

## ACTS, DECREES, ORDERS AND REGULATIONS

### FEDERAL PUBLIC SERVICE ECONOMY, SMES, SELF-EMPLOYED AND ENERGY

F. 2010 – 1158

[C – 2010/11166]

#### 6 APRIL 2010 – Market Practices and Consumer Protection Act (1)

ALBERT II, King of the Belgians,

To all present and to come, Greetings.

Parliament has passed and We endorse the following:

**Article 1.** This Act regulates a matter referred to in Article 78 of the Constitution.

#### CHAPTER 1 – *Definitions and general principles*

**Article 2.** For the purposes of this Act:

1. "business" means any natural or legal person pursuing a commercial objective on a lasting basis, including an association of such persons;
2. "practitioner of a liberal profession" means any business which is not a trader within the meaning of Article 1 of the Commercial Code and which is subject to a disciplinary body established by law;
3. "consumer" means any natural person who acquires or uses, exclusively for non-professional purposes, products placed on the market;
4. "product" means goods and services, immovable property, rights and obligations;
5. "goods" means any tangible movable item;
6. "service" means any service performed by a business in the context of its professional activity or pursuant to its object;
7. "uniform services" means all services with identical or similar characteristics and terms, irrespective in particular of the time or place of performance, the supplier of services or the person for whom they are intended;
8. "labelling" means any words, particulars, instructions, trade marks, pictorial matter or symbol relating to goods or uniform services and placed on the goods themselves or on any packaging, document, notice, label, ring or collar accompanying or referring to such goods or services;
9. "placing on the market" means importing for the purpose of sale, holding for the purpose of sale, offering for sale, sale, offering to hire goods and services, hiring of goods and services, transferring for a consideration or free of charge, where these operations are carried out by a business;
10. "registered name" means
  - a) for agricultural products and foodstuffs:

the protected designation of origin or protected indication of origin which can be claimed by agricultural products and foodstuffs under Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs;

b) for other products:

- the protected designation of origin which can be claimed by products originating in a region or a specific place, possessing quality or characteristics essentially or exclusively due to a particular geographical environment with its inherent natural and human factors, and produced, processed and prepared in the defined geographical area, where this has been recognised in accordance with the applicable regional legislation;

- the protected geographical indication which can be claimed by products originating in a region or a specific place, possessing a specific quality, reputation or other characteristics attributable to that geographical origin, and produced and/or processed and/or prepared in the defined geographical area, where this has been recognised in accordance with the applicable regional legislation;

11. "goods sold in bulk" shall mean goods which are not packaged and are measured or weighed by the consumer or in his presence;

12. "goods sold individually" means goods which cannot be split without changing their nature or properties;

13. "packaged goods" means goods which have been split, weighed, counted or measured, even during the manufacturing process, whether or not followed by wrapping, for the purpose of rendering these operations superfluous when they are offered for sale;

14. "pre-packaged goods" means packaged goods which are wrapped before they are offered for sale in wrapping of any kind, which covers them in whole or in part, but in such a way that the content cannot be changed without the wrapping being opened or modified.

This refers to:

a) pre-packaged goods in pre-established quantities: goods which are pre-packaged so that the quantity contained in the wrapping corresponds to a value chosen in advance;

b) pre-packaged goods in variable quantities: goods which are pre-packaged so that the quantity contained in the wrapping does not correspond to a value chosen in advance;

15. "unit of measurement" means the unit which corresponds to the definitions of the Act of 16 June 1970 on units, standards and measuring instruments (*loi du 16 juin 1970 sur les unités, étalons et instruments de mesure*) and to those of its implementing decrees;

16. "packer" means the person who actually pre-packages the goods with a view to offering them for sale;

17. "packager" means the person who packages the goods with a view to offering them for sale;

18. "nominal quantity" means the weight or volume indicated on pre-packaging and corresponding to the net quantity which this pre-packaging is deemed to contain;

19. "advertising" means any communication for the direct or indirect purpose of promoting the sale of products, irrespective of the place or the means of communication used;

20. "comparative advertising" means any advertising which, explicitly or implicitly, identifies a competitor or goods or services offered by a competitor;

21. "distance contract" means any contract concerning goods or services concluded between a business and a consumer under an organised distance sales or service-provision scheme run by the business, which, for the purpose of the contract, makes exclusive use of one or more means of distance communication up to and including the moment at which the contract is concluded;

22. "means of distance communication" means any means which, without the simultaneous physical presence of the business and the consumer, may be used for the conclusion of a contract between those parties;

23. "operator of a means of communication" means any public or private natural or legal person whose trade, business or profession involves making one or more means of distance communication available to businesses;

24. "financial service" means any service of a banking, credit, insurance, personal pension, investment or payment nature;

25. "durable medium" means any instrument which enables the consumer to store information addressed personally to him in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;

26. "supplier" means any business which is the contractual provider of services subject to distance contracts;

27. "combined offer" means an offer linking the acquisition of goods or services, for a consideration or free of charge, to the acquisition of other goods or services;

28. "unfair term" means any term or condition in a contract between a business and a consumer which, alone or in combination with one or more other terms or conditions, causes an obvious imbalance in the parties' rights and obligations, to the detriment of the consumer;

29. "commercial practice" means any act, omission, course of conduct or representation, commercial communication including advertising and marketing, by a business, directly connected with the promotion, sale or supply of a product;

30. "to materially distort the economic behaviour of consumers" means using a commercial practice to appreciably impair the consumer's ability to make an informed decision, thereby causing the consumer to take a transactional decision that he would not have taken otherwise;

31. "code of conduct" means an agreement or set of rules not imposed by law, regulation or administrative provision which defines the behaviour of businesses which undertake to be bound by the code in relation to one or more particular commercial practices or business sectors;

32. "professional diligence" means the standard of special skill and care which a business may reasonably be expected to exercise in its field of activity towards consumers, commensurate with honest practices in commercial matters;

33. "invitation to purchase" means a commercial communication which indicates 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;

34. "undue influence" means exploiting a position of power in relation to the consumer so as to apply pressure, even without using or threatening to use physical force, in a way which significantly limits the consumer's ability to make an informed decision;

35. "transactional decision" means any decision taken by a consumer concerning whether, how and on what terms to purchase, make payment in whole or in part for, retain or dispose of or exercise a contractual right in relation to the product, whether bringing him to act or to refrain from acting;

36. "collective consumer agreement" means an agreement concluded within the Consumer Council between the consumer organisations and the business organisations, which governs the relations between businesses and consumers concerning goods or services or categories of goods or services;

37. "working days" means all the calendar days with the exception of Sundays and statutory public holidays. If the period expressed in working days expires on a Saturday, it is prolonged until the following working day;

38. "the Minister" means the Minister for the Economy.

**Article 3.** § 1. This Act shall not apply to securities and other financial instruments referred to by the legislation on financial transactions and the financial markets.

However, the King may declare certain provisions of this Act applicable to the above-mentioned securities and other financial instruments, or to categories thereof, under the conditions and taking into account the adaptations He stipulates.

§ 2. This Act shall not apply to practitioners of a liberal profession, dentists and physiotherapists.

## CHAPTER 2 – *Market information*

### *Section 1*

#### General obligation to inform the consumer

**Article 4.** At the time of concluding the contract at the latest, the business shall provide the consumer in good faith with correct, useful information on the main characteristics of the product and conditions of sale, taking into account the need for information expressed by the consumer and the usage declared by the consumer or reasonably foreseeable.

#### *Section 2 – Indication of the price*

**Article 5.** § 1. Except in the case of a public sale, any business which offers goods for sale to the consumer must indicate their price in writing and unambiguously.

If the goods are displayed for sale, the price shall also be indicated legibly and conspicuously.

§ 2. Any business which offers the consumer uniform services shall indicate the price in writing, legibly, conspicuously and unambiguously.

**Article 6.** The price indicated shall be the total price payable by the consumer, inclusive of value added tax, all other taxes, and the cost of all services which the consumer is obliged to pay as a supplement.

**Article 7.** Prices payable by consumers shall be indicated at least in euros.

**Article 8.** All consumer advertising showing a price shall indicate it in accordance with the requirements set out in Articles 6 and 7 and the provisions adopted pursuant to Article 9, point 1.

**Article 9.** For the products or categories of products He designates, the King may:

1. lay down special terms for price indication;
2. waive the obligation to indicate the price conspicuously in the case of display for sale;
3. determine, for services or categories of services other than uniform services, in which cases and on which terms a prior estimate must be delivered to the consumer, provided that the latter so requests and the business is prepared to provide the service.

#### *Section 3 – Names, composition and labelling of goods and services*

**Article 10.** The labelling particulars rendered compulsory by this Act, its implementing decrees and the implementing decrees referred to in the second subparagraph of Article 139, § 2, instructions and guarantee certificates shall be formulated in a language comprehensible to the average consumer, taking into account the linguistic region where the goods or services are offered, for consideration or free of charge, to the consumer.

Where it is compulsory, the labelling shall be conspicuous and legible, used in the form and with the content laid down by the legislation applicable, and clearly separate from the advertising.

**Article 11.** § 1. Without prejudice to the competence conferred upon Him in the field of public health, the King may, with a view to ensuring the fairness of commercial transactions or consumer protection:

- a) determine the labelling and specify the particulars and other indications for the goods and services He designates;
- b) lay down the conditions for the composition, constitution, presentation, quality and safety to be met by goods so that they may be placed on the market, whether or not under a specific name;
- c) prohibit placing goods on the market under a specific name;
- d) impose the use of a specific name for goods which are placed on the market;
- e) impose the addition to the names under which goods are placed on the market of symbols, words or phrases intended to specify their meaning;
- f) prohibit the addition of certain symbols, words or phrases to the names under which goods are placed on the market.

§ 2. Before proposing a decree pursuant to the preceding paragraph, the Minister shall consult the Consumer Council and the Higher Council for the Self-Employed and SMEs and shall set a reasonable deadline for submission of the opinion. Once this deadline has expired, the opinion shall no longer be required.

**Article 12.** For services or categories of services, the King may, with due regard for the forms laid down in Article 11, § 2, with a view to ensuring the fairness of commercial transactions or consumer protection:

- a) stipulate which description and which general particulars of the services must be communicated to the consumer and how;
- b) prohibit placing services on the market under a specific name;
- c) impose the use of a specific name for services placed on the market;
- d) impose the addition to the names under which services are placed on the market of symbols, words or phrases intended to specify their meaning;
- e) prohibit the addition of certain symbols, words or phrases to the names under which services are placed on the market.

Where measures to be taken pursuant to this Article relate to financial services, these measures shall be proposed jointly by the Minister and the Minister for Finance.

#### *Section 4 – Indication of quantities*

**Article 13.** § 1. Any packaged goods intended for sale shall bear on the packaging or, in its absence, on the goods themselves, legibly, conspicuously and unambiguously, the indication of their nominal quantity expressed in a unit of measurement.

§ 2. For goods packaged in quantities exceeding 10 kg or 10 litres and intended for wholesale, the nominal quantity expressed in a unit of measurement shall be indicated either on the packaging or, in its absence, on the goods themselves, legibly, conspicuously and unambiguously, or on the invoice, dispatch note or any other document handed over or dispatched on delivery.

§ 3. For goods delivered in loading units exceeding 10 kg or 10 litres, the nominal quantity expressed in a unit of measurement shall be entered on a weighing or measuring document which shall be handed to the buyer on delivery.

**Article 14.** Responsibility for indicating the nominal quantity shall lie with the packer or packager, as appropriate.

If the goods are imported, responsibility for indicating the nominal quantity shall lie with the importer.

However, the obligation to indicate the nominal quantity shall lie with the person who has had the packaging or pre-packaging undertaken where he has informed the packer, the packager or the importer, as appropriate, of this in writing.

**Article 15.** Where the nominal quantity has not been indicated in accordance with the provisions of Article 13, § 1, the business may offer the goods for sale to the consumer only after having indicated this quantity expressed in units of measurement, legibly, conspicuously and unambiguously, on the packaging or, in its absence, on the goods themselves or on a sign placed near the goods.

The quantity need not be mentioned for goods sold in bulk.

**Article 16.** The indications provided by the measuring instruments used to determine the quantities of goods sold in bulk shall be clearly readable and conspicuous for the average consumer.

**Article 17.** Any consumer advertising concerning goods pre-packaged in pre-established quantities which shows a price shall mention the nominal quantities of the content of the packaging, in accordance with the provisions of this Section.

**Article 18.** For goods or categories of goods He designates, the King may:

1. lay down special rules concerning the indication of the quantities;
2. waive the obligations imposed by Articles 13 to 15;

3. waive the indication of the nominal quantity in a unit of measurement and stipulate another unit of sale;
4. determine the acceptable divergences between the nominal quantity indicated and the actual quantity, as well as the arrangements for monitoring these divergences;
5. fix nominal quantities for the content and/or containers of goods intended to be placed on the market;
6. stipulate the indication of the number of units contained in pre-packing and determine the acceptable divergences between the number indicated and the actual number, as well as the arrangements for monitoring these divergences.

#### *Section 5 – Comparative advertising*

**Article 19.** § 1. Comparative advertising shall be permitted when the following conditions regarding the comparison are met:

1. it is not misleading within the meaning of Articles 88 to 91 and Article 96, point 1;
2. it compares goods and services meeting the same needs or intended for the same purpose;
3. it objectively compares one or more material, relevant, verifiable and representative features of those goods and services, which may include price;
4. it does not create confusion among businesses, between the advertiser and a competitor or between the advertiser's trade marks, trade names, other distinguishing marks, goods or services and those of a competitor;
5. it does not discredit or denigrate the trade marks, trade names, other distinguishing marks, goods, services, activities, or circumstances of a competitor;
6. for goods with designation of origin, it relates in each case to goods with the same designation;
7. it does not take unfair advantage of the reputation of a trade mark, trade name or other distinguishing marks of a competitor or of the designation of origin of competing products;
8. it does not present goods or services as imitations or replicas of goods or services bearing a protected trade mark or trade name.

§ 2. All comparative advertising which does not respect the conditions laid down in § 1 shall be prohibited.

#### *Section 6 – Price promotions*

##### Subsection 1

##### Reference to the own price previously applied

**Article 20.** A business may proceed to announce a price reduction to the consumer compared to a price applied previously for the same product only where the new price is lower than the reference price, which is the lowest price that the business has applied during the month preceding the first day for which the new price is announced. The burden of proof of compliance with this condition shall lie with the business.

Where the business operates several points of sale or uses several selling techniques, the reference price shall be the lowest price that the business has applied during the period referred to in the first subparagraph in the sales outlet or according to the selling technique for which the announcement is made.

When there is mention of the new price, the announcement shall also mention the reference price or the information given shall enable the average consumer to calculate this reference price immediately and easily.

Where the business applies a uniform percentage reduction on products or categories of products, it may mention just the reference price. The announcement shall indicate whether or not the reduction has already been applied.

**Article 21.** Apart from in the case of a clearance sale, the price reduction may be announced only for a period not exceeding one month. Apart from for the goods referred to in Article 102, § 1, point 2, the period during which the reduction is announced may be no less than one full day of sale.

The date from which the reduced price is applicable shall continue to be indicated throughout the period of sale during which it is announced as a reduced price.

**Article 22.** For goods and services or categories of goods and services that He designates, the King may lay down special rules with regard to the reference to the own prices previously applied.

**Article 23.** The King shall designate the goods, services or categories of goods or services for which the announcements referred to in the first subparagraph of Article 20 are prohibited, and shall establish the conditions and the periods for which these prohibitions are applicable.

Before proposing a decree pursuant to the preceding paragraph, the Minister shall consult the Consumer Council and the Higher Council for the Self-Employed and SMEs and shall set a reasonable deadline for submission of the opinion. Once this deadline has expired, the opinion shall no longer be required.

#### Subsection 2 – Clearance sales

**Article 24.** The use of the term "*Liquidation*", "*Uitverkoop*" or "*Ausverkauf*" ["Clearance sale"] or any other equivalent term for the offer for sale or sale of goods shall be authorised only in one of the following cases and subject to compliance with the other conditions of this subsection:

1. the sale takes place pursuant to a court order;
2. the heirs or legal successors of a deceased person who ran a business offer for sale all or part of the stock of this business that they have acquired;
3. a business takes over the trade of another business and offers for sale all or part of the stock transferred;
4. a business which ceases to operate offers for sale all or part of its stock and has not sold off similar goods, for the same reason, during the previous three years;
5. a business undertakes alterations or repair work for a period exceeding 20 working days in the premises where the offer for sale to the consumer usually takes place, provided that this work makes selling impossible and the business has not sold off similar goods, for the same reason, during the previous three years;
6. a business transfers the establishment where the offer for sale to the consumer usually takes place elsewhere, or it closes its establishment, on condition that it has run the establishment for at least one year before the start of the clearance sale;
7. an incident has caused serious damage to all or a significant part of the stock of goods of the business;
8. as a result of *force majeure*, the business activity has been seriously impeded;
9. the natural person who runs a business ceases all professional activity to take retirement, provided, however, that this person has not carried out a clearance sale during the previous year for the reason referred to in point 4 or for the reason of closure of the establishment referred to in point 6.

**Article 25.** § 1. Apart from in the case provided for in Article 24, point 1, a person wishing to undertake a clearance sale shall notify his intention to do so to the Minister or to the official designated by him for this purpose, prior to the clearance sale and to any announcement relating thereto.

This notification, by registered letter, shall compulsorily stipulate the starting date of the clearance sale and shall invoke and justify the existence of one of the cases referred to in Article 24.

The clearance sale may not be undertaken until ten working days have passed following the dispatch of the notification, except in the cases provided for in Article 24, points 7 and 8.

The length of the clearance sale shall be limited to five months in the cases referred to in Article 24, points 1 to 8, and to twelve months for the case referred to in Article 24, point 9. Interruptions in the clearance sale during these periods shall not have suspensive effect.

Any announcement or other advertising concerning a clearance sale shall obligatorily specify the starting date of the sale.

§ 2. Apart from in the cases referred to in Article 24, points 1 and 7, any clearance sale shall take place in the sales outlets where, or according to the selling techniques with which, identical goods were usually put up for sale either by the business itself or by the deceased or the transferring business.

A business considering that it is unable to comply with the first subparagraph shall be required to apply to the Minister or to the official designated by him for this purpose for derogation by registered letter. It shall also specify the reasons invoked and the place where it wishes to undertake the clearance sale. A decision shall be taken on this request within ten working days. In the absence of a reasoned refusal within this period, the derogation shall be deemed to have been granted.

§ 3. Only goods which are part of the stock of the business at the time of the court order referred to in Article 24, point 1, at the time of the incident referred to in Article 24, point 7, or on the day of the notification provided for in § 1, may be offered for sale or sold in a clearance sale.

However, the goods which, at the time of the court order referred to in Article 24, point 1, at the time of the death of the person running a business referred to in Article 24, point 2, or at the time of the incident referred to in Article 24, point 7, or at the time of the impediment referred to in Article 24, point 8, which were the subject of an order which can be considered as normal in view of its size or its date, may also be offered for sale or sold in a clearance sale.

If the business operates several sales establishments, no goods may be transferred from an establishment to the place where the clearance sale is held without the authorisation of the Minister or the official designated by him for this purpose.

Authorisation shall be requested by registered letter, specifying the circumstances justifying the request. A decision shall be taken on this request within ten working days. In the absence of a reasoned refusal within this period, the transfer of the goods shall be deemed to have been authorised.

§ 4. Apart from in the case provided for in Article 24, point 1, any goods offered for sale in a clearance sale shall be subject to a price reduction in relation to the reference price, which is the lowest price asked during the month preceding the first day of the clearance sale, either by the business itself, or by the deceased or by the transferring business.

When mentioning the price at which the goods are sold in the clearance sale, the reference price shall also be mentioned, or the information given allowing the average consumer to calculate this reference price immediately and easily.

Where the business applies a uniform percentage reduction on products or categories of products, it may mention just the reference price. The announcement shall indicate whether or not the reduction has been applied.

§ 5. The burden of proof of compliance with all the conditions laid down for the clearance sale referred to in this subsection shall lie with the person who undertakes such a sale.

**Article 26.** The King may determine whether the notifications and requests referred to in Article 25 can also be made using other means of communication and shall establish the terms and conditions for this.

#### Subsection 3 – Seasonal sales

**Article 27.** The seasonal sales periods shall last from 3 January until 31 January and from 1 July until 31 July. If 3 January or 1 July is a Sunday, the seasonal sales period shall start one day earlier.

The use by a business of the term "*Soldes*", "*Opruiming*", "*Solden*" or "*Schlussverkauf*" ["Sales"], or any other similar term shall be authorised only for the offer for sale and the sale of goods during the seasonal sales period and if the conditions of this Section are met.

The second subparagraph shall not prejudice the right of the business to announce to consumers the offers for sale concerned before the start of the seasonal sales period.

The King may adapt the period referred to in the first subparagraph. Before proposing a decree, the Minister shall consult the Consumer Council and the Higher Council for the Self-Employed and SMEs and shall set a reasonable deadline for submission of the opinion. Once this deadline has expired, the opinion shall no longer be required.

**Article 28.** Only goods which the business has previously offered for sale for at least thirty days and which are still in the possession of the business at the start of the seasonal sales may be the subject of an offer under the name referred to in the second subparagraph of Article 27.

**Article 29.** Where the goods sold in seasonal sales have been offered for sale for the month preceding the seasonal sales period, in the same sales outlet or according to the same selling technique, the price asked shall be lower than the reference price, which is the lowest price that the business has applied for these goods, during this month, in this sales outlet or according to this selling technique.

Where the goods sold in seasonal sales have not been offered for sale for the month preceding the seasonal sales period, the price asked shall be lower than the reference price, which is the lowest price that the business has applied for these goods in the past, irrespective of the sales outlet or the selling technique used.

Where the price is mentioned with use of a name referred to in subparagraph 2 of Article 27, the reference price shall also be mentioned, or the information given shall enable the average consumer to calculate this reference price immediately and easily.

Where the business applies a uniform percentage reduction on the products or categories of products, it may mention just the reference price. The announcement shall indicate whether or not the reduction has been applied.

**Article 30.** The burden of proof of compliance with the conditions laid down for the offer for sale in Article 27 shall lie with the business which proceeds to make such an offer for sale.

**Article 31.** The King may stipulate the detailed rules for the offer for sale and the sale of goods under the names referred to in the second subparagraph of Article 27.

Before proposing a decree pursuant to the first subparagraph, the Minister shall consult the Consumer Council and the Higher Council for the Self-Employed and SMEs and shall set a reasonable deadline for submission of the opinion. Once this deadline has expired, the opinion shall no longer be required.

**Article 32.** § 1. During the periods starting 6 December and 6 June, each time until the first day of the next seasonal sales period, it shall be prohibited, in the clothing, leather goods and footwear sectors, to announce price reductions which take effect during this period, whatever the place or the means of communication used.

Before the waiting period referred to in the first subparagraph, it shall be prohibited to announce price reductions which take effect during the waiting period. The prohibition referred to in the first subparagraph shall also imply the prohibition to distribute vouchers conferring entitlement to a price reduction during the waiting period.

Without prejudice to the provisions of the first subparagraph of Article 25, § 4, clearance sales carried out during a waiting period may not be accompanied by an announcement of a price reduction except in the cases and on the conditions determined by the King.

§ 2. The King may designate the goods or categories of goods for which the prohibition referred to in § 1 does not apply.

Before proposing a decree pursuant to the first subparagraph, the Minister shall consult the Consumer Council and the Higher Council for the Self-Employed and SMEs and shall set a reasonable deadline for submission of the opinion. Once this deadline has expired, the opinion shall no longer be required.

§ 3. The prohibition to announce a price reduction referred to in § 1 shall not apply to offers for sale of products made during occasional trade events of a maximum duration of four days and organised at most once a year by local business groups or with their participation.

The King may establish the conditions on which these events may be organised.

Subsection 4. – Vouchers conferring entitlement to a refund or a price reduction

**Article 33.** Vouchers offered by a business on the acquisition of goods or services, which confer entitlement to a future refund of the price or of part of the price, shall mention the following information:

1. the name, address and, where appropriate, the form of company and business number of the issuer;
2. the amount refunded;
3. any time-limit on their validity, unless this is unlimited;

4. the terms and conditions for a refund, including the steps that the holder of the voucher must take to obtain the refund and the period within which the refund will be made, unless this information is communicated at the same time as the voucher in a separate document.

**Article 34.** § 1. Any business which is presented with a voucher which was distributed free of charge by itself or by another business and which allows its holder, on purchasing one or more goods and/or services, to obtain a price reduction immediately, shall be obliged to accept it, provided that the conditions of the offer are met.

However, if the voucher was issued by a business other than that to which it is presented, the obligation referred to in the first subparagraph shall apply only if the voucher mentions the information listed in § 2.

§ 2. The information referred to in the second subparagraph of § 1 shall be:

1. the name, address and, where appropriate, the form of company and business number of the issuer;
2. the amount of the reduction;
3. the goods or services which must be acquired to be able to use the voucher;
4. the sales outlets where the voucher may be used, except if it can be used in all sales outlets where the goods or services are offered for sale;
5. the time-limit on the validity of the voucher, unless this is unlimited.

**Article 35.** Any person who issues the vouchers referred to in this subsection shall become liable for the claim represented by these vouchers, under the conditions of their issue.

Where the issuer of the vouchers referred to in Article 34 is not the business where the voucher was presented, the issuer shall be obliged to reimburse the business where the voucher was presented within a reasonable period.

**Article 36.** § 1. For the vouchers referred to in this subsection, the King may:

1. stipulate a minimum format and distinctive symbols;
2. make the issue of vouchers subject to constituting guarantees of solvency and keeping special accounts, and impose supervisory measures;
3. stipulate special conditions intended to adapt the provisions of this subsection for the vouchers presented in the form of an electronic recording.

§ 2. Before proposing a decree pursuant to § 1, the Minister shall consult the Consumer Council and the Higher Council for the Self-Employed and SMEs and shall set a reasonable deadline for submission of the opinion. Once this deadline has expired, the opinion shall no longer be required.

#### *Section 7 – Miscellaneous provisions*

**Article 37.** Without prejudice to the application of Article 88, points 1 and 2, if advertising is announced for a limited period outside the business establishment for one or more goods mentioning their price, the business which no longer has the goods concerned at its disposal shall be obliged to issue to the consumer, for any goods of a price exceeding EUR 25, the stock of which is exhausted, a voucher giving entitlement to purchase them in a reasonable period and under the terms of the offer.

However, the obligation set out in the first subparagraph shall not apply where the business

- a) is no longer able to constitute a new stock of the goods concerned under the same conditions; or
- b) once the stock is exhausted, does not wish to offer the goods concerned for sale and it mentions this clearly in its advertising; or
- c) mentioned in the advertising concerned the number of goods in stock for each of the sales outlets covered by the advertisement.

The King may adapt the amount mentioned in the first subparagraph.

**Article 38.** § 1. Without prejudice to the powers conferred upon Him under any other legal provision, the King may, by decree deliberated within the Council of Ministers, for the goods and services or categories of goods and services He specifies:

1. prohibit or restrict the advertising, with a view to ensuring increased protection of consumer safety and the environment;

2. determine the minimum content of the advertising, with a view to ensuring that the consumer is better informed.

§ 2. Before proposing a decree pursuant to § 1, the Minister shall consult the Consumer Council and the Higher Council for the Self-Employed and SMEs and shall set a reasonable deadline for submission of the opinion. Once this deadline has expired, the opinion shall no longer be required

**Article 39.** § 1. The Eco-labelling and Environmental Advertising Committee shall be responsible for issuing opinions and recommendations in connection with advertising and labelling, which relate to the environmental impact, and in connection with drawing up a Code of Environmental Advertising.

§ 2. After the Committee has submitted its opinion and on the joint initiative of the Minister and the Minister for the Environment, the King may impose a Code of Environmental Advertising.

§ 3. The King shall determine the composition of the Committee. Its members shall include at least two representatives of environmental protection associations.

### CHAPTER 3 – *Contracts with consumers*

#### *Section 1 – General provisions*

**Article 40.** § 1. Where all or certain terms of a contract between a business and a consumer are written, these terms shall be drafted in plain intelligible language.

§ 2. Where there is doubt about the meaning of a term, the interpretation most favourable to the consumer shall prevail. This interpretation rule shall not be applicable in the context of the injunction provided for under Article 2 of the Act of 6 April 2010 on the Regulation of Certain Proceedings in the context of the Market Practices and Consumer Protection Act of 6 April 2010 (*loi du 6 avril 2010 concernant le règlement de certaines procédures dans le cadre de la loi du 6 avril 2010 relative aux pratiques du marché et à la protection du consommateur*).

A contract between a business and a consumer may be interpreted in particular according to the commercial practices directly related thereto.

**Article 41.** Where a contract with a consumer has been concluded following an unfair commercial practice referred to in Article 91, points 12, 16 and 17, and Article 94, points 1, 2 and 8, the consumer may, within a reasonable period from the time when he was aware or should have been aware of its existence, demand the reimbursement of the amounts paid, without returning the product delivered.

Where a contract with a consumer has been concluded following an unfair commercial practice referred to in Articles 84 to 86, 91, points 1 to 11, 13 to 15, 18 to 23, and in Article 94, points 3 to 7, the court may, without prejudice to the penalties under general contract law, order the reimbursement to the consumer of the amounts he has paid without returning the product delivered.

In cases of unsolicited supply to the consumer, within the meaning of Article 94, point 6, the consumer shall in any case be exempted from payment of the price or the provision of any other consideration, the absence of a response not constituting consent.

**Article 42.** Without prejudice to special regulations expressly authorising it, any business shall be prohibited from having the consumer sign a bill of exchange to obtain the promise or guarantee of payment of his commitments.

**Article 43.** Businesses shall be prohibited from invoicing telephone calls for which the consumer must pay the content of the message, in addition to the cost of the call, where these calls concern the performance of a contract already concluded.

**Article 44.** Businesses shall be prohibited, on concluding a contract on the Internet, from having recourse to options by default that the consumer must refuse to avoid any payment for one or more additional products.

*Section 2 – Distance contracts*

Subsection 1

Distance contacts not for financial services

**Article 45.** At the time of the offer of a distance contract, the consumer shall be provided unambiguously, in a clear and comprehensible manner, in any way appropriate to the means of distance communication used, with the following information in particular:

1. the identity of the business and its geographical address;
2. the main characteristics of the goods or service;
3. the price of the goods or service;
4. where appropriate, the delivery costs;
5. the arrangements for payment, delivery, performance of the contract;
6. the existence or absence of a right of withdrawal;
7. the terms and conditions either for return or refund of the goods, including any costs relating thereto;
8. the cost of using the means of distance communication, where it is calculated other than at the basic rate;
9. the period for which the offer or the price remains valid;
10. where appropriate, the minimum duration of the contract in the case of contracts for the supply of products or services to be performed permanently or recurrently.

Moreover, in the case of telephone communications, the identity of the business and the commercial purpose of the call shall be made explicitly clear at the beginning of any conversation with the consumer.

**Article 46.** § 1. The consumer shall receive the following information in writing or on another durable medium available and accessible to him:

1. confirmation of the information referred to in Article 45, points 1, 3 to 6 and 10, and the identification of the goods or service;
2. where appropriate, the conditions and procedures for exercising the right of withdrawal, and the following clause, drawn up in bold print in a box separate from the text, on the first page:

"The consumer shall be entitled to notify the business of withdrawal from the purchase, without penalty and without giving any reason, within ... calendar days from the day following the day of delivery of the goods or the conclusion of the service contract."

This clause shall be completed with the number of calendar days, which may not be less than 14.

In the event of omission of this latter clause, under the conditions referred to in § 2, the goods or services shall be deemed to have been supplied to the consumer without a prior request on his part and the latter shall not be bound to pay for the goods or service or to return them;

3. in the case of absence of any right of withdrawal, in the cases provided for in Article 47, § 4, the following clause, drawn up in bold print in a box separate from the text, on the first page:

"The consumer shall not be entitled to withdraw from the purchase.";

4. the geographical address of the business establishment to which the consumer may address any complaints;
5. information on after-sales services and guarantees which exist;
6. the conditions for cancelling the contract, where it is of unspecified duration or a duration exceeding one year.

§ 2. The consumer shall receive the information referred to in § 1:

- in the case of goods, on delivery to the consumer at the latest;

- in the case of services, before the performance of any service contract and, where appropriate, during the performance of the service contract if performance has begun, with the consumer's agreement, before the end of the withdrawal period.

§ 3. The provisions of §§ 1 and 2 shall not apply to services which are performed through the use of a means of distance communication, where they are supplied on only one occasion and are invoiced directly by the operator of the means of distance communication. Nevertheless, the consumer must be informed of the geographical address of the business establishment to which he may address any complaints.

**Article 47.** § 1. For any distance contract, the consumer shall have a period of at least 14 calendar days in which to withdraw from the contract. This right shall be exercised without penalty and without giving any reason.

Without prejudice to the provisions of Article 48, § 2, second indent, the only charge that may be made to the consumer because of the exercise of his right of withdrawal shall be the direct cost of returning the goods.

The period for exercise of this right shall begin:

- in the case of goods, from the day following the day of delivery to the consumer where the information obligations laid down in Article 46, § 1 have been fulfilled;

- in the case of services, from the day following the day of conclusion of the contract or from the day on which the information obligations laid down in Article 46, § 1, were fulfilled, if they are fulfilled after conclusion of the contract, provided that this period does not exceed the three-month period referred to in § 2.

Concerning respect of the withdrawal period, the period shall be considered to have been respected if the notification, on condition of having been given in writing or on a durable medium available and accessible to the recipient, was sent before the expiry of this period.

§ 2. If the business has failed to fulfil the information obligations provided for in Article 46, § 1, the withdrawal period shall be three months. This period shall begin:

- in the case of goods, from the day of delivery to the consumer;

- in the case of services, from the day of conclusion of the contract.

If the information referred to in Article 46, § 1, is supplied within this three-month period, the period referred to in § 1 shall begin on the day following the day of receipt of the information.

For goods supplied in successive deliveries, the withdrawal periods shall begin on the day following the day of the first delivery.

§ 3. Where the right of withdrawal provided for in §§ 1 and 2 has been exercised, the business shall be obliged to reimburse the sums paid by the consumer free of charge. Such reimbursement must be carried out no more than 30 days following the withdrawal.

§ 4. Unless the parties have agreed otherwise, the consumer may not exercise the right of withdrawal provided for in §§ 1 and 2 in respect of contracts:

1. for the provision of services if performance has begun, with the consumer's agreement, before the end of the withdrawal period referred to in § 1;

2. for the supply of goods made to the consumer's specifications or clearly personalised or which, by reason of their nature, cannot be returned or are liable to deteriorate or expire rapidly;

3. for the supply of audio or video recordings or computer software which were unsealed by the consumer;

4. for the supply of newspapers, periodicals and magazines;

5. for gaming and lottery services;

6. for the supply of foodstuffs, beverages or other goods intended for everyday consumption supplied to the home of the consumer, to his residence or to his workplace by regular roundsmen.

If the business has not warned the consumer, in accordance with Article 45, point 6, of the absence of a right of withdrawal, the consumer shall have the right of withdrawal referred to in § 2.

**Article 48.** § 1. Unless the parties have agreed otherwise, the business must execute the order within a maximum of 30 days from the day following that on which the consumer forwarded his order.

Where the business fails to perform the contract on time, the consumer shall be entitled, without judicial intervention and subject to merely notifying the business, to cancel it, provided that at that time the business has not yet dispatched the goods ordered or has not yet started to supply the service ordered, without prejudice to the right of the consumer to obtain damages, where appropriate. No compensation or costs can be claimed from the consumer on the grounds of this cancellation.

Furthermore, the consumer shall be refunded any sums he may have transferred as payment within 30 days.

§ 2. Where the right of withdrawal is exercised under Article 47, the consumer may not be charged for any direct costs of return if:

- the goods delivered or the service supplied do not correspond to the description given in the offer;
- the business has not fulfilled its information obligations referred to in Articles 45 and 46, § 1.

§ 3. Where the right of withdrawal is exercised under Article 47, the consumer who has concluded a credit contract with a view to financing fully or partly the price of the goods or service, which are the subject of the contract, may withdraw from the credit contract without costs or compensation, on condition:

1. that the credit contract was concluded with the business or granted by a third party, provided that an agreement exists between this third party and the business with a view to ensuring the financing of the latter's sales, and
2. the withdrawal from the credit contract is undertaken within the time limits and according to the terms and conditions referred to in Article 47.

#### Subsection 2

##### Distance contracts for financial services

**Article 49.** In the case of contracts for financial services comprising an initial service agreement followed by successive operations or a series of separate operations of the same nature performed over time, the provisions of this subsection shall apply only to the initial agreement.

If there is no initial service agreement but the successive operations or the separate operations of the same nature performed over time are performed between the same contractual parties, Articles 50 and 51 shall apply only when the first operation is performed. Where, however, no operation of the same nature is performed for more than one year, the next operation shall be deemed to be the first in a new series of operations and, accordingly, Articles 50 and 51 shall apply.

**Article 50.** § 1. In good time before the consumer is bound by any contract or offer, he shall be provided unambiguously, in a clear and comprehensible manner, in any way appropriate to the means of distance communication used, with the following information in particular:

1. the supplier

a) the identity, including business number, main business and geographical address of the supplier and any other geographical address relevant for the customer's relations with the supplier;

b) if the supplier is represented in the consumer's European Union Member State of residence, the identity of this representative and the geographical address relevant for the customer's relations with the representative;

c) when the consumer's dealings are with any business other than the supplier, the identity of this business, the capacity in which it is acting vis-à-vis the consumer, and the geographical address relevant for the customer's relations with this business;

d) where the supplier's activity and/or that of the other business with which the consumer is dealing is subject to an authorisation scheme, the particulars of the relevant supervisory authority;

2. the financial service

a) a description of the main characteristics of the financial service;

b) the total price to be paid by the consumer to the business for the financial service, including all related remuneration, charges and expenses, and all taxes to be paid via the business or, when an exact price cannot be indicated, the basis for the calculation of the price enabling the consumer to verify it;

c) where relevant, notice indicating that the financial service is related to instruments involving special risks related to their specific features or the operations to be executed or whose price depends on fluctuations in the financial markets outside the supplier's control and the indication that historical performances can provide no guarantee of future yield;

d) notice of the possibility that other taxes and/or costs may exist that are not paid via the business or imposed by it;

e) any limitations of the period for which the information provided is valid;

f) the arrangements for payment and for performance;

g) any specific additional cost for the consumer of using the means of distance communication, if such additional cost is charged;

### 3. the distance contract

a) the existence or absence of a right of withdrawal in accordance with Article 53 and, where the right of withdrawal exists, its duration and the conditions for exercising it, including information on the amount which the consumer may be required to pay on the basis of Article 54, § 1, as well as the consequences of non-exercise of that right;

b) the minimum duration of the distance contract in the case of financial services to be performed permanently or recurrently;

c) information on any right the parties may have to terminate the contract early or unilaterally by virtue of the terms of the distance contract, including any compensation for termination imposed by the contract;

d) practical instructions for exercising the right of withdrawal indicating, inter alia, the address to which the notification of a withdrawal should be sent;

e) the legislation taken by the business as a basis for the establishment of relations with the consumer prior to the conclusion of the contract;

f) any contractual clause on the law applicable to the contract and/or on the competent court;

g) in which language, or languages, the contractual terms and conditions and the prior information referred to in this Article are supplied, and furthermore in which language, or languages, the business, with the agreement of the consumer, undertakes to communicate during the duration of the contract;

### 4. redress

a) whether or not there is an out-of-court complaint and redress mechanism for the consumer that is party to the distance contract and, if so, the methods for having access to it;

b) the existence of guarantee funds or other compensation arrangements, not covered by the Act of 22 March 1993 on the status and supervision of credit institutions (*loi du 22 mars 1993 relative au statut et au contrôle des établissements de crédit*) and by the Act of 17 December 1998 creating a Fund for the protection of deposits and financial instruments and reorganising the mechanisms for the protection of deposits and financial instruments (*loi du 17 décembre 1998 créant un Fonds de protection des dépôts et des instruments financiers et réorganisant les systèmes de protection des dépôts et des instruments financiers*).

The commercial purpose of this information shall be made clear.

§ 2. Information on contractual obligations, to be communicated to the consumer during the pre-contractual phase, shall be in conformity with the contractual obligations which would result from the law presumed to be applicable to the distance contract if the latter were concluded.

**Article 51.** In the case of voice telephony communications, the identity of the business and the commercial purpose of the call shall be made explicitly clear at the beginning of any conversation with the consumer.

Subject to the explicit consent of the consumer, only the following information needs to be given:

- a) the identity and status of the person in contact with the consumer and his link with the supplier;
- b) a description of the main characteristics of the financial service;
- c) the total price to be paid by the consumer to the business for the financial service including all related remuneration, charges and expenses, and all taxes to be paid via the business or, when an exact price cannot be indicated, the basis for the calculation of the price enabling the consumer to verify it;
- d) notice of the possibility that other taxes and/or costs may exist that are not paid via the business or imposed by it;
- e) the existence or absence of a right of withdrawal in accordance with Article 53 and, where the right of withdrawal exists, its duration and the conditions for exercising it, including information on the amount which the consumer may be required to pay on the basis of Article 54, § 1, as well as the consequences of non-exercise of that right.

The business shall inform the consumer that other information is available on request and of what nature this information is. In any case, the business shall provide the full information when it fulfils its obligations under Article 52.

**Article 52.** § 1. In good time before the consumer is bound by any distance contract or offer, the business shall communicate to him all the contractual terms and conditions and the information referred to in Article 50, § 1, on paper or on another durable medium available and accessible to the consumer.

§ 2. The business shall fulfil its obligation under § 1 immediately after the conclusion of the contract, if the contract has been concluded at the consumer's request using a means of distance communication which does not enable providing the contractual terms and conditions and the information in conformity with § 1.

§ 3. At any time during the contractual relationship, the consumer shall be entitled, at his request, to receive the contractual terms and conditions on paper. In addition, the consumer shall be entitled to change the means of distance communication used, unless this is incompatible with the contract concluded or the nature of the financial service provided.

**Article 53.** § 1. The consumer shall have a period of at least 14 calendar days to withdraw from the distance contract for a financial service. This right shall be exercised without penalty and without giving any reason.

To exercise this right, the period shall begin:

- either from the day of the conclusion of the distance contract,
- or from the day on which the consumer receives the contractual terms and conditions and the information in accordance with Article 52, § 1 or § 2, if that is later than the date referred to in the first indent.

The period shall be considered to have been respected if the notification, on condition of having been given in writing or on a durable medium available and accessible to him, was sent before the expiry of this period.

§ 2. The right of withdrawal shall not apply to:

1. financial services whose price depends on fluctuations in the financial market outside the supplier's control, which may occur during the withdrawal period.

This applies in particular in the case of services related to:

- foreign exchange,
- money market instruments,
- transferable securities,
- units in collective investment undertakings,
- financial-futures contracts, including equivalent cash-settled instruments,
- forward interest-rate agreements (FRAs),
- interest-rate, currency and equity swaps,

- options to acquire or dispose of any instruments referred to in this point including equivalent cash-settled instruments, in particular options on currency and on interest rates;

2. contracts whose performance has been fully completed by both parties, at the consumer's express request, before the consumer exercises his right of withdrawal;

3. mortgage credit contracts subject to the Mortgage Credit Act of 4 August 1992 (*loi du 4 août 1992 relative au crédit hypothécaire*).

§ 3. If another contract concerning financial services, provided by a supplier or by a third party on the basis of an agreement between the third party and the business, has been attached to a distance contract for a given financial service, this additional contract shall be cancelled, without any penalty, if the consumer exercises his right of withdrawal referred to in § 1.

**Article 54.** § 1. During the withdrawal period, the performance of the contract may only begin after the consumer has given his approval.

When the consumer exercises his right of withdrawal under Article 53, § 1, he may only be required to pay, without any undue delay, for the financial service actually provided by the supplier in accordance with the distance contract.

The amount payable shall not:

- exceed an amount which is in proportion to the extent of the service already provided in comparison with the full coverage of the contract;

- in any case be so high that it could be construed as a penalty.

§ 2. The supplier may not require the consumer to pay any amount on the basis of § 1 unless he can prove that the consumer was duly informed about the amount payable, in conformity with Article 50, § 1, point 3(a). In no case may he require such payment if he has commenced the performance of the contract before the expiry of the withdrawal period provided for in Article 53, § 1 without the consumer's prior request.

§ 3. The supplier shall, without any undue delay and no later than within 30 calendar days, return to the consumer any sums he has received from him in accordance with the distance contract, except for the amount referred to in § 1. This period shall begin from the day on which the supplier receives the notification of withdrawal.

§ 4. The consumer shall return to the supplier any sums and/or goods he has received from the supplier without any undue delay and no later than within 30 calendar days. This period shall begin from the day on which the consumer dispatches the notification of withdrawal.

**Article 55.** § 1. The supplier shall be liable in relation to the consumer for compliance with the obligations arising from Articles 50 to 52.

§ 2. In the case of non-compliance with the obligations arising from Articles 50, § 1, points 2 and 3, 51 and 52, the consumer may cancel the contract, free of charge and without penalty, by registered letter stating the reasons, within a reasonable period from the time when he was aware or should have been aware of the non-compliance with these obligations.

#### Subsection 3 – Common provisions for the present Section

**Article 56.** § 1. It shall be for the business to provide proof that it has fulfilled the obligations concerning informing the consumer, compliance with time limits, the consumer's consent to conclusion of the contract and, where appropriate, its performance during the withdrawal period. In the case of remote contracts relating to financial services, this burden of proof shall lie with the supplier.

The terms and conditions or combinations of terms and conditions having as their object to place on the consumer the burden of proof in respect of compliance with all or part of the obligations, referred to in this Section, incumbent on the business and, in the case of distance contracts for financial services, on the supplier, shall be prohibited and void.

§ 2. Any term by which the consumer waives the benefit of the rights conferred upon him by this Section shall be deemed to be unwritten.

§ 3. Any term declaring the law of a State which is not a member of the European Union applicable to the contract shall be prohibited and void with regard to the matters governed by this

Section where, in the absence of this term, the law of a Member State of the European Union would be applicable and this law would procure greater protection for the consumer in these matters.

§ 4. The dispatch of goods and service vouchers shall always be undertaken at the risk of the party with whom the consumer has contracted.

**Article 57.** § 1. In the context of this Section, the King may:

1. take special measures applicable to certain means of distance communication, taking account, where appropriate, of the particularities of small and medium-sized enterprises;
2. exclude from the scope of this Section or of certain provisions that He designates, the goods or categories of goods that He designates;
3. exclude from the scope of this Section or of certain provisions that He designates, the services or categories of services that He designates;
4. take special measures for the goods or categories of goods that He designates;
5. take special measures for the services or categories of services that He designates;
6. take special measures for the public sales organised using a means of distance communication.

§ 2. Before proposing a decree pursuant to the provisions of this Section, the Minister shall consult the Consumer Council and the Higher Council for the Self-Employed and SMEs and shall set a reasonable deadline for submission of the opinion. Once this deadline has expired, the opinion shall no longer be required.

### *Section 3 – Contracts concluded outside the premises of the business*

**Article 58.** § 1. This Section shall cover sales to the consumer of goods and services carried out by a business:

1. at the home of the consumer or of another consumer and at the consumer's place of work;
2. during an excursion organised by or for the business outside its sales area;
3. in trade shows, fairs and exhibitions, provided that there is no payment on site of the total sum and the price exceeds EUR 200.

§ 2. The King may:

- adapt the amount referred to in § 1, point 3;
- extend the scope of this Section to sales carried out in other places that He designates.

Before proposing a decree, the Minister shall consult the Consumer Council and the Higher Council for the Self-Employed and SMEs and shall set a reasonable deadline for submission of the opinion. Once this deadline has expired, the opinion shall no longer be required.

**Article 59.** This Section shall not cover:

1. sales referred to in Article 58, § 1, point 1, relating to goods or services for which the consumer has made a prior, explicit request for the visit of the business, with a view to negotiating the purchase of these goods or services.

The consent given by the consumer to an offer of a visit proposed by telephone by the business shall not constitute a prior request;

2. sales of foodstuffs, beverages and household cleaning products by businesses serving customers, by frequent, regular rounds, by means of travelling shops;
3. public sales;
4. distance sales;
5. insurance sales;
6. sales organised in the context of non-commercial events for purely philanthropic purposes, on conditions laid down pursuant to the Act of 25 June 1993 on the Pursuit of Itinerant Activities and the Organisation of Public Markets (*loi du 25 juin 1993 relative à l'exercice des activités ambulantes et à l'organisation des marchés publics*), and provided that their amount does not exceed EUR 50. The King may adapt this amount;

7. consumer credit contracts subject to the legislation on consumer credit.

**Article 60.** Without prejudice to the rules governing proof under general contract law, sales to the consumer referred to by this Section shall be covered by a written contract, drawn up in the same number of copies as there are contracting parties with a separate interest, failing which they shall be void.

This contract shall mention:

- the name and address of the business;
- the date and place of conclusion of the contract;
- the precise designation of the goods or services and their main characteristics;
- the time of delivery of the goods or performance of the services;
- the price to be paid and the arrangements for payment;
- the following withdrawal clause, drawn up in bold print in a box separate from the text on the front of the first page:

"The consumer shall be entitled to withdraw from his purchase, free of charge, within seven working days from the day following the day of the signature of this contract, on condition that he notifies the business by registered letter. Any clause by which the consumer waives this right shall be void. The notification shall be considered to be in time if it is dispatched before this time-limit expires."

In the absence of this final indication, the contract shall be void.

**Article 61.** The sales of goods or services referred to in Article 58 shall be definitive only after a period of seven working days has passed from the day following the day of signature of the contract referred to in Article 60.

During this cooling-off period, the consumer shall be entitled to notify the business by registered letter that he is withdrawing from his purchase. The notification shall be considered to be in time if it is dispatched before the cooling-off period expires.

No services may be performed before the cooling-off period referred to in this Article has expired.

With the exception of the sales referred to in Article 58, § 1, point 3, no down payment or payment may be demanded or accepted from the consumer, under any pretext, in any form whatsoever, before the cooling-off period referred to in this Article has expired.

**Article 62.** In the case of sale on trial, the cooling-off period shall start on the day of the delivery of the goods and end on the expiry of the trial period, but may be no less than seven working days.

**Article 63.** If the consumer withdraws from his purchase, no charges or compensation may be demanded from him on that account.

**Article 64.** The offer for sale and the sale of goods by means of itinerant activities shall be permissible only in so far as it complies with the legislation governing such activities. For the rest, the provisions of this Act shall apply thereto.

#### *Section 4 – Public sales*

**Article 65.** § 1. The provisions of this Section shall apply to public offers for sale and sales to the consumer, either at auction or in a discount sale, as well as to the exhibition, with a view to such sales, of manufactured goods, although with the exception of offers for sale and sales:

1. of a non-commercial nature;
2. concerning works of art or collectors' items – with the exclusion of carpets and jewellery – or antiques;
3. carried out under a legal provision or court order;
4. carried out in the case of judicial reorganisation or bankruptcy;
5. carried out using a means of distance communication.

§ 2. The King may lay down special arrangements for public offers for sale and sales of goods that He designates. He may also determine the conditions applicable to public offers for sale and sales using a means of distance communication.

**Article 66.** § 1. Public offers for sale and sales within the meaning of Article 65 shall be authorised only if they relate to used goods.

§ 2. Any goods which show obvious signs of use, except if the obvious signs of use are the exclusive result of artificial ageing treatment, and any goods which the business can prove have already been used in a normal manner, shall be considered to be used goods.

**Article 67.** For specific goods, the King may authorise derogations from Article 66, § 1, where the offer for sale or the sale of such goods by other sales procedures proves to be difficult or impossible.

**Article 68.** Public offers for sale and sales within the meaning of Article 65 may take place only in premises intended exclusively for this use, unless a derogation is granted, in case of necessity, by the Minister or the official designated by him for this purpose.

Any organiser of a public offer for sale or sale shall be responsible for compliance with subparagraph 1 and Article 66.

The organiser shall indicate, legibly, his surname, first name or business name, address or registered office and business number in any announcement, advertising or any document relating to the public offer for sale and sale.

Under no circumstances may this indication be replaced by the indication of the judicial officer responsible for undertaking public sale operations.

**Article 69.** In the case of failure to comply with the provisions of this Section, the officials appointed by the Minister, referred to in Article 133, and the law enforcement officers may draw up a report. A copy of this report shall be handed over or notified to the organiser or his employee by registered letter.

The officials mentioned above may, in this case, order orally and on the spot, the prohibition to proceed with the sale of the goods referred to in the report or the stopping of this sale.

As a precaution, they may seize the goods which are the subject of the infringement, in accordance with the provisions of Article 137, § 1.

**Article 70.** The judicial officer responsible for undertaking public sale operations shall refuse his assistance to the operations relating to goods which have been seized pursuant to the third subparagraph of Article 69.

#### *Section 5 – Combined offer*

**Article 71.** Without prejudice to Article 72, a combined offer to a consumer shall be authorised provided that it does not constitute an unfair commercial practice within the meaning of Articles 84 and following.

**Article 72.** § 1. Any combined offer to the consumer, of which at least one component is a financial service and which is made by a business or by various businesses acting with a common purpose, shall be prohibited.

§ 2. By way of derogation from § 1, however, combined offers shall be permitted of:

1. financial services which constitute a whole;

The King may, on a proposal from the competent ministers and the Minister for Finance, designate the services offered in the financial sector which constitute a whole;

2. financial services and small products and services accepted as customary in trade;

3. financial services and tickets for legally authorised lotteries;

4. financial services and objects with indelible and clearly visible advertising inscriptions, which are not found as such in shops, provided that the cost price paid by the business does not exceed EUR 10, exclusive of VAT, or 5% of the retail price, exclusive of VAT, of the financial service with which they are given away. The percentage of 5% shall apply if the amount corresponding to this percentage exceeds EUR 10;

5. financial services and colour photographs, stickers and other images with minimal commercial value;

6. financial services and vouchers in the form of documents conferring entitlement, after the acquisition of a certain number of services, to a free offer or a price reduction upon the acquisition of a similar service, on condition that that benefit is provided by the same business and does not exceed one third of the price of the services previously acquired.

The vouchers must indicate any time-limit on their validity, as well as the conditions applicable to the offer.

When the business ends its offer, the consumer must receive the benefits offered in proportion to the purchases previously made.

#### *Section 6 – Unfair terms*

**Article 73.** The unfairness of a contractual term shall be assessed, taking into account the nature of the products for which the contract was concluded and by referring, at the time of conclusion of the contract, to all the circumstances attending the conclusion of the contract and to all the other terms of the contract or of another contract on which it is dependent.

To assess the unfairness, account shall also be taken of the plain intelligible language requirement referred to in Article 40, § 1.

Assessment of the unfair nature of the terms shall relate neither to the definition of the main subject matter of the contract nor to the adequacy of the price and remuneration, on the one hand, as against the services or goods supplied in exchange, on the other, in so far as these terms are in plain intelligible language.

**Article 74.** In contracts concluded between a business and a consumer, the terms and conditions or combinations of terms and conditions shall be unfair in all circumstances if they have the object of:

1. making an agreement irrevocable for the consumer, whereas provision of services by the business is subject to a condition, the realisation of which depends on its will alone;

2. providing, in contracts of indeterminate duration, for the price of the products to be determined at the time of delivery or allowing the business to increase the price unilaterally or to modify the conditions to the detriment of the consumer on the basis of factors which depend on its will alone, without giving the consumer the right, in all these cases, before the new price or the new conditions apply, of cancelling the contract, without payment of costs or damages, and without leaving him a reasonable period in which to do so.

However, the following shall be authorised and valid:

a) price-indexation clauses, where lawful, provided that the method by which prices vary is explicitly described in the contract;

b) terms under which a financial services business reserves the right to alter the rate of interest payable by or to the consumer, without notice where there is a valid reason, provided that the business is required to inform the consumer thereof at the earliest opportunity and that the latter is free to dissolve the contract immediately;

3. determining, in fixed-term contracts, that the price of the products is set at the time of delivery or allowing the business to increase the price unilaterally or to alter the conditions to the detriment of the consumer on the basis of factors which depend on its will alone, even if the possibility to terminate the contract is then offered to the consumer.

The exceptions provided for in the second subparagraph of point 2 shall also apply with regard to the case referred to in the first subparagraph;

4. reserving to the business the right to alter unilaterally the characteristics of the product to be delivered, if these are main characteristics for the consumer or for the consumer's intended use of the product, provided that this use has been communicated to the business and accepted by it or, in the absence of such specification, this use was reasonably foreseeable;

5. unilaterally fixing or altering the time of delivery of a product;

6. granting the business the right to determine unilaterally whether the goods delivered or service performed complies with the contract, or conferring upon it the exclusive right to interpret any term of the contract;

7. prohibiting the consumer from demanding the termination of the contract if the business fails to perform its obligations;

8. restricting the right of the consumer to terminate the contract where, under its contractual obligation under a guarantee, the business fails to comply, or fails to comply within a reasonable period, with its obligation to repair or replace the goods;

9. obliging the consumer to fulfil his obligations where the business has not performed or fails to perform its obligations;

10. without prejudice to Article 1184 of the Civil Code, authorising the business to unilaterally terminate the fixed-term contract, without compensating the consumer, apart from in cases of *force majeure*;

11. without prejudice to Article 1184 of the Civil Code, authorising the business to unilaterally terminate the contract of indeterminate duration without a reasonable period of notice, apart from in cases of *force majeure*;

12. in cases of *force majeure*, only authorising the consumer to break the contract on payment of damages;

13. releasing the business from its liability arising from its wilful deception, gross negligence or that of its employees or representatives or, except in cases of *force majeure*, on account of any failure to perform an obligation consisting in one of the main elements of the performance of the contract;

14. deleting or reducing the statutory guarantee in respect of hidden defects, provided for under Articles 1641 to 1649 of the Civil Code, or the statutory obligation to deliver goods in conformity with the contract, provided for under Articles 1649a to 1649g of the Civil Code;

15. setting an unreasonably short time limit for notifying the business of faults in the product delivered;

16. prohibiting the consumer from offsetting his debt to the business by a claim he has on it;

17. determining the amount of the compensation payable by the consumer who fails to carry out his obligations, without providing for compensation of the same amount if the business fails to perform its obligations;

18. committing the consumer for an indefinite period, without specifying a reasonable period of notice of termination of the contract;

19. renewing the fixed-term contract for successive delivery of goods for an unreasonable period if the consumer does not terminate it in time;

20. automatically extending a contract of fixed duration where the consumer does not notify otherwise, when the deadline fixed for the consumer to express this desire not to extend the contract is unreasonably early;

21. limiting in an unauthorised manner the means of proof that the consumer can use or imposing on him a burden of proof which is normally incumbent upon another contracting party;

22. having the consumer waive any recourse against the business in the event of a dispute;

23. allowing the business, by means of an address for service of process appearing in the contract, to bring its request before a court other than that designated by Article 624, points 1, 2 and 4, of the Judicial Code, without prejudice to the application of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters;

24. setting amounts of damages claimed in the case of non-fulfilment or late fulfilment of the consumer's obligations which obviously exceed the harm which may have been suffered by the business;

25. excluding or limiting the legal liability of the business in the event of the death of the consumer or physical injury to the latter, resulting from an act or omission of that business;

26. irrevocably binding the consumer to terms with which he had no real opportunity of becoming acquainted before the conclusion of the contract;

27. permitting the business to retain sums paid by the consumer where the latter decides not to conclude or perform the contract, without providing for the consumer to receive compensation of an equivalent amount from the business where the latter is the party cancelling the contract;

28. allowing the business to retain the sums paid by the consumer when it is the business itself which dissolves the contract;

29. limiting the obligation of the business to respect commitments undertaken by its agents or making its commitments subject to compliance with a particular formality;

30. inappropriately excluding or limiting the legal rights of the consumer vis-à-vis the business or another party in the event of total or partial non-performance or inadequate performance by the business of any of the contractual obligations;

31. giving the business the possibility of transferring its rights and obligations under the contract, where this transfer may serve to reduce the guarantees for the consumer, without the latter's agreement;

32. increasing the announced price of a product on account of the consumer's refusal to pay by direct debit;

33. increasing the announced price for a product on account of the consumer's refusal to receive invoices by electronic mail.

**Article 75.** § 1. Any unfair term shall be prohibited and void.

The contract shall continue to bind the parties if it is capable of continuing in existence without the unfair terms.

The consumer may not waive the benefit of the rights conferred upon him by this Section.

§ 2. Any term declaring the law of a State which is not a member of the European Union applicable to the contract shall be deemed to be unwritten with regard to the matters governed by this Section where, in the absence of this term, the law of a Member State of the European Union would be applicable and this law would procure greater protection for the consumer in these matters.

**Article 76.** With a view to ensuring the balance of the rights and obligations between the parties in sales of products to the consumer or to ensuring the fairness of commercial transactions, the King may, by decree deliberated within the Council of Ministers, for the sectors of professional activity or the categories of products He determines, stipulate or prohibit the use of certain terms in contracts concluded between a business and a consumer. He may also impose the use of standard contracts.

Before proposing a decree pursuant to § 1, the Minister shall consult the Unfair Terms Committee and the Higher Council for the Self-Employed and SMEs and shall set a reasonable deadline for submission of the opinion. Once this deadline has expired, the opinion shall no longer be required.

**Article 77.** § 1. The Unfair Terms Committee shall examine the terms and conditions used in offers for sale and sales of products between businesses and consumers.

§ 2. The Committee may be called upon by the Minister, consumer organisations and trade and inter-trade organisations concerned.

It may also conduct examinations on its own initiative.

§ 3. The King shall determine the composition of the Committee.

**Article 78.** § 1. The Committee shall recommend:

1. the deletion or modification of terms and conditions which it considers create an obvious imbalance in the parties' rights and obligations, to the detriment of the consumer;

2. the insertion of mentions, terms and conditions which it considers necessary to inform the consumer or the absence of which it considers creates an obvious imbalance in the parties' rights and obligations, to the detriment of the consumer;

3. wording and presentation of the terms and conditions such as to enable the consumer to comprehend their meaning and implications.

The trade and inter-trade organisations or consumer organisations may ask the Committee's opinion on draft terms or conditions used in the offers for sale and sales of products between businesses and consumers.

§ 2. Under its remit, the Committee shall propose to the Minister the amendments to laws or regulations which it considers desirable.

§ 3. Each year, the Committee shall draw up and publish a report on its activities. This shall include the full text of the recommendations and proposals made during the year.

#### *Section 7 – Order form*

**Article 79.** At the time of the sale, all businesses shall be required to deliver an order form when the delivery of the goods or supply of services is deferred and a down payment is made by the consumer.

The text of the order form shall be binding on the person who has drawn it up, notwithstanding all other or contrary general or special conditions.

The King may determine the indications which must appear in the order form.

#### *Section 8 – Supporting documents*

**Article 80.** § 1. Any business which provides services to the consumer shall be required to deliver a supporting document free of charge to the consumer who so requests. This obligation shall be waived where the price of the service has been communicated in accordance with Article 5, § 2, or where an estimate or invoice has been delivered including the indications referred to in § 2.

Contracts concluded under the denomination "package" or under any other equivalent denomination with the object of providing a service for a fixed all-inclusive price, agreed prior to the performance and covering the entirety of this service, shall not be covered by the scope of this Article.

§ 2. The King:

- shall determine, either in general, or for the services or categories of services that He designates, the indications which must appear in the supporting document;

- may exempt the services or categories of services that He designates from the application of this Section;

- may designate the goods or categories of goods to which this Section will apply;

- may, by way of derogation from § 1, for the services or categories of services He determines, require the business to deliver free of charge to the consumer a supporting document with the indications and on the terms and conditions that He determines.

§ 3. The decrees issued pursuant to § 2, fourth indent, shall be submitted by the Minister to the Consumer Council for opinion and to the Higher Council for the Self-Employed and SMEs for opinion. The Minister set a reasonable deadline for submission of the opinion. If it is not issued within the time limit set, the opinion shall no longer be required.

**Article 81.** The consumer shall be required to pay for the services performed only on the delivery of the supporting document requested, where such delivery is required by Article 80.

#### *Section 9 – Renewal of service contracts*

**Article 82.** § 1. Where a fixed-term service contract between a business and a consumer includes a tacit renewal clause, this clause shall appear in bold print and in a box separate from the text, on the front of the first page.

This clause shall mention the consequences of tacit renewal, and in particular the provision of § 2, and the final date on which the consumer may oppose the tacit renewal of the contract and the arrangements for him to notify this opposition.

§ 2. Without prejudice to the Non-Marine Insurance Contract Act of 25 June 1992 (*loi du 25 juin 1992 sur le contrat d'assurance terrestre*), the consumer may, after the tacit renewal of a fixed-term service contract, terminate the contract at any time, without compensation, at the end of a period of notice specified in the contract which may not exceed two months.

§ 3. Provided that no law lays down special rules relating to the tacit renewal of service contracts, the King may, for the services or categories of services that He determines, by decree deliberated within the Council of Ministers:

1. establish special arrangements for the tacit renewal of a contract;
2. waive obligations referred to under §§ 1 and 2.

§ 4. The scope of this Section may be extended by the King, by decree deliberated within the Council of Ministers, to certain categories of goods that He designates.

#### CHAPTER 4 – *Prohibited practices*

##### *Section 1*

##### Unfair commercial practices in relation to consumers

##### Subsection 1 – Scope

**Article 83.** This Section shall apply to unfair business-to-consumer commercial practices before, during and after the offer for sale and sale of products.

##### Subsection 2 – Unfair commercial practices

**Article 84.** A commercial practice shall be unfair if:

a) it is contrary to the requirements of professional diligence  
and

b) it materially distorts or is likely to materially distort the economic behaviour of the average consumer whom it reaches or to whom it is addressed, or if it is directed to a specific group of consumers, the economic behaviour of the average member of that group with regard to the product concerned.

A commercial practice which is likely to materially distort the economic behaviour of a single clearly identifiable group of consumers who are particularly vulnerable to the practice or the underlying product because of their mental or physical infirmity, age or credulity in a way which the business could reasonably be expected to foresee, shall be assessed from the perspective of the average member of that group. This is without prejudice to the common and legitimate advertising practice of making exaggerated statements or statements which are not meant to be taken literally

**Article 85.** Business-to-consumer commercial practices shall be unfair which:

1. are misleading as set out in Articles 88 to 91, or
2. are aggressive as set out in Articles 92 to 94.

**Article 86.** Unfair business-to-consumer commercial practices shall be prohibited.

**Article 87.** Any act or omission contrary to the laws protecting consumer interests shall also be prohibited – i.e. the Regulation mentioned in the Annex to Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws or the Directives also mentioned in that Annex, as transposed – that harms, or is likely to harm, the collective interests of consumers residing in a European Union Member State other than the Member State where the act or omission originated or took place, where the responsible business or supplier is established or where evidence or assets pertaining to the act or omission are to be found.

##### Subsection 3 – Misleading commercial practices

**Article 88.** A commercial practice shall be regarded as misleading if it contains false information and is therefore untruthful or in any way, including overall presentation, deceives or is likely to deceive the average consumer in relation to one or more of the following elements, even if the information is factually correct, and in either case causes or is likely to cause him to take a transactional decision that he would not have taken otherwise:

1. the existence or nature of the product;
2. the main characteristics of the product, such as its availability, benefits, risks, execution, composition, accessories, after-sale customer assistance and complaint handling, method and date of manufacture or provision, delivery, fitness for purpose, usage, quantity, specification, geographical or

commercial origin or the results to be expected from its use, or the results and material features of tests or checks carried out thereon;

3. the extent of the business' commitments, the motives for the commercial practice and the nature of the sales process, any statement or symbol in relation to direct or indirect sponsorship or approval of the business or the product;

4. the price or the manner in which the price is calculated, or the existence of a specific price advantage;

5. the need for a service, part, replacement or repair;

6. the nature, attributes and rights of the business or its intermediary, such as its identity and assets, qualifications, status, approval, affiliation or connection and ownership of industrial, commercial or intellectual property rights or its awards and distinctions;

7. the consumer's rights, including the right to replacement or reimbursement under the Consumer Protection on Sale of Consumer Goods Act of 1 September 2004 (*loi du 1<sup>er</sup> septembre 2004 relative à la protection des consommateurs en cas de vente de biens de consommation*), or the risks he may face.

**Article 89.** A commercial practice shall also be regarded as misleading which, in its factual context, taking account of all its features and circumstances, causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise, where it involves:

1. any marketing of a product, including comparative advertising, which creates confusion with any products, trade marks, trade names or other distinguishing marks of a competitor;

2. non-compliance by the business with commitments contained in codes of conduct by which the business has undertaken to be bound, where:

a) the commitment is not a declaration of intent, but is firm and is capable of being verified and

b) the business indicates in a commercial practice that it is bound by the code.

**Article 90.** § 1. A commercial practice shall be regarded as a misleading omission if, in its factual context, taking account of all its features and circumstances and the limitations of the communication medium, it omits material information that the average consumer needs, according to the context, to take an informed transactional decision and thereby causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise.

§ 2. It shall also be regarded as a misleading omission when a business hides or provides in an unclear, unintelligible, ambiguous or untimely manner such material information as referred to in § 1 or fails to identify the commercial intent of the commercial practice if not already apparent from the context, and where, in either case, this causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise.

§ 3. Where the medium used to communicate the commercial practice imposes limitations of space or time, these limitations and any measures taken by the business to make the information available to consumers by other means shall be taken into account in deciding whether information has been omitted.

§ 4. In the case of an invitation to purchase, the following information shall be regarded as material, if not already apparent from the context:

1. the main characteristics of the product, to an extent appropriate to the medium and the product;

2. the geographical address and the identity of the business, and, where applicable, the geographical address and the identity of the business on whose behalf it is acting;

3. the price inclusive of taxes, or where the nature of the product means that the price cannot reasonably be calculated in advance, the manner in which the price is calculated, as well as, where appropriate, all additional freight, delivery or postal charges or, where these charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable;

4. the arrangements for payment, delivery, performance and the complaint handling policy, if they depart from the requirements of professional diligence;

5. where appropriate, the existence of a right of withdrawal or cancellation.

§ 5. Information requirements in relation to commercial communication including advertising or marketing, established by Community law, and especially the Articles of the Directives referred to in Annex II to 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, shall also be regarded as material.

**Article 91.** Misleading commercial practices shall in all circumstances be considered unfair where they have as their object:

1. claiming to be a signatory to a code of conduct when this is not the case;
2. displaying a trust mark, quality mark or equivalent without having obtained the necessary authorisation;
3. claiming that a code of conduct has an endorsement from a public or other body which it does not have;
4. claiming that a business, including its commercial practices, or a product has been approved, endorsed or authorised by a public or private body when it has not or making such a claim without complying with the terms of the approval, endorsement or authorisation;
5. making an invitation to purchase products at a specified price without disclosing the existence of any reasonable grounds the business may have for believing that it will not be able to offer for supply or to procure another business to supply, those products or equivalent products at that price for a period that is, and in quantities that are, reasonable having regard to the product, the scale of advertising of the product and the price offered;
6. making an invitation to purchase products at a specified price and then, with the intention of promoting a different product:
  - a) either refusing to show the consumer the product proposed;
  - b) or refusing to take orders for it or deliver it within a reasonable time;
  - c) or demonstrating a defective sample of it;
7. falsely stating that a product will only be available for a very limited time, or that it will only be available on particular terms for a very limited time, in order to elicit an immediate decision and deprive consumers of sufficient opportunity or time to make an informed choice;
8. undertaking to provide after-sales service to consumers with whom the business has communicated prior to a transaction in a language which is not one of the national languages and then making such service available only in another language without clearly disclosing this to the consumer before the consumer is committed to the transaction;
9. stating or creating the impression that a product can legally be sold when it cannot;
10. presenting rights given to consumers in laws or regulations as a distinctive feature of the offer by the business;
11. using editorial content in the media to promote a product where a business has paid for the promotion without making that clear in the content or by images or sounds clearly identifiable by the consumer;
12. making a materially inaccurate claim concerning the nature and extent of the risk to the personal security of the consumer or his family if the consumer does not purchase the product;
13. promoting a product similar to a product made by a particular manufacturer in such a manner as deliberately to mislead the consumer into believing that the product is made by that same manufacturer when it is not;
14. establishing, operating or promoting a pyramid promotional scheme where a consumer gives consideration for the opportunity to receive compensation that is derived more from the introduction of other consumers into the scheme than from the sale or consumption of products;
15. claiming that the business is about to cease trading or move premises when it is not, without prejudice to Articles 24 and following;

16. claiming that products are able to facilitate winning in games of chance;
17. falsely claiming that a product is able to cure illnesses, dysfunction or malformations;
18. passing on materially inaccurate information on market conditions or on the possibility of finding the product with the intention of inducing the consumer to acquire the product at conditions less favourable than normal market conditions;
19. claiming in a commercial practice to offer a competition or prize promotion without awarding the prizes described or a reasonable equivalent;
20. describing a product as "gratis", "free", "without charge" or similar if the consumer has to pay anything other than the unavoidable cost of responding to the offer and collecting or paying for delivery of the item;
21. including in marketing material an invoice or similar document seeking payment which gives the consumer the impression that he has already ordered the promoted product when he has not;
22. falsely claiming or creating the impression that the business is not acting for purposes relating to its professional activity, or falsely representing itself as a consumer;
23. creating the false impression that after-sales service in relation to a product is available in a Member State of the European Union other than the one in which the product is sold.

#### Subsection 4 – Aggressive commercial practices

**Article 92.** A commercial practice shall be regarded as aggressive if, in its factual context, taking account of all its features and circumstances, by harassment, coercion, including the use of physical force, or undue influence, it significantly impairs or is likely to significantly impair the average consumer's freedom of choice or conduct with regard to the product and thereby causes him or is likely to cause him to take a transactional decision that he would not have taken otherwise.

**Article 93.** In determining whether a commercial practice uses harassment, coercion, including the use of physical force, or undue influence, account shall be taken of:

1. the timing, location, nature or persistence of the commercial practice;
2. the use of threatening or abusive language or behaviour;
3. the exploitation by the business of any specific misfortune or circumstance of such gravity as to impair the consumer's judgement, of which the business is aware, to influence the consumer's decision concerning the product;
4. any onerous or disproportionate non-contractual barriers imposed by the business where a consumer wishes to exercise rights under the contract, including rights to terminate a contract or to switch to another product or another business;
5. any threat to take any action that cannot legally be taken.

**Article 94.** Aggressive commercial practices shall in all circumstances be considered unfair where they have as their object:

1. creating the impression that the consumer cannot leave the premises until a contract is formed;
2. conducting personal visits to the consumer's home ignoring the consumer's request to leave or not to return, without prejudice to the laws or regulations authorising this with a view to enforcing a contractual obligation;
3. making persistent and unwanted solicitations by telephone, fax, e-mail or other remote media, without prejudice to:
  - a) laws or regulations authorising this to enforce a contractual obligation;
  - b) Article 100; and
  - c) Article 14 of the Act of 11 March 2003 on certain legal aspects of information society services (*loi du 11 mars 2003 sur certains aspects juridiques des services de la société de l'information*);
4. requiring a consumer who wishes to claim on an insurance policy to produce documents which could not reasonably be considered relevant as to whether the claim was valid, or failing systematically

to respond to pertinent correspondence, in order to dissuade a consumer from exercising his contractual rights;

5. including in an advertisement a direct exhortation to children to buy advertised products or persuade their parents or other adults to buy advertised products for them;

6. demanding immediate or deferred payment for or the return or safekeeping of products supplied by the business, but not solicited by the consumer;

7. explicitly informing a consumer that if he does not buy the product or service, the job of the person concerned or material resources of the business will be in jeopardy;

8. creating the false impression that the consumer has already won, or will win, whether or not by accomplishing a formality, a prize or other equivalent benefit,

- when in fact either there is no prize or other equivalent benefit,

- or accomplishing any formality in relation to claiming the prize or other equivalent benefit is subject to the consumer paying money or incurring a cost.

#### *Section 2 – Unfair market practices in relation to persons other than consumers*

**Article 95.** Any act contrary to honest market practices by which a business harms or may harm the professional interests of one or more other businesses shall be prohibited.

**Article 96.** Without prejudice to other legislation or regulations, any advertising by a business shall be prohibited which:

1. taking into account all its features, in any way, including its presentation or the omission of information, deceives or is likely to deceive the person to whom it is addressed or whom it reaches, in particular with respect to:

a) the characteristics of goods or services, such as their availability, nature, execution, composition, method and date of manufacture or provision, environmental impact, fitness for purpose, uses, quantity, specification, geographical or commercial origin, the results to be expected from their use, the results and material features of tests or checks carried out on the goods or services;

b) the price or the manner in which the price is calculated, and the conditions on which the goods are supplied or the services provided;

c) the nature, attributes, qualifications and rights of a business, such as its identity, assets, skills and ownership of industrial, commercial or intellectual property rights or its awards and distinctions;

and which, for those reasons, is likely to affect his economic behaviour or which, for those reasons, injures or is likely to injure a business;

2. contains denigratory information in relation to another business, its assets, services or activity;

3. without legitimate reason, allows the identification of one or more other businesses;

4. promotes an act which must be considered as a failure to comply with this Act or as an infringement under Articles 124 à 127.

**Article 97.** Without prejudice to other laws or regulations, all advertising of a business shall be prohibited which:

1. includes an invoice or similar document seeking payment, which gives the impression that the goods or service have already been ordered, when they have not;

2. hides or provides in an unclear manner material information relating to the consequences resulting from the reply given by the addressee or which hides, provides in an unclear manner or fails to identify the commercial intent if this is not clearly apparent from the context.

**Article 98.** It shall be prohibited for any business to send goods of any kind to a person without a prior request on his part, inviting him to acquire these goods against payment of the price, to put them in safekeeping or to return them to their sender, even free of charge.

It shall also be prohibited for any business to provide a service of any kind to another person without a prior request on his part, inviting him to accept this service against payment of the price.

The Minister may grant derogations to these prohibitions for offers made for a philanthropic purpose. In this case, the number of the authorisation obtained and the following indication "The recipient shall be under no obligation regarding payment or return" shall be shown legibly, conspicuously and unambiguously on the documents relating to the offer.

Under no circumstances shall the recipient be obliged to pay for the service provided or the goods sent or to return the latter, since the absence of a reply from the recipient concerning the supply of goods or services shall not constitute consent.

**Article 99.** It shall be prohibited to establish, operate or promote a pyramid promotion scheme where a business gives consideration for the opportunity to receive compensation that is derived more from the introduction of other businesses into the scheme than from the sale or consumption of products.

### *Section 3 – Unsolicited communications*

**Article 100.** § 1. The use of automated call systems without human intervention and fax machines for the purposes of advertising specifically addressed to a natural person shall be prohibited in the absence of prior, freely given, specific, informed consent on the part of the recipient of the messages.

The natural person having given his consent may withdraw it at any time, without giving reasons and without any costs being chargeable to him.

Any legal person may notify a specific sender, without cost or indication of reasons, that it no longer wishes to receive advertising from it transmitted by a means of communication referred to in the first subparagraph.

The King may, by decree deliberated within the Council of Ministers, extend the prohibition referred to in the first subparagraph to means of communication other than those mentioned, taking account of their development.

§ 2. Without prejudice to Article 14 of the Act of 11 March 2003 on certain legal aspects of information society services (*loi du 11 mars 2003 sur certains aspects juridiques des services de la société de l'information*), personalised advertising, transmitted by means other than those referred to in § 1 or determined in application thereof may be so only in the absence of a clear objection by the recipient, whether a natural or legal person. No costs may be charged to the recipient on the grounds of exercising his right of objection.

§ 3. When advertising is transmitted by a means of communication referred to in § 1, or determined in application thereof, the sender shall provide clear, comprehensible information concerning the right to object, in future, to receiving advertising.

§ 4. On sending any advertising by a means of communication referred to in § 2, it shall be prohibited to hide the identity of the business on whose behalf the communication is made.

§ 5. The burden of proof of the fact that the advertising sent by a means of communication referred to in § 1, or determined in application thereof, was solicited, shall be incumbent upon the sender of the message.

### *Section 4 – Sale below cost*

**Article 101.** § 1. It shall be prohibited for any business to offer for sale or sell goods below cost.

A sale below cost shall be considered to be any sale at a price which is not at least equal to the price at which the business purchased the goods or that the business would have to pay on restocking, after deduction of any reductions granted and definitively acquired. To determine the existence of a sale below cost, no account shall be taken of the reductions granted, exclusively or not, in exchange for commitments by the business other than the purchase of goods.

§ 2. In the case of a combined offer of several goods, whether or not identical, the prohibition referred to in the first subparagraph of § 1 shall apply only where the offer as a whole constitutes a sale below cost.

**Article 102.** § 1. The prohibition provided for in the first subparagraph of Article 101, § 1, shall not apply, however:

1. for goods sold in clearance sales or seasonal sales;
2. for goods which can no longer be stored;

3. for goods that the business, on account of external circumstances, can no longer reasonably sell at a price equal to or above their purchase price;

4. for goods the selling price of which has been aligned, for the necessities of competition, with the price asked by competitors for the same goods or for competing goods.

§ 2. Contractual terms prohibiting the sale below cost to the consumer shall not have effect vis-à-vis the person who sells the goods in the cases referred to in § 1.

#### *Section 5 – Arrangements concerning proof*

**Article 103.** § 1. The Minister or the official appointed by him pursuant to Article 133, § 1, may ask a business to provide proof concerning the substantive accuracy of the factual data it communicates in the context of a commercial practice.

The business shall provide proof concerning the substantive accuracy of these data within a maximum period of one month.

If the proof required under the first subparagraph is not provided or is deemed to be insufficient, the Minister or the official appointed for this purpose may consider the commercial practice to be contrary to the provisions of this Chapter.

§ 2. The business shall also be required to provide such proof when an injunction is sought by:

1. the Minister and, where appropriate, the competent minister referred to in Article 115;

2. the other persons referred to in Article 113, provided that, taking account of the legitimate interests of the business and of any other party to the procedure, the President of the Commercial Court considers that such a requirement is appropriate in the light of the circumstances of the particular case.

If the proof required under the first subparagraph is not provided or is considered to be inadequate, the President of the Commercial Court may consider the factual data to be inaccurate.

#### *CHAPTER 5 – Collective consumer agreements*

**Article 104.** § 1. Collective consumer agreements may relate to the general contract terms proposed to consumers, the information to be given to them, the commercial promotion methods, quality aspects, conformity and safety of goods and services and consumer dispute resolution mechanisms.

§ 2. The collective consumer agreement shall specify its scope, date of entry into force and duration.

The collective consumer agreement shall not apply to contracts in progress, unless otherwise provided and on condition that this is more favourable to the consumer.

The collective consumer agreement shall specify the arrangements by which the information concerning the agreement is given to both businesses and consumers.

§ 3. Where appropriate, the collective consumer agreement shall establish the arrangements for its review and extension.

It shall also lay down the conditions for its termination by all or some of the signatories or adherents, as well as the length of the period of notice, which may be no less than six months.

**Article 105.** Collective consumer agreements shall be negotiated and signed within the Consumer Council.

The request to negotiate a collective consumer agreement shall be made by a member of the Consumer Council or by a member of the Government.

If the request concerns a sector which is not represented on the Consumer Council, the businesses of the sector or their representatives shall be invited.

Collective consumer agreements may not be concluded without their approval.

Collective consumer agreements must be the subject of unanimity within the Consumer Council, both to start the negotiations and to conclude an agreement.

A specific unit shall be created within the Consumer Council secretariat to provide secretarial services for collective consumer agreements and to keep a register thereof.

Internal regulations shall establish the procedure to be followed and the quorum required, within each group of the Consumer Council, to take unanimous decisions. They shall be approved by the King, by decree deliberated within the Council of Ministers.

**Article 106.** The general contract terms defined in the collective consumer agreements shall be submitted in advance for opinion to the Unfair Terms Committee, which shall issue its opinion within three months. After this period, the collective consumer agreement may be concluded.

**Article 107.** The collective consumer agreement shall be forwarded to the Government by the Minister.

In the absence of opposition by a member of the Government within fifteen days, it shall be published in the *Moniteur belge*.

In the case of opposition by a member, it shall be included on the agenda for the next Council of Ministers.

In the absence of ratification by the Council of Ministers, the collective consumer agreement shall become inapplicable.

Any amendment, renewal or termination of collective consumer agreements shall be submitted to the Council of Ministers, then published in the *Moniteur belge*.

**Article 108.** The signatories and adherents to a collective consumer agreement shall ensure that it is applied correctly.

The collective consumer agreement shall provide for the manner in which consumer complaints are handled.

Non-compliance with a collective consumer agreement by a business may be considered as an unfair commercial practice in relation to the consumer within the meaning of Chapter 4, Section 1.

**Article 109.** The King, by decree deliberated within the Council of Ministers, may, on the unanimous opinion of the Consumer Council, impose a collective consumer agreement of national scope on an entire sector.

#### CHAPTER 6 – *Injunction*

**Article 110.** Where the infringement concerns advertising, an injunction on the grounds of failure to comply with Articles 19, 84 to 86, 96 and 97 may be sought only against the advertiser of the prohibited advertising.

However, where the advertiser is not resident in Belgium and has not designated a responsible person resident in Belgium, an injunction may also be sought against:

- the publisher of the written advertising or the producer of the audiovisual advertising;
- the printer or the director, if the publisher or the producer are not resident in Belgium or have not designated a responsible person resident in Belgium;
- the distributor or any other person who contributes knowingly to the advertising having effect if the printer or director are not resident in Belgium and have not designated a responsible person resident in Belgium.

**Article 111.** An injunction may be sought against a business for commercial practices by its representative used outside the premises of this representative, where the representative has not made his identity clearly known and his identity could not reasonably have been known either by the person seeking the injunction.

**Article 112.** The President of the Commercial Court may grant the offender a period in which to end the infringement, where the nature of the infringement so requires. He may grant the lifting of the injunction when the infringement has been ended.

**Article 113.** Proceedings based on Article 2 of the Act of 6 April 2010 on the Regulation of Certain Proceedings in the context of the Market Practices and Consumer Protection Act of 6 April 2010 (*loi du 6 avril 2010 concernant le règlement de certaines procédures dans le cadre de la loi du 6 avril 2010 relative aux pratiques du marché et à la protection du consommateur*) shall be brought on the application of:

1. parties concerned;

2. the Minister or Director-General of the Directorate-General for Supervision and Mediation of the Federal Public Service Economy, SMEs, Self-Employed and Energy, except where the application concerns an act referred to in Article 95;

3. a trade or inter-trade organisation with legal personality;

4. an association with the object of defending consumer interests and with legal personality, provided that it is represented on the Consumer Council or it has been approved by the Minister, according to criteria determined by royal decree deliberated within the Council of Ministers, except where the application concerns an act referred to in Article 95.

By way of derogation from Articles 17 and 18 of the Judicial Code, the associations and organisations referred to in the first subparagraph, points 3 and 4, may bring legal proceedings to defend their collective interests defined by their articles of association.

The injunction concerning the acts prohibited by Article 75 may be sought, separately or jointly, against several businesses of the same economic sector or their associations which use or recommend the use of the same general contract terms or similar terms.

Proceedings based on Article 2 of the Act of 6 April 2010 on the Regulation of Certain Proceedings in the context of the Market Practices and Consumer Protection Act of 6 April 2010, for acts referred to in Article 87, may also be brought by the minister competent for the matter concerned.

**Article 114.** Proceedings based on Article 3 of the Act of 6 April 2010 on the Regulation of Certain Proceedings in the context of the Market Practices and Consumer Protection Act of 6 April 2010 shall be brought at the request of the persons entitled to bring legal proceedings for infringement according to the Act relating to the intellectual property right concerned.

**Article 115.** Without prejudice to the possible application of Article 95 and Article 2 of the Act of 6 April 2010 on the Regulation of Certain Proceedings in the context of the Market Practices and Consumer Protection Act of 6 April 2010 to the acts to which they refer, proceedings for infringement of Article 4 of the Act of 6 April 2010 on the Regulation of Certain Proceedings in the context of the Market Practices and Consumer Protection Act of 6 April 2010 shall be brought exclusively at the request of the minister competent for the matter concerned.

Proceedings based on Article 4, point 9, of the Act of 6 April 2010 on the Regulation of Certain Proceedings in the context of the Market Practices and Consumer Protection Act of 6 April 2010 shall be brought at the request of the Minister for the Environment. The Committee established by the Act of 14 July 1994 establishing the European Eco-label Award Committee (*loi du 14 juillet 1994 portant création du Comité d'attribution du label écologique européen*) may propose bringing such proceedings to the Minister.

**Article 116.** The President of the Commercial Court may authorise the display of his decision, or his summary thereof, for the period he specifies, both outside and inside the offender's establishments and order the publication of his judgment or his summary in the press or in any other way, all at the expense of the offender.

However, these publicity measures can be authorised only if they are likely to contribute to the cessation of the act complained of or its effects.

If a publicity measure is cancelled on appeal, the President of the Commercial Court shall set the amount to be paid by the party to whom the publicity measure was granted in accordance with the first subparagraph, and who enforced the measure despite an appeal against the judgment having been lodged in time, to the party to the detriment of whom the publicity measure was pronounced.

**Article 117.** Proceedings referred to in Articles 2 to 4 of the Act of 6 April 2010 on the Regulation of Certain Proceedings in the context of the Market Practices and Consumer Protection Act of 6 April 2010 may no longer be brought one year after the facts relied upon have ended.

**Article 118.** Proceedings shall be brought and examined according to the summary procedure.

The judgment shall be provisionally enforceable, notwithstanding any remedies and without a guarantee.

Any decision issued on proceedings based on Articles 2 to 4 of the Act of 6 April 2010 on the Regulation of Certain Proceedings in the context of the Market Practices and Consumer Protection Act

of 6 April 2010 shall, within eight days, and at the instance of the registrar of the competent court, be communicated to the Minister, unless the decision was issued at his request.

In addition, the registrar shall be required to inform the Minister without delay of the appeal lodged against any decision issued in application of Articles 2 to 4 of the Act of 6 April 2010 on the Regulation of Certain Proceedings in the context of the Market Practices and Consumer Protection Act of 6 April 2010.

#### CHAPTER 7 – *Special provisions relating to designation of origin*

**Article 119.** § 1. Registered names shall be protected against:

a) any direct or indirect commercial use of a registered name in respect of products not covered by the registration in so far as those products are comparable to the products registered under that name or in so far as using the name exploits the reputation of the protected name;

b) any misuse, imitation or evocation, even if the true origin of the product is indicated or if the protected name is translated or accompanied by an expression such as "style", "type", "method", "as produced in", "imitation" or similar;

c) any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product, on the inner or outer packaging, advertising material or documents relating to the product concerned, and the packing of the product in a container liable to convey a false impression as to its origin;

d) any other practice liable to mislead the consumer as to the true origin of the product.

Where a registered name contains within it the name of a product which is considered generic, the use of that generic name on the appropriate product shall not be considered to be contrary to points (a) or (b) in the first subparagraph.

§ 2. Protected names may not become generic.

**Article 120.** Where the court establishes an infringement of the rules on registered names, it shall order each infringer to desist.

The court may also issue an injunction against intermediaries whose services are used by a third party to infringe the rules on registered names.

**Article 121.** § 1. Without prejudice to any damages due to the injured party by reason of the infringement, and without compensation of any sort, the court may order, at the request of the party entitled to bring legal proceedings for infringement, the recall from the channels of commerce, definitive removal from the channels of commerce or destruction of the infringing goods and, in appropriate cases, of the materials and implements principally used in the creation or manufacture of these goods.

These measures shall be implemented at the expense of the offender, unless there are special reasons against this.

In assessing a request referred to in the first subparagraph, the need for proportionality between the seriousness of the infringement and the remedies ordered, as well as the interests of third parties, shall be taken into account.

§ 2. When in the course of proceedings the court finds an infringement, it may, at the request of the party entitled to bring legal proceedings for infringement, order the infringer to provide the party which has brought these proceedings with all the information in its possession concerning the origin and distribution networks of the infringing goods or services and to communicate to it all the relevant data, provided that the measure in question is justified and proportionate.

The same injunction may be imposed on the person who was found in possession of the infringing goods on a commercial scale, was found to be using the infringing services on a commercial scale or was found to be providing on a commercial scale services used in infringing activities.

§ 3. The court may order that its decision taken under this Article and/or under Article 120 or the summary it draws up to be displayed for the period it determines, both outside and inside the establishments of the offender and order the publication of its judgment or its summary in the press or in any other manner, all at the expense of the offender.

**Article 122.** § 1. The injured party shall be entitled to compensation for all prejudice it has suffered as a result of infringement of Article 119.

§ 2. Where the extent of the prejudice cannot be determined in any manner, the court may, reasonably and fairly, set the damages as a lump sum.

The court may, as damages, order the delivery to the applicant of the infringing goods and, in appropriate cases, of the materials and implements principally used in the creation or manufacture of these goods, and which are still in the possession of the defendant. If the value of these goods, materials and instruments exceeds the extent of the real damage, the court shall set the cash payment to be made by the applicant.

In the case of bad faith, the court may order the transfer of all or part of the profit made as a result of the infringement as damages and the rendering of account in this respect. Only the costs directly linked to the counterfeiting activities concerned shall be deducted to determine the profit to be transferred.

#### CHAPTER 8 – *Warning procedure*

**Article 123.** Where it is found that an act constitutes an infringement of this Act, one of its implementing decrees or the decrees referred to in Article 139 or that it may give rise to an injunction in accordance with point 2 of the first subparagraph of Article 113, the official appointed by the Minister or the competent minister for the matter concerned pursuant to Article 133, § 1, may send the offender a warning ordering him to put an end to this act, without prejudice to Article 103.

The warning shall be served on the offender within a period of three weeks from the finding of the facts, by receipted registered letter or by handing over a copy of the report establishing the facts.

The warning shall mention:

1. the alleged facts and the legal provision(s) infringed;
2. the period within which an end must be put to the infringement;
3. that if no response is given to the warning, either proceedings for an injunction will be brought in accordance with point 2 of the first subparagraph of Article 113 or the officials appointed under Article 133, § 1, or under Article 136 may respectively notify the Public Prosecutor or apply the compromise settlement provided for under Article 136;
4. that the undertaking of the offender to bring the infringement to an end can be publicised.

A detailed annual report on the operation of the warning procedure shall be presented within a reasonable period to the legislature, which shall decide on its possible publication.

The information supplied in this report shall be anonymous.

#### CHAPTER 9 – *Criminal sanctions*

**Article 124.** A fine of EUR 250 to EUR 10 000 shall be imposed on those who commit an infringement of the provisions of:

1. Articles 5 to 8 on price indication and the decrees adopted pursuant to Article 9;
2. Article 10 on the name, composition and labelling of products and the decrees adopted pursuant to Articles 11 and 12;
3. Articles 13 to 17 on the indication of quantity and the decrees adopted pursuant to Article 18;
4. Articles 20 and 21 on the reference to the own price applied previously and the decrees adopted pursuant to Articles 22 and 23;
5. Articles 24 and 25 on clearance sales;
6. Articles 27 to 29 and Article 32 on sales in seasonal sales and the waiting period;
7. Article 42 on presentation to the consumer, for signature, of a bill of exchange;
8. Articles 45 to 56 on distance contracts and the decrees adopted pursuant to Article 57;
9. Articles 58 to 64 on sales concluded outside the premises of the business;

10. Article 70 imposing on judicial officers responsible for undertaking public sales, the obligation to refuse to assist in certain circumstances;

11. Articles 79 and 80 on the order form and supporting documents and decrees adopted pursuant to Articles 79 and 80;

12. decrees adopted pursuant to Article 109 on collective consumer agreements;

13. Articles 86, 91 and 94 on unfair commercial practices in relation to consumers, with the exception of Articles 91, points 12, 14, 16 and 17, and 94, points 1, 2 and 8;

14. Article 98 on inertia selling in relation to businesses.

However, where an infringement of the implementing decrees referred to in Article 9 of this Act also constitutes an infringement of the Consumer Health Protection (Foodstuffs and other Products) Act of 24 January 1977 (*loi du 24 janvier 1977 relative à la protection de la santé des consommateurs en ce qui concerne les denrées alimentaires et les autres produits*), the penalties provided for by this latter Act alone shall be applicable.

**Article 125.** A fine of EUR 500 to EUR 20 000 shall be imposed on those who, in bad faith, commit an infringement of the provisions of this Act, with the exception of those referred to in Articles 124, 126 and 127 and with the exception of the infringements referred to in Article 95.

**Article 126.** A fine of EUR 1 000 to EUR 20 000 shall be imposed on:

1. those who fail to comply with the provisions of a judgment or order issued under Article 2 of the Act of 6 April 2010 on the Regulation of Certain Proceedings in the context of the Market Practices and Consumer Protection Act of 6 April 2010 (*loi du 6 avril 2010 concernant le règlement de certaines procédures dans le cadre de la loi du 6 avril 2010 relative aux pratiques du marché et à la protection du consommateur*) in response to an injunction;

2. those who, deliberately, prevent or impede the performance of the duties of the persons referred to in Articles 133 to 134 with a view to investigating and finding the infringements or failures to comply with the provisions of this Act;

3. those who, deliberately, in person or through an intermediary, delete, conceal or totally or partially rip up the notices displayed pursuant to Articles 116 and 130.

**Article 127.** Imprisonment of one month to five years and a fine of EUR 26 to EUR 20 000, or just one of these penalties, shall be imposed on those who commit an infringement of Articles 91, points 12, 14, 16 and 17, and 94, points 1, 2 and 8, relating to unfair commercial practices.

**Article 128.** Where the facts submitted to the court are the subject of an injunction, a final decision in the criminal proceedings can be taken only after a final decision has been issued concerning the injunction.

**Article 129.** Without prejudice to the application of the customary rules governing repeated offences, the penalty provided for in Article 126 shall be doubled in the event of an infringement referred to in point 1 of that Article occurring within five years from a final conviction handed down for the same infringement.

**Article 130.** The court may order the display of the judgment or the summary it draws up for the period it determines, both outside and inside the offender's establishments and at his expense, as well as the publication of the judgment or its summary at the offender's expense through the press or in any other way; it may also order the confiscation of the unlawful profits attributable to the infringement.

**Article 131.** Societies and associations with legal personality shall have civil liability for the damages, fines, expenses, confiscations, returns and pecuniary penalties of any kind pronounced for infringement of the provisions of this Act against their bodies or employees.

The same shall apply in respect of the members of all trade associations without legal personality, where the infringement was committed by a partner, manager or employee during an operation belonging to the activity of the association. However, the partner with civil liability shall be personally liable only up to the sums or assets he has acquired from the operation.

These societies, associations and members may be summoned directly before the criminal court by the prosecution service or the civil party.

**Article 132.** The provisions of Book I of the Penal Code, including Chapter 7 and Article 85, shall be applicable to the infringements referred to by this Act.

By way of derogation from Article 43 of the Penal Code, the court shall assess, when it hands down a conviction for one of the infringements referred to in this Act, whether it is appropriate to order the special confiscation. This provision shall not apply in the case of repeated offence referred to in Article 129 of this Act.

On expiry of a period of ten days from the ruling, the registrar of the tribunal or court shall inform the Minister, by ordinary letter, of any judgment or order relating to an infringement referred to in this Act.

The registrar shall also be required to notify the Minister without delay of any appeal filed against such a decision.

#### CHAPTER 10 – *Investigation and establishment of infringements*

**Article 133.** § 1. Without prejudice to the duties incumbent upon the law enforcement officers, the officials appointed by the Minister shall be competent for the investigation and establishment of the infringements referred to in Articles 124 to 127. The reports drawn up by these officials shall have the value of proof until evidence is provided to the contrary.

§ 2. In performing their duties, the officials referred to in § 1 may:

1. during normal opening or working hours, enter the workshops, buildings, adjacent and enclosed courtyards to which access is necessary to accomplish their tasks;

2. make all the useful findings, have produced, on first demand and on the spot, the documents, papers or books necessary for their investigations and findings and take copies thereof;

3. seize, against receipt, the documents referred to in point 2 which are necessary to prove an infringement or to seek the co-authors or accomplices of the offenders;

4. take samples, according to the methods and conditions determined by the King;

5. if they have reason to believe in the existence of an infringement, enter the inhabited premises with the prior authorisation of the police magistrate; visits to inhabited premises must be carried out between 08:00 and 18:00 and must be made jointly by at least two officials.

§ 3. In the performance of their duties, the officials referred to in § 1 may require the assistance of the local or federal police.

§ 4. The officials appointed shall exercise the powers granted to them under this Article under the supervision of the Procurator General, without prejudice to their subordination to their superiors in the administration.

§ 5. The infringements referred to in the second subparagraph of Article 124 may be investigated and established either by the officials referred to in § 1 or by those referred to in Article 11 of the Consumer Health Protection (Foodstuffs and other Products) Act of 24 January 1977 (*loi du 24 janvier 1977 relative à la protection de la santé des consommateurs en ce qui concerne les denrées alimentaires et les autres produits*).

§ 6. In the case of application of Article 123, the report referred to in § 1 shall be forwarded to the Public Prosecutor only if no response has been given to the warning. In the case of application of Article 136, the report shall be forwarded to the Public Prosecutor only if the offender has not agreed to the compromise settlement proposal.

**Article 134.** § 1. The officials referred to in Article 133, § 1, shall also be competent for the investigation and establishment of acts which, without being punishable, may be the subject of injunction proceedings brought on the initiative of the Minister. The reports drawn up in this respect shall have the value of proof until evidence is provided to the contrary.

§ 2. In the performance of their duties, the officials referred to in § 1 shall have at their disposal the powers referred to in Article 133, § 2, points 1, 2 and 4.

**Article 135.** § 1. The officials appointed for this purpose by the ministers referred to in Article 115 shall be competent to investigate and establish the infringements which may give rise to the proceedings provided for in Article 4 of the Act of 6 April 2010 on the Regulation of Certain Proceedings in the context of the Market Practices and Consumer Protection Act of 6 April 2010 (*loi*

*du 6 avril 2010 concernant le règlement de certaines procédures dans le cadre de la loi du 6 avril 2010 relative aux pratiques du marché et à la protection du consommateur*). The reports drawn up in this respect shall have the value of proof until evidence is provided to the contrary.

§ 2. In the performance of their duties, the officials referred to in § 1 shall have at their disposal the powers referred to in Article 133, § 2, points 1, 2 and 4.

**Article 136.** The officials appointed for this purpose by the Minister may, in the light of the reports establishing an infringement of Articles 124 to 127 and drawn up by the officials referred to in Article 133, § 1, propose to the offenders payment of a sum for the discontinuation of the criminal action.

The rates and arrangements for payment and collection shall be laid down by the King.

**Article 137.** § 1. The prosecution service, in the light of the reports drawn up pursuant to Article 133, § 1, may order the seizure of the goods which are the subject of the infringement.

The officials appointed, where they establish an infringement under the powers conferred upon them by Article 133, § 1, may, as a precaution, undertake the seizure of the goods which are the subject of the infringement. This seizure shall be confirmed by the prosecution service within a period which may not exceed eight days, in accordance with the provisions of the first subparagraph.

The person holding the seized goods may be appointed as their legal custodian.

The seizure shall be automatically lifted by the judgment ending the prosecution, where this judgment is final, or when it is decided to take no further action.

The prosecution service may lift the seizure that it has ordered or confirmed if the offender refrains from offering the goods under the conditions which gave rise to the proceedings; this renunciation shall not imply any recognition of the merits of those proceedings.

§ 2. The investigating judge, in the light of the reports drawn up pursuant to Article 133, § 1, and establishing infringements of the provisions referred to in Article 124, point 8, may, by reasoned order, direct the operators of means of communications, where they are able to do so, to suspend, within the limits and for the period that he specifies which may not exceed one month, making available to the offender the means of communication used to commit the infringement.

The investigating judge may extend the effects of his order once or several times; he shall end it as soon as the circumstances justifying it no longer exist.

#### CHAPTER 11 – *Amending, repealing and transitional provisions*

**Article 138.** The following shall be repealed:

1. the Act of 14 July 1991 on commercial practices and consumer information and protection (*loi du 14 juillet 1991 sur les pratiques du commerce et sur l'information et la protection du consommateur*);

2. Article 112 of the Electronic Communications Act of 13 June 2005 (*loi du 13 juin 2005 relative aux communications électroniques*).

**Article 139.** § 1. The legal provisions not contrary to this Act, which refer to provisions of the Act of 14 July 1991 on commercial practices and consumer information and protection, shall be presumed to refer to the equivalent provisions of this Act.

§ 2. The legislation adopted to implement the Commercial Practices Act of 14 July 1971 (*loi du 14 juillet 1971 sur les pratiques du commerce*) or the Act of 14 July 1991 on commercial practices and consumer information and protection which is not contrary to the present Act shall remain in force until it is repealed or replaced by decrees adopted pursuant to this Act.

Infringements of the provisions of the decrees adopted pursuant to the Act of 9 February 1960 authorising the King to regulate the use of names under which goods are marketed (*loi du 9 février 1960 permettant au Roi de réglementer l'emploi des dénominations sous lesquelles les marchandises sont mises dans le commerce*) and the Commercial Practices Act of 14 July 1971 and the Act of 14 July 1991 on commercial practices and consumer information and protection shall be investigated, established and punished in accordance with Chapters 8, 9 and 10 of this Act.

**Article 140.** The King may coordinate the provisions of this Act and the provisions explicitly or implicitly modifying them at the time when coordinations are established.

To this end, He may:

1. modify the order, numbering and, in general, the presentation of the provisions to be coordinated;
2. modify the references contained in the provisions to be coordinated with a view to ensuring their consistency with the new numbering;
3. modify the drafting of the provisions to be coordinated with a view to ensuring their consistency and standardising the terminology without affecting the principles inscribed in these provisions.

The coordinations shall bear the title determined by the King.

#### CHAPTER 12 – *Final provisions*

**Article 141.** The King shall exercise the powers conferred upon Him by the provisions of Chapters 2, 3, 4, Sections 1 and 3, and Chapter 5, on the joint proposal of the Ministers for the Economy, SMEs and the Self-Employed and Consumer Affairs.

The King shall exercise the powers conferred upon Him by the provisions of Chapter 4, Sections 2 and 4, on the joint proposal of the Ministers for the Economy and SMEs and the Self-Employed.

Where measures to be taken pursuant to this Act concern goods or services which, in the fields referred to by Chapters 2 to 5, are regulated or likely to be regulated on the initiative of ministers other than those for the Economy, SMEs and the Self-Employed and Consumer Affairs in accordance with the first and second subparagraphs, these measures shall include in their preamble a reference to the agreement of the ministers concerned. Where appropriate, these measures shall be proposed jointly by the ministers concerned and implemented by them, by joint agreement, each with regard to his own field.

The same shall apply where, in the fields covered by Chapters 2 to 5, measures to be taken, on the initiative of ministers other than those for the Economy, SMEs and the Self-Employed and Consumer Affairs, concern goods or services which are regulated or likely to be regulated pursuant to this Act.

**Article 142.** This Act shall enter into force 30 days after its publication in the *Moniteur belge*.

We promulgate this Act and order that the seal of State be affixed thereto and that it be published by the *Moniteur belge*.

Done at Châteauneuf-de-Grasse, 6 April 2010.

ALBERT

By the King:

The Minister for SMEs, the Self-Employed, Agriculture and Science Policy,  
Ms S. LARUELLE

The Minister for Climate and Energy  
P. MAGNETTE

The Minister for Enterprise and Simplification,  
V. VAN QUICKENBORNE

Sealed with the State seal:  
The Minister for Justice,  
S. DE CLERCK

—————  
Note

(1) *Ordinary session 2009-2010.*

House of Representatives

*Parliamentary papers* – Bill, No 2340/1 – Amendments, Nos 2340/2, 2340/3 and 2340/4 – Report given on behalf of the Committee, No 2340/5 – Text adopted by the Committee, No 2340/6 – Amendments tabled in plenary session, No 2340/7 – Text adopted by the Committee, No 2340/8. – Text adopted by the Committee, No 2340/9 – Text adopted in plenary session and forwarded to the Senate, No 2340/10.

*Verbatim report:* 11 February 2010.

Senate

*Parliamentary papers* – Draft mentioned by the Senate, No 4-1657/1 – Amendments, No 4-1657/2  
– Report given on behalf of the Committee, No 4-1657/3 – Text corrected by the Committee, No 4-1657/4 – Decision not to amend, No 4-1657/5.