

Act amending the Danish Marketing Act (*lov om markedsføring*) ¹⁾

(Transposition of the Directive on unfair commercial practices, inspections etc.)

WE, MARGRETHE THE SECOND, by the Grace of God Queen of Denmark, do hereby announce: The Danish Parliament has passed and We have granted our Royal assent to the following Act:

§ 1

Act No 1389 of 21 December 2005 on marketing, as amended by § 102 of Act No 538 of 8 June 2006, is hereby amended as follows:

1. The following *footnote* is added to the title of the Act:

"1) The Act contains provisions implementing parts 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 ("Unfair Commercial Practices Directive"), OJ No L 149, 2005, pp. 22-39."

2. The following subpara. 2 is added to § 1:

"*Subpara. 2.* Marketing relating to consumers' economic interests shall not be likely to materially distort their economic behaviour."

3. § 2, subpara. 2, is replaced by the following:

"*Subpara. 2.* §§ 1 and 3, § 12 a and § 13, subpara. 3 and subpara. 6 No 1, shall not be applicable to financial institutions insofar as the Minister for Economic and Business Affairs has issued regulations in the area concerned."

4. § 2, subpara. 3, is replaced by the following:

"*Subpara. 3.* §13, subparagraphs 2 and 4, and §§ 15 and 16 shall not be applicable to financial institutions."

5. § 3 and its heading are replaced by the following:

"Misleading and unreasonable marketing"

§ 3. Subpara. 1. Traders shall not use misleading or inaccurate claims or omit important information if this is likely to materially distort the economic behaviour of consumers or other traders in the marketplace.

Subpara. 2. Marketing which, by virtue of its content, form or practice is misleading, aggressive or exposes consumers or traders to undue influence, and which is likely to materially distort their economic behaviour, shall not be permitted.

Subpara. 3. The accuracy of factual claims shall be documented.

Subpara. 4. The Minister for Family and Consumer Affairs shall establish detailed rules for specific forms of marketing which, under EU rules, shall in all circumstances be regarded as unfair business-to-consumer practice."

6. § 5, subparagraph 3, is repealed.

7. The following is inserted after § 12:

"Invitation to purchase

§ 12 a. Subpara. 1. In the case of an invitation to purchase directed at consumers, a trader shall provide the following information unless it is already apparent from the context:

- 1) the main characteristics of the product or service
- 2) the address and identity of the trader
- 3) the arrangements for payment, delivery and performance of the agreement insofar as these deviate from the norm for the sector
- 4) the trader's procedure with regard to complaints insofar as this deviates from the norm for the sector
- 5) the right of withdrawal, cancellation or return where the consumer has such a right, and
- 6) the price inclusive of taxes.

Subpara. 2. Where the nature of the product or service means that the price cannot reasonably be calculated in advance, the manner in which the price is calculated shall be indicated. Where appropriate, all additional freight, delivery or postal charges or, where this information cannot reasonably be calculated in advance, the fact that such charges may be payable shall be indicated.

Subpara. 3. 'Invitation to purchase' means a commercial communication which indicates the characteristics of the product and the price in a way appropriate to the means of the commercial communication used and thereby enables the consumer to make a purchase."

8. The following subpara. 4 is added to § 14:

"Subpara. 4. Subparagraphs 1-3 shall be applicable mutatis mutandis where goods are offered electronically to consumers with the opportunity to place an order."

9. The following is inserted after § 22:

"On-site inspections

§ 22 a. *Subpara. 1.* The Consumer Ombudsman may conduct inspections for dealing with complaints submitted by enforcement authorities in other EU Member States in accordance with Regulation (EC) No 2006/2004 on consumer protection cooperation, which is concerned with infringements of directives for which the Consumer Ombudsman is designated as the competent authority.

Subpara. 2. The Consumer Ombudsman's inspections may only take place following the acquisition of a court order.

Subpara. 3. Permission to perform inspections means that the Consumer Ombudsman may access a company's premises and means of transport with a view to consulting and taking copies of all information, including marketing material, accounts and other business records, regardless of the data medium. The Consumer Ombudsman may require verbal explanations of factual claims in connection with an inspection.

Subpara. 4. Where a company's data are stored or processed by an external data processor, the Consumer Ombudsman may access the premises of the external data processor with a view to consulting and taking copies of the information, cf. subpara. 3, provided that the Consumer Ombudsman is unable to obtain the data in question directly from the company which is subject to inspection.

Subpara. 5. Where the company's circumstances mean that the Consumer Ombudsman is unable to access or take copies of the data on the day of the inspection, cf. subparagraphs 3 and 4, he may seal the relevant premises and information for up to 72 hours.

Subpara. 6. Subject to the same conditions as in subpara. 5 above, the Consumer Ombudsman may remove information with a view to copying. Any information removed by the Consumer Ombudsman shall be returned to the company within three working days of the inspection, together with a copy of any information which the Consumer Ombudsman has kept for more detailed assessment.

Subpara. 7. The police shall, if necessary, provide assistance in exercising the powers under subparagraphs 3-6. The Minister for Family and Consumer Affairs may, following consultations with the Minister for Justice, establish detailed rules in this respect.

Subpara. 8. Chapters 2 and 3 of the Act on legal protection with regard to the administration's use of compulsory intervention and duties of disclosure (*lov om retssikkerhed ved forvaltningens anvendelse af tvangsindgreb og oplysningspligter*) shall be applicable to inspections carried out under this provision."

10. Under § 30 *subpara. 2*, "or § 22 a, subpara 2, second sentence" are inserted after "§ 22, subpara. 2".

11. § 30, *subpara. 3*, is replaced by the following:

"*Subpara. 3.* Infringement of the provisions in § 3, subparagraphs 1 and 2, §§ 4-6, § 8, subpara. 2, §§ 9-11, § 12 a, subparagraphs 1 and 2, § 13, subparagraphs 1-4, § 14, § 15, subpara. 3, § 14, § 16, subparagraphs 1-4, and intentional infringement of § 18 shall be punishable by a fine, unless a more stringent penalty is prescribed elsewhere. Infringement of § 3, subpara 2, which comprises slander or libel of another trader or referring to circumstances which specifically affect the trader concerned, and infringements of § 5 shall be subject to private prosecution."

The Act shall enter into force on 1 December 2007. However, § 1, Nos 9 and 10, shall enter into force on 29 December 2006.

Issued at Christiansborg Castle on 20 December 2006

*Under Our Royal Hand and
Seal, Margrethe R.*

/Carina Christensen

¹⁾ The Act contains provisions implementing parts 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 ("Unfair Commercial Practices Directive"), OJ No L 149, 2005, pp. 22-39."