

---

The Saeima has adopted and the  
Prime Minister has proclaimed the following Law:

## **Law on the prohibition of unfair commercial practices**

### **Chapter I. General provisions**

#### **Article 1. Terms used in the Law**

(1) The following terms are used in this Law:

1) **author of a commercial practice:** a producer, service provider or retailer who, as part of his economic or professional activities, carries out a commercial practice, as well as any other person acting in the name of or on behalf of a producer, service provider or retailer;

2) **commercial practice:** activity (course of conduct, representation, commercial communication, marketing) or lack of activity (omission), which is directly related to promoting trade, selling merchandise (tangible or intangible goods) or the provision of a service to a consumer.

(2) The other terms and concepts used in this Law shall have the meaning ascribed to them in the Law on the Protection of Consumer Rights.

#### **Article 2. Purpose of this Law**

The purpose of this Law is to protect consumers' rights and economic interests by prohibiting authors of commercial practices from conducting unfair commercial practices in relation to consumers.

#### **Article 3. Scope of the Law**

(1) This Law defines unfair commercial practices, and also governs the sphere of responsibilities of institutions carrying out monitoring.

(2) The provisions of this Law shall be without prejudice to those areas laid down as exceptions in Article 3 of Directive [2005/29/EC](#) of the European Parliament and of the Council of 11 May 2005, concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive [84/450/EEC](#), Directives [97/7/EC](#), [98/27/EC](#) and [2002/65/EC](#) of the European Parliament and of the Council and Regulation (EC) No [2006/2004](#) of the European Parliament and of the Council.

#### **Article 4. Prohibition on unfair commercial practices and features of unfair commercial practices**

(1) Unfair commercial practices are hereby prohibited.

(2) A commercial practice is unfair if at least one of the following conditions is true:

1) it is contrary to the requirement of professional diligence and distorts or is likely to distort the economic behaviour of an average consumer or of the average member of a group of consumers to whom the commercial practice is addressed or whom it affects;

2) it is misleading;

3) it is aggressive.

#### **|Article 5. Code of good practice**

(1) In order to promote the protection of the rights and economic interests of consumers and compliance with the provisions of this Law, those who carry out economic or professional activities or professional associations created by them may draft a code of good practice.

(2) A code of good practice is a voluntary agreement or set of rules created by those who carry out economic or professional activities, which is not governed by legislation and which regulates the activities of those who carry out commercial practices, who have undertaken to fulfil the obligations laid down in the code of good practice in one or more forms of commercial practice, or in one or more economic or professional spheres of activity.

(3) The code of good practice may include guidelines for fair commercial practice and professional diligence criteria that satisfy generally accepted honest market practice and the principle of good faith in the relevant economic or professional sphere of activity.

### **Chapter II. Commercial practices not complying with the requirements of professional diligence and negative influencing of a consumer's economic behaviour**

#### **Article 6. Commercial practices not complying with the requirements of professional diligence**

A commercial practice shall be regarded as not complying with the requirements of professional diligence if it is not carried out with the standard of skill and care that a consumer may reasonably expect and does not satisfy generally accepted honest market practice or the principle of good faith in the relevant economic or professional sphere of activity.

### **Article 7. Negative influencing of a consumer's economic behaviour**

(1) A commercial practice shall be regarded as negatively influencing a consumer's economic behaviour if it significantly restricts the consumer's ability to make an informed decision and as a result the consumer may take a decision to enter into a contract which he would otherwise not have taken.

(2) The following decisions taken by consumers shall be regarded as decisions taken by a consumer to enter into a contract:

- 1) a decision to purchase a product or obtain a service, or to refrain from doing so;
- 2) a decision to purchase a product or obtain a service in a particular form and on particular terms;
- 3) a decision to pay for goods or services in part or in whole;
- 4) a decision to retain a product, obtain a service or exercise his legal consumer rights.

### **Article 8. Negative influencing of the economic behaviour of a group of consumers**

(1) If a commercial practice can have a negative influence on the economic behaviour only of a clearly identifiable group of consumers, whom the author of the commercial practice could reasonably be expected to foresee to be particularly vulnerable to such practices, products or services, **in view of** their mental or physical state, age or **unreasonable credulity (including through a lack of experience or knowledge)**, then such a commercial practice shall be assessed from the perspective of the average member of that group of consumers.

(2) The provisions of point 1 of this Article shall be without prejudice to the right of an author of a commercial practice, in advertising, to make exaggerated statements or statements which are not meant to be taken literally.

## **Chapter III. Misleading commercial practices**

### **Article 9. Misleading actions**

(1) A commercial practice shall be regarded as misleading if, in view of all the circumstances, under the influence of the practice a consumer takes or may take a decision concerning entering into a contract that he would otherwise not have taken. A commercial practice shall be regarded as misleading in the following cases:

- 1) false information is provided as part of it, or such information in any way, including in terms of its overall presentation, deceives or might deceive the average consumer even if the information is factually correct;
- 2) the author of a commercial practice unfairly uses measures to market a product or a service, including comparative advertising, that create confusion concerning the

product's or service's trade mark, trade name, name of the producer of the product or the provider of the service (firm) or other distinguishing mark;

3) the author of a commercial practice does not comply with commitments laid down in a code of good practice, despite having undertaken to fulfil them and despite having declared that he is bound by the code of good practice.

(2) In assessing whether information complies with the law, account shall be taken of:

1) the existence of the product or service and its main features, as well as, for instance, the availability of the product or service; the benefits of the product or service; the risks associated with the product or service; the activity, content, accessories, after-sales service and complaint review procedure for the product or service; the method and date of production and supply; the conditions of supply; the purpose, use, quantity, specifications, geographical or commercial origin of the product or service; the expected outcome of using the product or service; the testing or control results for the product or service;

2) the extent of the commitments of the author of the commercial practice, the goals of the relevant commercial practice and the specific features of the sales process for the product or service, any communication or symbol in relation to direct or indirect sponsorship or approval of the author of the commercial practice's product or service;

3) the price or the method of calculating the price or the existence of discounts;

4) the need for a service, replacement of parts or repair;

5) the identity of the author of the commercial practice and his good qualities, qualifications, status, reputation, membership of an association, intellectual property rights or distinctions;

6) the rights of the consumer, including the right to make a claim in relation to the legal provisions or safety requirements of a non-compliant product or service.

## **Article 10. Misleading omissions**

(1) A commercial practice shall be regarded as misleading if, taking account of all its features and circumstances as well as limitations in the medium used to communicate it, it may be concluded that:

1) material information has been omitted which the average consumer needs to take an informed decision, and under the influence of the commercial practice the average consumer takes or may take a decision concerning entering into a contract that he would otherwise not have taken;

2) the person carrying out the commercial practice hides material information or provides it in an unclear, unintelligible, ambiguous or untimely manner, or fails to identify the commercial intent of the commercial practice if not already apparent from the context, and as a result the average consumer takes or may take a decision concerning entering into a contract that he would otherwise not have taken.

(2) Where the medium used to communicate the commercial practice is limited in terms of space or time, then any measures taken by the author of the commercial practice to make the information available to the consumer by other means shall be taken into account when assessing whether information has been omitted.

(3) If the author of a commercial practice, in a manner appropriate to the form of commercial communication used, invites a consumer to purchase a product or obtain a service and indicates the features and price of the product or service, the following information shall be regarded as material:

1) the main characteristics of the product or service, to the extent that it is possible to show these for the particular product or service, taking the communication medium into account;

2) the address and identity of the author of the commercial practice and, if he is acting on behalf of another person, the address and identity of this second author of a commercial practice;

3) the price (including taxes) or (if because of the characteristics of the product or service it is not possible to calculate the price in advance) the method of calculating it, as well as all additional charges (relating to transport, supply or postage), if there are any, or (if it is not possible to calculate the relevant payment for these charges in advance) an indication that the author of the commercial practice may collect additional payments;

4) the arrangements for payment, delivery, performance of the contract and the complaint handling policy, if these differ from the arrangements laid down by the criteria of professional diligence;

5) cancellation rights.

(4) Also to be regarded as material information are requirements relating to the provision of information which are laid down in other rules and regulations governing the protection of consumer rights or the sale of products or provision of services, and in particular information about remote contracts, remote financial services contracts, contracts for the purchase of a right to use a residential building or part of a building on a timeshare basis, consumer credit agreements, about package tourism services, about indications of prices of products and services, about medicines, about information society services provided, about private pension funds and about insurance contracts.

## **Article 11. Commercial practices which are misleading in any circumstances**

A commercial practice is misleading in any circumstances if the author of the commercial practice:

1) claims to be a signatory to a code of good conduct, but is not;

2) uses a trust mark, a quality mark or an equivalent mark without the necessary authorisation;

3) provides false information to the effect that a code of good practice has been endorsed by a public governmental body or a private law entity;

4) provides false information to the effect that in relation to his activities in a specific sphere or in relation to a product or service a conformity assessment procedure has been carried out; or that such an activity, product or service has been endorsed or authorised by a public governmental body or private law entity, or, when providing such information, does not comply with the terms under which the conformity assessment was carried out, a specific endorsement was made or an authorisation for use given;

5) makes an invitation to purchase products or obtain services at a specified price, while aware of the fact that he will not be able to offer these or equivalent products or services, or supply or purchase them from a supplier for the same price, within a reasonable time and in reasonable quantities, having regard to the product or service, the scale of the advertising and the price offered. This condition shall not apply to cases where the author of the commercial practice states the fact that the product or service is available only for a limited time and in limited quantities;

6) makes an invitation to purchase products or obtain services at a specified price, but refuses to show the product offered to consumers or refuses to take an order or to fulfil it within a reasonable time, or demonstrates products or items with defects, in order to promote the sale of another product or service;

7) falsely states that a product or service will only be available for a very limited time, or that it will only be available on particular terms for a very limited time, thus encouraging the consumer to take an immediate decision on entering into a contract and not giving him the opportunity or sufficient time to take an informed decision;

8) undertakes to provide an after-sales service to consumers with whom he has communicated prior to the transaction in a language which is not the official state language, but then offers the relevant services only in this other language, although he did not clearly warn the consumer of this before the contract was entered into;

9) states or otherwise creates the impression that the product can legally be sold or the service can legally be provided, when it cannot;

10) treats rights given to the consumer in law as a special offer by the author of the commercial practice;

11) provides information using the mass media with the intention of promoting the sale of a product or the provision of a service, without indicating by the use of images or sounds that can be clearly understood by consumers that payment was made for the provision of this information;

12) falsely states that the personal security of the consumer or his family is under threat, or provides false information about the level of possible risk in the event that the consumer does not purchase the relevant product or use the relevant service;

13) with the intention of selling a product or service which is similar to a product or service offered by another retailer or service provider, knowingly takes promotional measures to create the misleading impression in the consumer that he himself has produced the relevant product or is providing the relevant service;

14) establishes or promotes a pyramid promotional scheme, whereby a consumer pays for the opportunity to receive remuneration mainly through the introduction of other consumers to the scheme rather than the opportunity to benefit as a result of the sale or consumption of products or the provision of services;

15) provides false information to the effect that he is about to cease trading or move to different premises;

16) claims that a product or service can aid in winning games of chance, draws or lotteries;

17) provides false information to the effect that a product or service can help to cure illnesses or eliminate dysfunctions or physical defects;

18) provides materially inaccurate information on the state of the market or on the possibilities of purchasing the product or obtaining the service, so as to induce the consumer to purchase the product or obtain the service at conditions which are less favourable than those obtaining in a normal market situation;

19) offers a competition and claims that prizes will be awarded, but does not provide either the promised prizes or acceptable equivalents;

20) describes a product or service as “gratis”, “free”, “without charge” or similar, where the consumer has to pay anything other than the cost of responding to the offer and collecting the product or service supplied;

21) includes in advertising material an invoice or similar document requesting payment, thus creating the false impression in the consumer that he has ordered the product or service being advertised;

22) provides false information or creates the false impression that he is acting for a purpose not connected with his own commercial or economic interests, office or profession, or represents himself as a consumer;

23) creates the false impression that after-sales service for the product or service is available only in another Member State within the European Economic Area, and not in the state in which the product is sold or the service provided.

## **Chapter IV. Aggressive commercial practices**

### **Article 12. Use of aggression and harassment, coercion and undue influence**

(1) A commercial practice shall be regarded as aggressive if, taking account of all its features and circumstances, it can be concluded that in fact it involves harassment, coercion, including the use of physical force or undue influence, and negatively affects or may negatively affect the average consumer's freedom of choice or conduct with regard to the product or service and as a result the consumer takes or may take a decision concerning entering into a contract that he would otherwise not have taken.

(2) Undue influence is regarded as the use of coercive measures in respect of the consumer and subjecting the consumer to pressure, even in cases where physical force is not used or threatened, but the consumer's ability to make an informed decision is materially restricted.

(3) In order to establish whether harassment, coercion or undue influence has been used in a commercial practice, account shall be taken of:

- 1) its timing, location, nature or persistence;
- 2) whether threats or abuse using words or action have been permitted;
- 3) whether the person carrying out the commercial practice has knowingly, with the intention of influencing a decision by the consumer about entering into a contract, made use of a specific misfortune or circumstance of such gravity as to impair the consumer's judgement;
- 4) any onerous or disproportionate non-contractual barriers imposed by the person carrying out the commercial practice on the consumer in cases where the consumer wishes to exercise rights under the contract, including rights to terminate a contract or switch to another product, service or another retailer or service provider;
- 5) any threat to take any unlawful action.

### **Article 13. Commercial practices which are aggressive in any circumstances**

A commercial practice is to be regarded as aggressive in any circumstances if the author of the commercial practice:

- 1) creates the impression that the consumer will not be able to leave the premises until a contract has been formed;
- 2) visits the consumer's home, ignoring his request not to visit, except for cases where the author of the commercial practice visits in order to enforce his contractual obligations in accordance with the rules and regulations;
- 3) makes persistent solicitations which the consumer does not want, by telephone, fax, e-mail or another means of communication, except in cases where the author of the commercial practice is doing so in order to enforce his contractual obligations in accordance with the rules and regulations, and he complies with the restrictions on the use of remote means of communication laid down in other rules and regulations;
- 4) requires a consumer who wishes to submit a claim for compensation in connection with an insurance policy he has taken out to produce documents which cannot reasonably be considered to have any relevance to the validity of the claim, or systematically fails to reply, in order to dissuade a consumer from exercising his contractual rights;
- 5) includes in an advertisement an invitation directly addressed to children to purchase a product or to obtain a service, or to persuade their parents or other adults to purchase a product or obtain a service;
- 6) demands immediate or deferred payment for products supplied or services provided which the consumer has not ordered, or demands that such products or items be returned or kept safe, except for cases where an equivalent product has been supplied or an equivalent service provided in accordance with the rules and regulations on remote contracts;
- 7) informs a consumer that if he does not purchase a product or make use of a service, the author of the commercial practice's activities or livelihood will be in jeopardy;



8) creates the false impression that the consumer has already won, will win or will on performing a particular act win a prize or other benefit, when in fact either there is no provision for a prize or other benefit, or the consumer will only be given the opportunity to claim a prize or other benefit after having paid some money or incurring a personal cost.

## **Chapter V. Monitoring**

### **Article 14. Monitoring bodies**

(1) The Consumer Rights Protection Centre shall monitor compliance with this Law within its sphere of responsibilities, while in the field of drugs, monitoring shall be carried out by the Health Inspectorate, and in the field of veterinary drugs, monitoring shall be carried out by the Food and Veterinary Service (hereafter referred to as the 'monitoring body').

(2) A monitoring body shall be entitled to demand that public governmental institutions responsible for national control and monitoring in relation to specific products and services check the compliance of a specific product or service with the information used in a commercial practice or carry out other activities necessary in assessing a commercial practice.

### **Article 15. Rights of a monitoring body**

(1) At the request of a person, on the basis of information provided by another body or on its own initiative, a monitoring body shall assess the compliance of a commercial practice with the requirements of consumer rights protection legislation and other rules and regulations, as well as of this Law.

(2) A monitoring body, when assessing the compliance of a commercial practice with the requirements of this Law, shall be entitled to demand and to receive from the author of the commercial practice all the information, documents and other proof required to clarify the matter with regard to the truth of information used in the commercial practice and the compliance of activities with the requirements of this Law, and shall also be entitled to specify a deadline for the production of documents and proof.

(3) If an author of a commercial practice does not supply the information requested in accordance with point 2 of this Article or does not provide full information, the monitoring body shall be entitled to regard the information used in the commercial practice as inaccurate or untrue.

(4) A monitoring body, when assessing the nature and essence of a commercial practice, as well as other aspects, shall be entitled to propose that an author of a commercial practice:

1) ensures, within a specified time period, that the commercial practice complies with the requirements of the rules and regulations;

2) undertakes in writing to remedy an infringement detected within a specified time period.

(5) The rights referred to in point 4 of this Article shall not permit the monitoring body to take the decisions referred to in point 8 of this Article.

(6) If, under point (4)(1) of this Article, the commercial practice has not been brought into compliance with the requirements of the rules and regulations within the specified time period, the monitoring body shall take one or more of the decisions referred to in point 8 of this Article.

(7) If the author of the commercial practice gives a written undertaking, pursuant to point (4)(2) of this Article, to remedy an infringement detected within a specified time period, the monitoring body shall not take the decisions referred to in point 8 of this Article. By signing a written undertaking, the author of the commercial practice has acknowledged his responsibility for the infringement detected. If the undertaking is not kept, the monitoring body shall be entitled to take one or more of the decisions referred to in point 8 of this Article and the author of the commercial practice shall be held liable as laid down in the rules and regulations.

(8) If a monitoring body finds a commercial practice to be unfair, it shall be entitled to take one or more decisions:

1) imposing an obligation on the author of the commercial practice to provide additional information in an appropriate manner which is required in order to ensure that the commercial practice complies with the requirements of this Law;

2) imposing an obligation on the author of the commercial practice to desist immediately from the unfair commercial practice;

3) prohibiting the unfair commercial practice, if it has not yet begun, but is planned;

4) imposing an obligation on the author of a commercial practice to publicise a notification, using a means of communication that is appropriate for the relevant commercial practice, giving amended information in reference to the unfair commercial practice;

5) imposing an administrative penalty under the procedure laid down by law.

(9) A monitoring body shall be entitled to take the decisions referred to in point 8 of this Article even where it has no evidence of losses caused by the author of the commercial practice.

(10) A monitoring body shall not begin to assess the compliance of a commercial practice with the requirements of the rules and regulations or shall suspend its assessment if a decision is taken to terminate investigation of the case or if one of the following decisions has already been taken concerning a specific infringement of a prohibition on an unfair commercial practice:

1) one of the decisions referred to in point 8 of this Article;

2) one of the decisions referred to in Article 15(4) of the Law on Advertising.

(11) In order to reduce the negative effects resulting from failure to comply with the prohibition on unfair commercial practices, a monitoring body shall be entitled to

place information about an undertaking referred to in Article 15(4)(2) of this Law on its internet site, and shall place its decision in full or in part on its internet site and shall publish it in the journal “*Latvijas Vēstnesis*” [the official Latvian government journal] (the author of the commercial practice shall cover the costs associated with publication).

#### **Article 16. Challenging a decision by the monitoring body**

A decision by the monitoring body may be challenged before a court under the procedure laid down in the rules and regulations. Challenging a decision shall not suspend its validity.

#### **Article 17. Monitoring body’s decision on interim settlement**

(1) If the monitoring body has reason to believe that the prohibition on unfair commercial practices has been contravened and that this may give rise to immediate and significant harm to the economic interests of a specific group of consumers, it shall be entitled to take the decisions referred to in Article 15(8)(2) and (3) of this Law as an interim settlement.

(2) A decision on an interim settlement shall be valid from the time it is notified until the time when it is lifted or amended by a decision by the monitoring body or until the time when a final decision by the monitoring body enters into force.

(3) A decision by the monitoring body on an interim settlement may be challenged in the administrative regional court within 10 days of the day on which it enters into force. Challenging such a decision shall not suspend its validity.

(4) The court shall examine an application for a decision by the monitoring body on an interim settlement in a written process within 14 days.

(5) A decision by the court concerning a decision referred to in point 4 of this Article may not be challenged and shall enter into force upon being taken.

#### **Reference to European Union directive, for information purposes**

This Law contains legal provisions deriving from Directive [2005/29/EC](#) of the European Parliament and of the Council of 11 May 2005, concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive [84/450/EEC](#), Directives [97/7/EC](#), [98/27/EC](#) and [2002/65/EC](#) of the European Parliament and of the Council and Regulation (EC) No [2006/2004](#) of the European Parliament and of the Council.

This Law enters into force on 1 January 2008.

This Law was adopted by the Saeima on 22 November 2007.

Prime Minister

V. Zatlers

Riga, 12 December 2007