

Pre-packaged food products Business to Consumer (B2C) distance selling and information obligations in Italian mass market retailers

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Abstract

The supply and sale of food online are on the rise. The value of e-commerce in Europe has been estimated in 602 billion euros in 2017, 324 million people in the old continent purchase online. In the European area, the Netherlands and Italy are the countries where the e-commerce market grew faster in the last five years. Nevertheless, in Italy the spread of online shopping has reached the 89.9% of the population between 11 and 74 years old. The access to the Internet, as declared by 43 million Italians, it is carried out from fixed or mobile locations. In terms of revenues the food sector recorded a +24% among the different sectors facing one of the higher grows in terms of percentages. The regulatory framework that disciplines the food products distance selling can be traced back to two fundamental pillars: the European legislation on e-commerce on the one side and the food information to consumers on the other side. Under article 14 of the Regulation (EU) No. 1169/2011, the European legislator states that the mandatory information, as indicated in article 9, shall be available to the consumer before the purchase is concluded and when the product is delivered. The study aims at verifying: the level of compliance by Italians MMR with the information regulation about food products distance selling in relation to (a) the fulfillment of the obligation concerning mandatory provisions and (b) the fulfillment of the obligations concerning availability and readability of the information provided. The research has been conducted analyzing the websites of the ten largest Italian MMR and in particular: if the mandatory information were provided, the availability of the information according to the Regulation (EU) 1169/2011; the number of clicks needed to identify the food product in the website and the number of clicks

required to obtain all the information. The observation testified a substantial compliance with the information obligations according to the European regulation. Differently, when considering the availability and readability of the information, from the analysis emerged that consumers have to follow a path that is not immediate and intuitive. Conclusions are provided in relation to the presented research.

Introduction

In Italy the spread of online sales reached 89.9% of the population between 11 and 74 years, with 43 million Italians declaring that they can access the Internet from fixed or mobile locations. The B2C e-commerce market in Italy generated a turnover of € 35.1 billion in 2017, growing by 11% when compared to 2016. On this turnover, the food sector represents the 2.7% and it is among the sectors that have grown the most (+24%) (Casaleggio Associati, 2018). Online purchases of food products from a supermarket have reached a value that overcomes 200 million euros in 2017, an increase of over 50% if compared to the previous year; in this segment, the main traditional GDO operators play a preponderant and constantly evolving role developing new services to offer to the consumers such as the delivery at the given address (prevailing formula) or the possibility to pick up the ordered products in selling points (Click & Collect) (Nielsen, 2018). In addition to supermarket chains, there important companies that are operating exclusively online, such as Amazon Prime Now, Supermercato24 and others (MBRES, 2018). The legislative framework applicable to food products distance selling finds its normative reasoning in different legal sources. The general regulation about B2C (Business to Consumer) distance selling in the European legal system is provided in the Directive 2011/83/UE, adopted in Italy with the Decree of 21 February 2014, n. 21. In addition, specific requirements concerning the distance selling of food products are provided by the European legislation about food information to consumers. Nevertheless, the Regulation (EU) 1169/2011 defines the “means of distance communication” as “any means which, without the simultaneous physical presence of the supplier and the consumer, may be used for the conclusion of a contract between those parties” (Article 2.2(u)) and furnishes indication about “distance selling” under Article 14. Based on this article, the mandatory information indicated in Article 9 of the Regulation (EU) 1169/2011,

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shall be made available to the consumer before the conclusion of the contract through which the food products are purchased online and at the moment of the delivery of the purchased item. The only difference between the two phases is represented by the date of minimum durability that shall be provided only when products are delivered. It seems to be clear, on this specific choice, the will of the European legislator to strengthen the importance of the information to the consumers in a phase that is prior to the conclusion of the contract (Rolandi, 2017). This attention might be explained considering that these types of trades are characterized by a lack of physical and simultaneous presence of the contracting parties that contributes to accentuate the weak position of the consumers. In fact, consumers are not able to view the product or request added information and consequently might be difficult to identify characteristics and qualities (Bolognini, 2012). Lately other provisions concerning the distance sale of food products have been introduced, in particular the Regulation (EU) 2017/625 on official controls. The aforementioned regulation requires that the competent authorities “shall draw up and keep an up-to-date a list of operators” (in the food sector) (see Article 10.2) and to enable this, operators shall provide the competent authorities at least the following updated details (Article 15.5):

their name and legal form; and the specific activities carried out, including activities undertaken by means of distance communication, and the places under their control”

The same regulation also provides that official controls might be conducted taking samples of the goods offered for sale through distance communication techniques.

Materials and Methods

In recent years, in relation to food products B2C distance selling there has been a real evolution with an increasing number of consumers willing to purchase using the network and digital technologies and at the same time the multiplication of producers and/or intermediaries that decided to approach the new trade channel of the online sale of food products. Lately the use of online supermarkets has increased, allowing consumers to carry out the shopping through the network and have the items delivered or with the possibility to pick them up in specific selected points. The purpose of this work is to assess the compliance with pre-contractual information obligations in distance selling (B2C) of pre-packed food products utilizing as samples for the survey the ten largest groups of Italian large-scale retail trade. Using the data collected in the Mediobanca report about the major Italian MMR (Mass Market Retailers) (MBRES, 2018) the following list has been extracted: Coop, Selex, Conad, Esselunga, Carrefour, Eurospin, Auchan-SMA, Lidl Italy, Iper-Unes, Group Pam (please note that Eurospin and Group Pam both utilize Supermercato 24 and therefore in the sheets are going to be listed at first ten cases and then nine). On the basis of the aforementioned list, online shopping services have been identified for each operator by typing the words “on line shopping” and the name of the company operating in the large-scale distribution, for example, on the internet search engine “Google Search”: “Conad spending online”. In this way it was possible to obtain the following scheme shown in Table 1 in which for each “line leader” operating in the GDO the online shopping service and their web address were identified.

For each retailer a sheet has been created identifying a series of characteristics related to the structure of the web site and the information provided: the name of the company, the name of the online shopping service, the web address of the online shopping service, the characteristics of the service, the dissemination of the service on the

national territory, the information presented on the home page concerning the “trader” as defined by the Article 2.2 of the Directive 2011/83/EU, the identification of the trader according to Article 6.1 b), c), d) of the Directive 2011/83/EU, the identification of the “food business operator responsible for the food information” according to Article 8.1 of the Regulation (EU) 1169/2011 (see DG SANCO document of 31 January 2013, page 2.6.1, page 7), the indication of the VAT number on the home page of the website, even if the web site is used only for advertising purposes (resolution of the Revenue Agency No. 60 of 16/05/2006, Article 35 of Presidential Decree 633/1972). In the pre-contractual phase of distance selling, the mandatory information on pre-packed food, as defined under Article 9.1 of the Regulation (EU) 1169/2011, shall be available and easily accessible as indicated Article 12.1 of the same Regulation, except, as previously said, for the indications referred to in Article 9.1(f). The availability of the information and therefore its readability has been empirically evaluated on the basis of the number of clicks needed to reach and read all the mandatory information available on the online web site that offers the food products. To this end, some “numerical” characteristics have been considered and identified in the number of clicks needed to reach the food product from the online shopping site and number of clicks needed to obtain all the information according to Article 9 of Regulation (EU) 1169/2011 (refers to pre-packed food). All data referred to the analyzed websites were obtained on 05/07/2018.

Results

From the analysis of the indicated characteristics (see method section) among the ten chosen subjects it emerged that only four of them are also owners of the online shopping website. The remaining, therefore six, are two independent online platforms and specifically Supermarket24 and Primenow Amazon and in the other cases the online shopping website is owned by different subjects which do not correspond to the MMR. All the indicated subjects, according to Article 8.1 of Regulation (EU) 1169/2011 (see Table 2), can be defined as “traders”. Furthermore, referring to the indication of the VAT number/tax code in the home page, according to the resolution n. 60 of the Revenue Agency, it has been observed that it is respected in seven cases out of nine, indicating the number in the lower part of the home page.

Concerning the indication of the compulsory information indicated in Article 9 of Regulation (EU) 1169/2011 has been observed that are available to the consumer, after the identification of a product, with a total average click number of 3.8 (evaluation made on 8 online sites) (Table 3). During this observation it emerged that when purchasing the product, the buyer can add it to the cart to finalize the purchase before reading the provided mandatory information. Moreover, it emerged that in two cases the online shopping site does not provide any mandatory information violating the EU regulation and exclusively indicates the legal name and the price, and in one of the two cases it is present a warning to the buyer affirming that “the producers can modify the composition of their products. Therefore, the packaging of the product may contain information different from those shown ...” it is indicated because the offered product is showed as an image that also depicts the side of the pre-packed product showing the label.

Discussion

In case of e-commerce through online supermarkets the consumer usually concludes the contract with the seller that coincides with the supermarket. Here we get to an unclear situation trying to identify who should be the subject in charge of providing the information according to the regulation. It is useful to this regard to underline that the DG SANCO, in the document “Questions and answers on the application of Regulation (EU) n. 1169/2011 on the provision of food information to consumers”, indicates that “the food business operator responsible for food information is the operator under whose name or business name the food is marketed. The operator must ensure the presence and the accuracy of the food information provided” and moreover “where foods are offered for sale by means of distance selling, the responsibility for providing mandatory food information before the purchase is concluded lies with the owner of the website”. This answer leads to at least two critical findings: firstly, the incorrect exclusive identification of distance selling with internet sales, without considering also mail, e-mail, telephone, telefax as being all different types of distance selling; secondly the lack of correspondence between the given answer (Q&A DG SANCO) and the content of Article 8 of Regulation (EU) 1169/2011. The aforementioned article refers in fact to the operators in the food sector, a category to which it is difficult to trace the owner of the website

(Bolognini, 2012).

As affirmed under Article 3.1 of Regulation (EU) 1169/2011 food information the information should guarantee the possibility for the consumer to make informed choices and to make a safe use of the purchased food. A question arises about if and in which terms those two requirements are met if there is the possibility to allow the consumer to make the purchase even before having visualized and read the

mandatory information. In facts generally in practical cases, once the professional has provided the information about the name of the product and the related price appearing in the same field of view, the buyer is authorized to make the purchase. On the one hand shall be also noticed that it partially complies with Article 13.5 of Regulation (EU) 1169/2011 and on the other it makes “easy” the purchase without necessarily being forced to read the mandatory infor-

mation.

Conclusions

Although distance selling cannot be considered a recent market takeover, the advent of the Internet has facilitated the use of this method to conclude contracts in the food sector. The analysis shows that what disposed under Article 14 of the Regulation

Table 1. Italian MMR (Mass Market Retailers) an online grocery.

No.	MMR	Affiliates	Online store	WEB site
1	COOP	Coop alleanza 3.0	Easycoop	www.EasyCoop.com
2	Selex	Il gigante; Mercato; Emisfero; Dok; Iper-super-pan; Famila	Cosicomodo	www.cosicomodo.it
3	Conad		Altuoservizio	www.Altuoservizio.conad.it
4	Esselunga		Esselungacasa	www.Esselungacasa.it
			Cliccaevai	www.cliccaevai.esselunga.it
5	Carrefour		Myshop	www.Myshop.carrefour.it
6	Eurospin		Supermercato24	www.Supermercato24.it
7	Auchan-SMA		Shop.auchan	www.shop.auchan.it
8	Lidl Italia		My Lidl Shop	www.myidlishop-lidl.it
9	Iper-Unes*	U2; U!	Amazon Prime	www.primenow.amazon.it
10	Gruppo PAM	Pam; Panorama	Supermercato24	www.Supermercato24.it

Table 2. Identification of the responsible subjects for the information.

Denomination	Website online grocery	VAT number	Website ownership/subject in charge of the information
Easycoop	www.EasyCoop.com	Yes	Digitails.r.l.
Cosicomodo	www.cosicomodo.it	Yes	SelexGruppoCommerciale.p.a.,
Altuoservizio	www.Altuoservizio.conad.it	Yes	Conad del Tirrenos.c.
Esselungacasa	www.Esselungacasa.it	Yes	EsselungaS.p.A.
Cliccaevai	www.cliccaevai.esselunga.it		
Myshop	www.Myshop.carrefour.it	No	GS SPA, S.S.C. Societa' SviluppoCommerciale SRL e DiperdiS.r.l
Supermercato24	www.Supermercato24.it	Yes	S24 S.r.l.,
Shop.auchan	www.shop.auchan.it	Yes	Chronodrive Italia S.r.l.,
My Lidl Shop	www.myidlishop-lidl.it	Yes	Lidlitalias.r.l
Amazon Prime	www.primenow.amazon.it	No	Amazon Europe Core SARL

Table 3. The number of total clicks needed to get to the obligatory information to read them.

Denomination	N° of clicks needed to identify the food item for the online grocery	N° of click needed to obtain the information provided according to art. 9 of Reg.(UE) 1169/2011	N° of total clicks
Easycoop	2	6	8
Cosicomodo	2	2	4
Altuoservizio			
Esselungacasa	2	4	6
Cliccaevai			
Myshop	1	5	6
Supermercato24	1	0*	1
Shop.auchan	3	2	5
My Lidl Shop	NV	NV	NV
Amazon Prime	1	0*	1

*No mandatory information provided according to Article9 of the Regulation (UE) 1169/2011 except for the product name, net quantity and price. NV: not assessable

(EU) 1169/2011 represents only a small part of the entire applicable regulatory framework. Despite this there are several unclear issues that emerged from the present conducted research in relation to the content of Article 14. In particular it emerged that to it is not clear which is the subject that is in charge of providing the information according to the regulation. Moreover, it is not clear how this information shall be presented and what under these particular circumstances could be considered accessible and easy to read when considering the number of clicks that the consumers have to make before to get to the information. Additionally, it emerged that not in all the situations observed there is a general respect able at furnishing the mandatory information to the buyer. It is certainly desirable for the future the intervention of the European legislator and probably clear guidelines might be useful.

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