquires physical possession of the first good [Article 9(2), (iii) of the Directive].

(ii) Formalities in the exercise of the right. This is a relevant point, and its regulation allows the protection of consumers to be increased or decreased. In this sense, the need for any kind of formality would be detrimental to the protection of this contracting party. For this reason, in order to increase the consumers' and users' protection level, Article 11(1) of the Directive has provided for this right to be exercised through an unequivocal statement targeted to the trader setting out the decision to terminate the contract. For that, the model withdrawal form attached to the Directive shall be used, or any other type of statement.

Besides, and in order to speed up the effects of the withdrawal, the theory of issuance is followed, according to which the consumer shall have exercised his right of withdrawal when the communication concerning the exercise of the right of withdrawal is sent by the consumer before the period has expired [Art. 11(2)], whether or not the trader has received it. For this reason the burden of proof shall be on the consumer [Art. 11(4)].

(iii) Legal consequences of the exercise of the withdrawal right. As previously mentioned, the exercise of this right allows consumers to dissociate from the contract concluded, terminating the obligations of the parties. So says the legislative authority in Article 12 of the Directive when it mandates that *"The exercise of the right of withdrawal shall terminate the obligations of the parties to .... perform the distance contract...."*

Consequently, once this right is exercised, the contracting parties shall enter into a process of settlement of possessions, in which benefits are restored. Thus, and regarding the trader, he shall reimburse all payments received, including the costs of delivery, not later than 14 days – and using the same means of payment– from the day on which he is informed of the consumer's decision to withdraw from the contract.

In order to guarantee that consumers return the goods, the trader has the right to withhold the reimbursement *"...until he has received the goods back, or until the consumer has supplied evidence of having sent back the goods ..."* [Art. 13(3) of the Directive].

As far as the consumer is concerned, he shall send back the goods subject of the contract not later than 14 days from the day on which he has communicated his decision of withdrawal. In this sense, it will be sufficient if within this period he sends back the goods to the trader or to a person authorised by the trader [Art. 14(1) of the Directive]. In any case, the consumer shall bear the cost of returning the goods, *"...unless the trader has agreed to bear them or the trader failed to inform the consumer that the consumer has to bear them"* [Art. 14(1) of the Directive]

In every case, and regardless of the cost of returning the goods, the consumer shall not be liable for any diminished value of the goods traded through the terminated contract, provided that this diminishment results from the handling of the goods other than what is necessary *"...to establish the nature, characteristics and functioning of the goods ..."*. Obviously, any manipulation of the products that exceeds the above-mentioned cliché shall imply the accrual of the right of compensation by the consumer, except when the trader has failed to provide notice of the right of withdrawal, in which case *"the consumer shall in any event not be liable for diminished value of the goods ..."* [Art. 14(2) of the Directive].

## IV – Conclusions

Internet allows for the promotion of products offered on a global market at a low cost and contact with worldwide clients/importers or distributors as well. If the company is able to perceive the opportunities derived from the strategic use of its web, it will try to offer quality resources which facilitate contact with clients on domestic and international markets. However,

available statistics suggest that, despite the important efforts made by the sector companies to increase the use of ICTs, they generally underuse the potential of the internet as a channel to sell goods and services.

In order to solve this situation, efforts are needed in different areas, particularly those aimed at increasing users' perception of safety regarding transactions processed and settled on the Internet. In view of the protective nature of the Community's regulatory activity regarding consumers and users in the field of distance contracts, we believe that in the EU further progress will be ensured to develop exponentially electronic commerce as a result of the correct defence of their economic interests that, of course, supports the consumers and users' greater confidence in this type of commercial system.

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