



## **Act relating to the control of marketing and contract terms and conditions, etc.**

Date LOV-2009-01-09-2

Ministry Ministry of Children and Families

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Abbreviated title Marketing Control Act

Original title Lov om kontroll med markedsføring og avtalevilkår mv. (markedsføringsloven)

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### **Kapitteloversikt:**

Chapter 1. General provisions

Chapter 2. Commercial practices that affect consumers

Chapter 3. Particular forms of marketing, etc.

Chapter 4. Special provisions relating to the protection of children

Chapter 5. Control of contract terms and conditions, etc.

Chapter 6. Protection of the interests of traders

Chapter 7. Enforcement

Chapter 8. Cross-border enforcement, etc.

Chapter 9. Penalties and civil sanctions

Chapter 10. Entry into force etc.

**Amendment acts incorporated in this text:** Acts 19 June 2009 No. 43, 3 September 2010 No. 53, 25 May 2012 No. 27, 31 May 2013 No. 25, 21 June 2013 No. 57, 9 May 2014 No. 16, 20 June 2014 No. 27, 19 June 2015 No. 65, 17 June 2016 No. 29, 2 June 2017 No. 32, 2 June 2017 No. 31, 16 June 2017 No. 49, 21 June 2019 No. 58, 20 May 2020 No. 42 (in force 1 July 2020).

**Amendment acts not yet incorporated in this text:**

Amendment act	Entry into force	Amending
Act 27 March 2020 No. 15	1 January 2021	Repealing sections 28 and 29, amending sections 48 and 48 b.
Act 20 May 2020 No. 42	1 September 2023	Sections 44 and 47.
Act 23 June 2020 No. 98	1 January 2021	Section 10 a.
Act 11 June 2021 No. 62	1 July 2022	Sections 2, 21, 35 and 42.
Act 18 June 2021 No. 122	1 July 2022	Section 48 a.
Act 16 Juni 2023 No. 38	1 October 2023	Sections 3, 7, 8, 10, 16 a, new section 17 a, amending section 22, new section 28, amending section 42 and new section 48 c.
Act 16 June 2023 No. 60	1 January 2024	Section 23.
Act 14 June 2024 No. 32	1 July 2024	Section 7
Act 25 April 2025 No. 12	1 January 2026	Section 41
Act 20 June 2025 No. 41	1 July 2025	Sections 10 a and 42

See also the EEA Agreement Annex IX no. 31e (Directive 2002/65/EC) and Annex XIX no. 2 (Directive 2006/114/EC), no. 7f (Regulation (EC) No 2006/2004), no. 7g (Directive 2005/29/EC) and no. 7i (Directive 2011/83/EU).

**This is an unofficial translation of the Norwegian version of the Act and is provided for information purposes only. Legal authenticity remains with the Norwegian version as published in Norsk Lovtidend. In the event of any inconsistency, the Norwegian version shall prevail.**

The translation is provided by the Ministry of Children and Families.

## Chapter 1. General provisions

### Section 1. *The content of the Act*

Unless otherwise stipulated, the Act relates to the control of marketing, commercial practices and contract terms and conditions in consumer relations, and requires traders to follow good business practice in their transactions with one another.

## **Section 2. Good marketing practice, etc.**

Marketing shall not conflict with good marketing practice. In the assessment, emphasis shall be given to whether the marketing offends against general ethical and moral views, and to whether it employs offensive means.

The marketer and the designer of the marketing shall ensure that the marketing does not conflict with the equality of the sexes and that it does not exploit the body of one of the sexes or convey an offensive or derogatory appraisal of women or men.

In determining whether the first or second paragraphs have been infringed, emphasis shall be given to whether the marketing stands out as particularly intrusive by reason of its design, format or scope, or other means employed.

## **Section 3. Presentation and documentation of marketing**

All marketing shall be designed and presented in such a way that it is clear that it is marketing.

Documentation shall be available to substantiate factual claims made in marketing, including as to the properties or effect of products. The documentation shall be in the possession of the advertiser at the time that the marketing takes place.

## **Section 4. The geographical scope of the Act**

The Act shall apply to acts and terms and conditions that are directed at consumers or traders in the realm, subject to the limitations imposed by other legislation.

With the exception of chapter 6, the Act shall also apply to acts and terms and conditions that take effect abroad, as long as they are also unlawful pursuant to the legislation of the country in which they take effect.

The King may by regulation provide whether and to what extent the Act shall apply to Svalbard and Jan Mayen.

## **Section 5. Definitions**

In this Act, the following terms shall have the following meanings:

- a. «consumer»: a natural person who is not primarily acting for commercial purposes,
- b. «trader»: a natural or legal person who is acting for commercial purposes, and anyone acting in the name of or on behalf of that person,
- c. «product»: good, service, immovable property, rights and obligations,
- d. «commercial practice»: any act, omission, course of conduct or representation, commercial communication including advertising and marketing, by a trader, directly connected with the promotion, sale or supply of a product to consumers,
- e. «guarantee»: any obligation assumed by a trader towards a consumer in connection with the sale of goods, services or other products that grants the consumer supplementary rights.

## **Chapter 2. Commercial practices that affect consumers**

## **Section 6. *Unfair commercial practices***

Unfair commercial practices shall be prohibited.

A commercial practice shall be unfair if it conflicts with good business practice towards consumers and is likely materially to distort the economic behaviour of consumers, causing them to make decisions they would not otherwise have made.

If a commercial practice is directed at a particular group of consumers, or if only a clearly identifiable group of consumers is particularly vulnerable due to mental or physical infirmity, age or credulity, and the trader should have understood this, the unfairness of the practice shall be assessed from the perspective of the consumer group in question. The protection of vulnerable groups shall not affect the common and legitimate practice of making exaggerated statements which are not meant to be taken literally.

A commercial practice shall always be unfair if it is misleading pursuant to section 7 or section 8, or aggressive pursuant to section 9.

The Ministry shall by regulation lay down the forms of commercial practice that are to be considered unfair in all circumstances.

## **Section 7. *Misleading acts***

A commercial practice shall be considered misleading if it contains false information and is therefore untruthful, or if it is otherwise likely to deceive consumers in relation to one or more of the following elements:

- a. the existence or nature of the product,
- b. the main characteristics of the product, such as its availability, benefits or risks, the product's execution, quantity, composition, specifications, accessories, origin, method and date of manufacture or provision of the product, delivery, usage or fitness for purpose, results to be expected from its use, tests or checks carried out on the product, or after-sale service and complaint-handling,
- c. the extent of the trader's 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 trader or the product,
- d. the price of the product or how the price is calculated, or the existence of a price advantage,
- e. the need for a service, parts, replacement or repairs,
- f. the nature, attributes and rights of the trader or the trader's agent,
- g. the rights of the consumers, including the right to replacement or reimbursement, or the risks the consumers may face,
- h. the trader's duty to observe industry codes of conduct.

The practice shall nevertheless only be regarded as misleading if it is likely to cause consumers to make an economic decision that they would not otherwise have made.

Any marketing of a product, including comparative advertising, which creates confusion with the product or trade mark, trade name or other distinguishing mark of a competitor, shall also be considered misleading.

## **Section 8. *Misleading omissions***

A commercial practice shall be considered misleading if, in its specific context and pursuant to an overall evaluation, it omits or hides material information that consumers require in the context to be able to make an informed economic decision, or if it presents the information in an unclear, unintelligible, ambiguous or

unsuitable manner. In the assessment of whether information has been omitted, account shall be taken of limitations of space or time on the medium used to communicate the commercial practice, and of any measures implemented by the trader to make the information available to consumers by other means.

The practice shall nevertheless only be regarded as misleading if it is likely to cause consumers to make an economic decision that they would not otherwise have made.

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

- a. information about the main characteristics of the product, to an extent appropriate to the medium and the product,
- b. information about the geographical address and identity of the trader and, if applicable, the geographical address and identity of the trader on whose behalf the person is acting,
- c. information about the arrangements for payment, delivery, performance and complaint-handling, if these depart from the requirements of good business practice towards consumers,
- d. for products and transactions involving a right of withdrawal or right of cancellation, information about the existence of such a right.

The same shall apply to information about the price inclusive of taxes or, if the nature of the product means that the price cannot reasonably be calculated in advance, about how the price is calculated. Where appropriate, all additional freight, delivery or postal charges shall be disclosed. If the charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable shall be disclosed.

«Invitation to purchase» shall mean a commercial communication which indicates the characteristics and price of the product in a way appropriate to the means of the commercial communication used and thereby enables consumers to make a purchase.

## **Section 9. Aggressive commercial practices**

A commercial practice shall be considered aggressive if it, in its specific context and pursuant to an overall evaluation, by harassment, coercion, including the use of physical force, or undue influence, is likely significantly to impair the freedom of choice or conduct of consumers with regard to a product. «Undue influence» shall mean exploiting a position of power in relation to consumers so as to apply pressure, even without using or threatening to use physical force, in a way which significantly reduces the ability of consumers to make an informed decision.

In determining whether a commercial practice is aggressive, account shall be taken of:

- a. timing, location, nature and duration,
- b. use of threatening or improper language or behaviour,
- c. the exploitation by the trader of a specific misfortune or circumstance that is so serious that it may impair the consumer's judgement, of which the trader is aware, to influence the consumer's decision with regard to the product,
- d. onerous or disproportionate non-contractual barriers imposed by the trader where consumers wish to exercise rights under the contract, including rights to terminate a contract or to switch to another product or another trader,
- e. any threat of unlawful acts.

The practice shall nevertheless only be regarded as aggressive if it is likely to cause consumers to make an economic decision that they would not otherwise have made.

## **Section 10. Price marking and information duty, etc.**

A person who in the course of trade sells goods, services or other products to consumers shall, to the extent that this is practically possible, provide information about the prices in such a way that they can easily be seen by the customers.

The Ministry may by regulation provide more detailed rules relating to the implementation of the duty in the first paragraph.

In order to facilitate the evaluation of prices and the quality of goods and services by customers, the Ministry may by regulation order traders to implement measures in addition to those that follow from the requirement in the first paragraph. Such regulations relating to information measures may, among other things:

- a. order marking, notices or other information about price, commercial terms, quality and other properties,
- b. order grading and issue provisions relating to weights and measures and the provision of information about the price per unit (comparison price) of goods offered for sale.

An exemption may be made from the right of access pursuant to the Freedom of Information Act<sup>1</sup> for information that concerns grocery prices and is linked to an information portal established on the basis of this Act.

1 Offentleglova

## **Section 10 a. *Information about ADR entities and the platform for online resolution of disputes, etc.***

Traders must provide the consumers with clear and understandable information concerning ADR entities which can handle a case between the parties and which have been registered pursuant to section 27 of the Act relating to alternative dispute resolution entities in consumer matters. The information must refer to the ADR entities' websites. This information must as a minimum be provided in the general contract terms and conditions, where such exist, and on the trader's website, where such exists. The information must be easy to find on the website.

Traders must inform the consumer in accordance with the first paragraph when a case arises between the parties, and it is clear that the parties will not find an amicable solution on their own. The information must be given in writing or on some other durable medium. A durable medium is any device which enables the consumers to store information in such a way that it may subsequently be retrieved in an unaltered state.

Traders who enter into agreements with consumers on the internet or in online marketplaces, must on their websites have an easily accessible electronic link to the platform for online dispute resolution, which is established through implementation of Regulation (EU) no. 524/2013 on online dispute resolution for consumer disputes, cf. section 28 of the Act relating to ADR entities in consumer matters. Information about the platform must also be given in the general contract terms and conditions, where such exist. The trader must also inform consumers that this platform can be used to handle cases between the parties. When the consumer is presented with an offer by e-mail, the e-mail must contain an electronic link to the platform. The trader's online website must also show his/her e-mail address.

## **Chapter 3. Particular forms of marketing, etc.**

### **Section 11. *Demand for payment for goods, services or other products without prior agreement, etc.***

It shall be prohibited in the course of trade:

- a. to demand payment for goods, services or other products without prior agreement,

b. to deliver goods, services or other products with a demand for payment without prior agreement.

In the event of a delivery made contrary to sub-paragraph (b) of the first paragraph, the recipient shall not be obliged to pay, unless otherwise provided by law.

It shall be prohibited in the course of trade to refer consumers who contact traders in connection with an agreement between the parties to a telephone number that charges the consumer a higher price than the basic rate.

Prior to entering into an agreement, the trader shall seek the consumer's explicit consent for any payment in addition to the remuneration agreed upon for the contractual service. If such consent is not obtained, but is inferred by using default options which the consumer must reject in order to avoid the additional payment, the consumer shall be entitled to reimbursement of this additional charge.

The Ministry may by regulation issue more detailed provisions on the requirement to document concluded contracts and to store such documentation.

## ***Section 12. Prohibition on marketing by telephone when the recipient has opted out***

In the course of trade it shall be prohibited to direct telephone marketing to consumers who have opted out of such marketing by registering in the Central Marketing Exclusion Register.<sup>1</sup>

In the course of trade it shall be prohibited to direct telephone marketing to natural persons who have opted out of such marketing directly with the trader.

However, it shall be permitted to direct telephone marketing to natural persons who have opted out according to the first and second paragraphs, if the natural person has made an express request to a specific trader concerning receiving such marketing from the trader. Such a request may be withdrawn at any time.

It shall also be permitted to direct telephone marketing to consumers who have opted out of such marketing in the Central Marketing Exclusion Register, if there is an existing customer or donor relationship and the trader has received the consumer's contact information in connection with sales or fundraising. Such marketing can only relate to the trader's own products that correspond to those on which the customer or donor relationship is based.

For voluntary organisations, an existing donor relationship shall also be considered to exist if the donor, following his/her first contribution, has consented to or asked to be contacted on a later occasion, or the donor has made sporadic donations over a three-year period.

1 Reservasjonsregisteret

## ***Section 13. Prohibition on marketing by addressed mail when the recipient has opted out***

In the course of trade it shall be prohibited to direct marketing by addressed mail to consumers who have opted out of such marketing by registering in the Central Marketing Exclusion Register.

In the course of trade it shall be prohibited to direct marketing by addressed mail to natural persons who have opted out of such marketing directly with the trader.

However, it shall be permitted to direct marketing by addressed mail to natural persons who have opted out according to the first and second paragraphs, if the natural person has made an express request to a trader

concerning receiving such marketing from the trader. Such a request may be withdrawn at any time.

It shall also be permitted to direct marketing by addressed mail to consumers who have opted out of such marketing in the Central Marketing Exclusion Register, if there is an existing customer or donor relationship and the trader has received the consumer's contact information in connection with sales or fundraising. Such marketing can only concern the trader's own products that correspond to those on which the customer or donor relationship is based.

### ***Section 13 a. Common rules for opting out of marketing by telephone and marketing by addressed mail***

The Central Marketing Exclusion Register shall enable consumers, if they so wish, to opt out of marketing from other than voluntary organisations.

Traders shall update their address register in line with the Central Marketing Exclusion Register before their first inquiry and before inquiry in the month when the marketing is conducted.

Traders shall make sure that natural persons easily and without costs can opt out of marketing directly with the trader.

The Ministry may by regulation stipulate further rules on the Central Marketing Exclusion Register and opting out directly with the trader.

### ***Section 14. Prohibition on telephone marketing at certain times, calling from hidden telephone numbers, etc.***

In the course of trade it shall be prohibited to direct telephone marketing to consumers on Saturdays, Sundays or other public holidays, and on working days before 09:00 and after 21:00.

In the course of trade it shall be prohibited to direct telephone marketing to consumers from a hidden telephone number and from a telephone number that is not registered or cannot be found in telephone directories.

### ***Section 15. Restrictions on the use of certain methods of communication***

It shall be prohibited in the course of trade, without the prior consent of the recipient, to direct marketing communications at natural persons using electronic methods of communication which permit individual communication, such as electronic mail, telefax or automated calling systems (calling machines).

The prior consent requirement specified in the first paragraph shall not, however, apply to marketing where the natural person is contacted orally by telephone.

The prior consent requirement specified in the first paragraph shall also not apply to marketing by means of electronic mail where there is an existing customer relationship and the contracting trader has obtained the electronic address of the customer in connection with a sale. The marketing may only relate to the trader's own goods, services or other products corresponding to those on which the customer relationship is based. At the time that the electronic address is obtained, and at the time of any subsequent marketing communication, the customer shall be given a simple and free opportunity to opt out of receiving such communications.

«Electronic mail» shall in this section mean any communication in the form of text, speech, sound or image that is sent via an electronic communications network, and that can be stored on the network or in the terminal equipment of the recipient until the recipient retrieves it. This includes text and multimedia messages sent to mobile telephones.

The provisions of the E-commerce Act,<sup>1</sup> including section 9 on electronic marketing, shall apply in addition to this provision.

1 Ehandelsloven

## ***Section 16. Information duty in the case of unsolicited marketing by telephone or by addressed mail***

In the case of unsolicited marketing by telephone or addressed mail, the trader must disclose who has provided the personal information that led to the inquiry. Where it is relevant, the trader must provide information on the right to opt out in the Central Marketing Exclusion Register and directly with the trader.

In the case of unsolicited telephone marketing to consumers, the trader must immediately introduce himself/herself and state that he or she is calling for marketing purposes. If the inquiry is made on behalf of someone else, this must also be said.

### ***Section 16 a. In particular about voluntary organisations' non-commercial activities***

Where voluntary organisations' activities are not regulated by the general provisions of the Act, the following shall apply:

- a. Natural persons may opt out of fundraising conducted by voluntary organisations. The rules for marketing by telephone and addressed mail in sections 12, 13, 13 a paragraphs 2-4, 14 and 16 apply correspondingly for fundraising by voluntary organisations.
- b. It shall be prohibited for voluntary organisations to send natural persons a request for financial support that is likely to be understood as a demand for payment.

The Ministry may by regulation stipulate further rules on how to formulate requests for financial support.

## ***Section 17. Delivery of unaddressed advertising material and free newspapers***

It shall be prohibited in the course of trade to deliver or to instruct an intermediary to deliver unaddressed advertising material or free newspapers to consumers who have clearly stated that they object to this. An intermediary shall not, however, be liable for the delivery if the intermediary has been informed, and has reason to believe, that the material being delivered is not advertising material or a free newspaper.

Inserts distributed with newspapers and other printed matter that are covered by editorial responsibility shall not be considered unaddressed advertising material or a free newspaper pursuant to this provision.

### **Section 18. Additional advantage when marketing to consumers**

Traders who in marketing offer consumers an additional advantage or an opportunity to obtain such an advantage, for example in the form of discounts, gifts, participation in competitions or games, shall ensure that the terms and conditions for making use of the offer are clear and easily accessible to the consumers.

## **Chapter 4. Special provisions relating to the protection of children**

### **Section 19. General provision**

When a commercial practice is directed at children, or may be seen or heard by children, particular care shall be exercised with regard to the impressionability, lack of experience and natural credulity of children.

In the assessment of whether a commercial practice contravenes provisions in or introduced pursuant to this Act, account shall be taken of age, development and other factors that make children particularly vulnerable.

### **Section 20. Unfair commercial practices affecting children**

In the assessment of whether a commercial practice is unfair pursuant to section 6, emphasis shall be given to whether the commercial practice is directed especially at children. Even if the commercial practice is not directed especially at children, emphasis shall be given to whether the practice, by virtue of its nature or the product, is likely to influence children, and to whether the trader can be expected to foresee the particular vulnerability of children to the practice.

It shall be prohibited to include in advertising direct exhortations to children to purchase advertised products or to persuade their parents or other adults to buy the advertised products for them.

### **Section 21. Special provisions relating to good marketing practice towards children**

In an assessment pursuant to section 2 of marketing directed at children, emphasis shall be given to, among other things, whether the marketing:

- a. encourages breaches of the law, dangerous behaviour or breaches of ordinary safety norms,
- b. plays on social insecurity, a bad conscience or poor self-confidence,
- c. employs frightening means or is likely to cause fear or anxiety, or
- d. employs aggressive means like violence, sexuality or drugs.

## **Chapter 5. Control of contract terms and conditions, etc.**

### **Section 22. Unfair contract terms and conditions**

Terms and conditions which are applied or are intended to be applied in the course of trade with consumers may be prohibited if they are deemed to be unfair to consumers and if general considerations call for such a prohibition. The same shall apply to terms and conditions applied to organisations that are not primarily acting in the course of trade, as long as the contract is to serve the personal purposes of the members.

In the assessment of fairness, emphasis shall be given to the balance between the rights and obligations of the parties, and to the clarity of the contractual relationship.

The first and second paragraphs shall not apply to the content of terms and conditions relating to prices, or to the content of terms and conditions relating to pay and work in employment relationships. The King may issue rules specifying particular contractual relationships to which the first and second paragraphs shall not apply.

### ***Section 23. Requirements relating to guarantee conditions in consumer relationships***

If a guarantee is provided, the guarantee conditions shall provide the following information in a clear and plain manner:

- a. the content of the guarantee, including any limitations and special conditions,
- b. that the rights of the consumer under the applicable legislation, which shall be specified, apply in addition to the guarantee, and that these rights are not affected by the guarantee,
- c. what is required in order to make use of the guarantee, including the duration and geographical scope of the guarantee and the name and address of the guarantor,
- d. the maximum time limit for lodging a complaint under current and more precisely specified legislation, if this is longer than the guarantee period,
- e. that a complaint may in any event be lodged about the product in its entirety under the applicable legislation, which shall be specified, if the guarantee is limited, for example if the guarantee applies only to a part of the product, or if the guarantee only covers some of the repair costs.

Where marketing prior to conclusion of a contract is directed at Norwegian consumers, the guarantee conditions shall be drawn up in Norwegian.

Before the contract is concluded, the guarantor shall inform the consumer of the guarantee and of the consumer's right to receive the guarantee conditions. When the consumer so requests, he or she shall be provided with the guarantee conditions in a legible form that is stored on paper or in another durable medium that is accessible to the consumer.

### ***Section 24. Application of the Competition Act<sup>1</sup>***

Section 10 of the Competition Act shall not apply to the use of contract terms and conditions that have been negotiated in cooperation with The Consumer Authority.<sup>2</sup>

1 Konkurranseloven

2 Forbrukertilsynet

## **Chapter 6. Protection of the interests of traders**

### ***Section 25. Good business practice***

No act shall be performed in the course of trade which conflicts with good business practice among traders.

### ***Section 26. Misleading business methods***

It shall be prohibited in the course of trade to use an incorrect or otherwise misleading representation which is likely to influence the demand for or supply of goods, services or other products. In this chapter, «representation» shall mean any form of announcement or statement made orally, in writing or otherwise, thus including descriptions, pictures, demonstrations, the form, size or type of packaging, etc.

The Ministry may by regulation issue more detailed provisions relating to comparative advertising.

### ***Section 27. Insufficient guidance, etc.***

It shall be prohibited in the course of trade to use any representation which is likely to influence the demand for or supply of goods, services or other products when the representation must be considered unfair because it does not provide reasonable or sufficient guidance or introduces irrelevant matters.

### ***Section 28. Trade secrets***

A person who has obtained knowledge or possession of a trade secret in connection with an employment or business relationship or a position of trust shall not exploit the secret unlawfully in the course of trade.

The same shall apply to any person who has obtained knowledge or possession of a trade secret through another person's breach of a confidentiality obligation or otherwise through the unlawful act of another person.

### ***Section 29. Technical aids***

A person who has been entrusted with technical drawings, descriptions, formulas, models or similar technical aids in connection with an employment or business relationship or a position of trust shall not use these unlawfully in the course of trade.

The same shall apply to any person who has obtained possession of technical drawings, descriptions, formulas, models or similar technical aids through the unlawful act of another person.

### ***Section 30. Copying the products of another person***

It shall be prohibited in the course of trade to use copies of distinguishing marks, products, catalogues, advertising materials or other produced items in such a manner and under such circumstances that the use must be considered an unfair exploitation of the efforts or results of another person, and to present a risk of confusion.

### ***Section 31. Application of incorrect geographical descriptions to wines and spirits***

It shall be prohibited in the course of trade to apply a geographical description to a wine or spirit which does not originate from the geographical location designated by the description. This shall apply even if the actual place of origin is also stated, or if the geographical description has been translated or is followed by an expression like «kind», «type», «imitation», or something similar.

## **Chapter 7. Enforcement**

## **Section 32. *The authorities and their independence, etc.***

The Consumer Authority<sup>1</sup> and the Market Council<sup>2</sup> shall monitor the traders' commercial practices and contract terms and conditions in accordance with chapter 7.

The Consumer Authority and the Market Council are independent administrative bodies under the Ministry. The King and the Ministry cannot control the Consumer Authority's or the Market Council's exercise of authority in individual cases or their general interpretation of the law. The Ministry does not consider decisions made by the Consumer Authority or the Market Council. However, the Ministry considers appeals regarding other decisions than those made by the Market Council in the first instance, which can be appealed according to the Public Administration Act.<sup>3</sup> The Ministry also handles appeals after refusal of a request for access pursuant to the Freedom of Information Act.

If a commercial activity that falls under this Act, also comes under regulations or control provisions in other acts, the King may stipulate further rules on the delimitation between the various authorities' remit and the cooperation between them.

1 Forbrukertilsynet

2 Markedsrådet

3 Forvaltningsloven

## **Section 33. *How the authorities are organised***

The Consumer Authority is headed by a director. The director is appointed by the King for a period of six years, and the appointment may be repeated once.

The Market Council shall have a chairperson, a vice chairperson and as many members as are necessary to fulfil the duties of the Market Council.

The Market Council's chairperson and vice chairperson must meet the requirements for judges in section 53 first paragraph and section 54 second paragraph of the Courts of Justice Act.<sup>1</sup> The chairperson, vice chairperson and other members are appointed by the King for four years.

1 Domstolloven

## **Section 34. *Information duty and inspection etc.***

Everyone is obligated to provide the Consumer Authority or the Market Council with the information these authorities require to carry out their duties under the law, including information that is necessary to assess whether a commercial practice is unfair. The authorities may require the information to be provided in writing or orally, within a given deadline. On the same conditions to those mentioned in the first and second sentences, the authorities may order the surrender of all types of information and the storage medium of such information.

The Consumer Authority and the Market Council may inspect all premises, land, devices and equipment, including means of transport, used by traders in the course of trade. Representatives or employees of the trader have a duty to provide the necessary guidance and assistance in the implementation of inspections. The Consumer Authority and the Market Council may request the assistance of the police to implement inspections.

The Consumer Authority and the Market Council may seize documents and objects, and take copies, that they find necessary to carry out their tasks under the law. Items may only be seized for the necessary period and to the extent necessary.

The duty of confidentiality that follows from law, order or agreement, does not preclude the information duty or the right to conduct inspections or seizures pursuant to this section. This does not, however, apply to information, documents or objects etc. that are comprised by the duty of secrecy mentioned in sections 117–120 of the Criminal Procedure Act, with the exception of section 118, first paragraph, first sentence. When there is a suspected breach of provisions which the Consumer Authority monitors pursuant to section 35 first paragraph, and particular considerations make it necessary, a provider of access to an electronic communication network or service may be ordered to provide information on the number of marketing messages through electronic means, a contract-based secret telephone number or other subscription information, as well as electronic communication address, even though the information is comprised by section 118 first paragraph, second sentence of the Criminal Procedure Act.

The Consumer Authority may purchase goods and services, if necessary under a cover identity, in order to detect infringements of provisions under the Consumer Authority's purview pursuant to section 35, first paragraph, and to obtain evidence for use in the Consumer Authority's case handling. The Consumer Authority may demand, in whole or in part, the repayment of the purchase price or waiver of payment claims, to the extent this does not disproportionately disadvantage the trader.

### ***Section 35. The Consumer Authority's duties***

The Consumer Authority monitors compliance with the provisions in chapters 1 to 5 of this Act, as well as provisions given pursuant to this Act. The Consumer Authority shall also conduct such monitoring as is ordered under other sets of rules.

The Consumer Authority conducts monitoring out of consideration for the consumers. Monitoring pursuant to section 2 second paragraph, however, is conducted out of consideration for equality of the sexes, with particular emphasis on how women are portrayed. Monitoring pursuant to section 10 with regulations is conducted so that consumers can gain an overview of the market and easily compare prices.

### ***Section 36. The Consumer Authority's processing of cases and competence to make decisions***

The Consumer Authority shall on its own initiative, or on request from others, seek to encourage traders to follow the provisions which the Consumer Authority is to monitor pursuant to section 35, including by conducting negotiations with the traders or their organisations.

If the Consumer Authority finds that a trader is acting in breach of the provisions mentioned in section 35, the Consumer Authority may demand a written confirmation that the illegal situation will cease, or it may make a decision. The Consumer Authority may also obtain a written confirmation that the trader will offer remedial measures to affected consumers.

### ***Section 37. The Market Council's duties, etc.***

The Market Council processes appeals of decisions made by the Consumer Authority, other decisions that may be appealed pursuant to the Public Administration Act and decisions pursuant to the second paragraph. The Market Council also processes appeals on decisions made by other bodies than the Consumer Authority, when this follows from other regulations.

The Consumer Authority's decisions that terms and conditions or a commercial practice is legal, or that a case is not a priority, may be appealed to the Market Council by traders or consumers who are affected by the

action or the terms and conditions, or by a group of traders, consumers or employees.

The Market Council's decisions cannot be appealed.

## **Section 38. Regulation**

The Ministry may by regulation provide further provisions concerning the Consumer Authority's and the Market Council's organisation, duties and processing of cases.

## **Section 39. Decisions made by the Consumer Authority and the Market Council**

The Consumer Authority and the Market Council may, if they find that considerations mentioned in section 35 second paragraph warrant intervention, make an individual decision concerning

- a. a prohibition or an order pursuant to section 40
- b. an order pursuant to section 41
- c. an enforcement penalty pursuant to section 42.

A decision pursuant to a) and b) is valid for five years unless the decision says otherwise. The decision may be valid for a maximum of ten years. The decision may be renewed.

The Consumer Authority may make decisions pursuant to the first paragraph (a) of an interim nature where there is reasonable suspicion of infringement of provisions under the Consumer Authority's purview pursuant to section 35, and there is a risk of serious harm to the interests of consumers. Interim decisions shall be effective for a specified period of time that may not exceed three weeks from the time it took effect. Decisions may be renewed if the conditions in the first paragraph are satisfied.

Decisions pursuant to the first and second paragraph may also be directed at accessories. However, this does not apply for decisions against advertising in breach of section 3-1 first paragraph of the Broadcasting Act and regulations given pursuant to section 3-1 third paragraph of the Broadcasting Act. Section 48 fifth paragraph applies correspondingly.

Legal proceedings relating to decisions made by the Market Council or the Consumer Authority must be initiated within six months from the party received information about the decision. The deadline is calculated according to the rules in sections 148 and 149 of the Courts of Justice Act. A reinstatement may be granted for failure to comply with the deadline pursuant to the rules in sections 16-12 to 16-14 of the Dispute Act.

## **Section 40. Prohibitions and orders**

Prohibitions and orders may be issued to ensure that provisions as mentioned in section 35, first paragraph are observed. The use or intended use of terms and conditions as described in section 22 may also be prohibited.

## **Section 41. Enforcement penalties**

To ensure compliance with decisions pursuant to section 40 or confirmations pursuant to section 36, second paragraph, an enforcement penalty which must be paid in case of non-compliance with the decision or confirmation shall be fixed. The fixing of the enforcement penalty may be omitted if special circumstances so indicate.

The enforcement penalty may be fixed as a running charge or as a lump sum. When determining the

enforcement penalty, emphasis shall be given to the consideration that it must not be profitable to breach the decision.

To ensure compliance with orders pursuant to section 34 first paragraph, an enforcement penalty may be stipulated and is to be paid by the party to whom the order is directed, if the order is not followed. The second paragraph first sentence applies correspondingly.

A final decision requiring payment of an enforcement penalty shall constitute a ground for enforcement of the amount due.

In special cases, accrued penalties may be reduced or waived.

The Ministry may by regulation provide more detailed rules relating to the imposition of an enforcement penalty.

## **Section 42. *Infringement penalties***

In the event of intentional or negligent infringement of section 6, section 10, section 11, section 12, section 13, section 13 a, section 14 first paragraph, section 15, section 16, section 16 a first paragraph a, section 17, section 18, section 20 second paragraph or of regulations pursuant to section 6 fifth paragraph or section 10, which is considered significant or which has taken place repeatedly, an infringement penalty may be stipulated and is to be paid by the party to whom the decision is directed. If the trader, or anyone acting on behalf of the trader, intentionally or negligently fails to comply with the duty to assist in inspections pursuant to section 34, second paragraph, an enforcement penalty may be imposed on the trader.

In the determination of the amount of the penalty, emphasis shall be given to the severity, scope and effects of the infringement.

Payment of the infringement penalty shall fall due four weeks after the decision is made. A final decision relating to an infringement penalty shall constitute a ground for enforcement of the amount due.

The Ministry may by regulation provide more detailed rules relating to the assessment of infringement penalties.

## **Section 43. *Orders to remove digital online content etc.***

If an infringement of provisions under the Consumer Authority's purview pursuant to section 35, first paragraph, entails a risk of serious harm to the interests of consumers, and there are no other effective means to stop the infringement, the court may, at the Consumer Authority's request, order

- a. a hosting service provider or owner of an online interface to remove content on the interface or include an explicit display of a warning to consumers when they access the online interface,
- b. an internet service provider to restrict access to an online interface,
- c. a hosting service provider to remove, disable or restrict access to an online interface,
- d. a top-level domain registry or a domain registrar to delete, suspend or re-register a fully qualified domain name to the Consumer Authority.

In assessing whether an order should be issued, considerations should be made for freedom of information and freedom of expression, the collective interests of consumers, the defendant's interests, and the possibility of less intrusive measures.

### **Section 43 a. *Interim measures in case of orders pursuant to Section 43***

The court issues orders pursuant to section 43 as interim measures pursuant to the rules in the Dispute Act Chapter 32 and 34, with the adjustments that follow from section 43 b and section 43 c. The person who breaches the regulations according to section 43, first paragraph and the person responsible for implementing the order pursuant to section 43, first paragraph (a-d) will be assigned the role of defendant.

Applications for interim measures are submitted in writing to the Oslo County Court. The application must specify all the parties. The application must account for the grounds on which it is based. Documents cited and which are in the plaintiff's possession, must be included with the application.

### **Section 43 b. *The court's decision etc.***

If the person who breaches the regulations according to section 43, first paragraph is unknown or has an unknown address, a decision ordering interim measures pursuant to section 43 a, first paragraph, may be made without summoning the person in breach of the regulations to an oral hearing. In such circumstances, communications from the court to the person in breach of the regulations pursuant to section 43, first paragraph, may be waived. In circumstances as mentioned in the first sentence, a person in breach of the regulations according to section 43, first paragraph, may demand a subsequent oral hearing pursuant to the Dispute Act section 32-8.

If an appeal has not been decided when a person in breach of the regulations according to section 43, first paragraph, demands an oral hearing pursuant to section 32-8 of the Dispute Act, processing of the appeal shall be stayed. The appeal and decisions in the appeal concerning the merits of the case lapse if the court issues a new decision on the merits following a subsequent oral hearing. The court's decision based on a subsequent oral hearing may be appealed.

### **Section 43 c. *Relationship to the rules in the Dispute Act***

The person responsible for implementing an order pursuant to section 43, first paragraph (a-d) may only be ordered to cover the plaintiff's legal costs pursuant to Chapter 20 of the Dispute Act in appeals where said party is the appellant. Costs may nevertheless be imposed pursuant to the Dispute Act section 20-4 (c).

Section 32-9 of the Dispute Act does not apply to the person responsible for implementing orders pursuant to section 43, first paragraph (a-d).

The Dispute Act section 34-6, first paragraph (c) does not apply when the plaintiff's claims have been upheld.

## **Chapter 8. Cross-border enforcement, etc.**

### **Section 44. Scope**

The provisions in this chapter apply to acts undertaken in the course of trade that contravene provisions which pursuant to the EEA Agreement protect the collective interests of consumers, as these provisions have been incorporated into Norwegian law.

Sections 45 and 46 shall apply to acts that contravene provisions implementing the EEA legislation that is

included in Annex 1 to Directive 2009/22/EC of the European Parliament and of the Council on injunctions for the protection of consumers' interests. The provisions shall only apply to acts performed in the course of trade in Norway that produce their effects in another EEA state or acts performed in the course of trade in another EEA state that produce their effects in Norway.

Section 47 shall apply to acts that contravene provisions implementing the EEA legislation that is included in the annex to Regulation (EC) No 2006/2004 of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws. The provision shall only apply if the legal breach affects consumers that are resident in another member state than the one where the legal breach originated or took place, where the trader is established, or where the evidence is located.

The Ministry shall issue regulations providing which provisions protect the collective interests of consumers at any given time pursuant to the second and third paragraphs.

#### **Section 45. Right to submit cases to the Consumer Authority and the Market Council**

Foreign authorities and organisations that are included on the list of qualified entities that is published by the EU Commission in the Official Journal of the European Communities and its EEA Supplement pursuant to the provisions of the EEA Agreement may submit a case to the Consumer Authority and the Market Council with a view to securing a prohibition on acts as described in section 44, second paragraph.

#### **Section 46. Authorisation of authorities and organisations**

The Ministry shall authorise Norwegian authorities and organisations that are permitted to act as a party to cases in other EEA states with a view to securing a prohibition on acts as described in section 44, second paragraph. The Ministry shall inform the Standing Committee of the EFTA States of the names and objectives of the designated authorities and organisations with a view to their inclusion on the list referred to in section 45.

The Ministry may by regulation provide more detailed rules relating to approval pursuant to the first paragraph.

#### **Section 47. Incorporation of the regulation on cooperation between national authorities responsible for the enforcement of consumer protection laws**

Annex XIX no. 7f to the EEA Agreement (Regulation (EC) No 2006/2004) on cooperation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection cooperation) shall have the force of law subject to the adaptations that follow from the annex itself, from Protocol 1 to the Agreement and otherwise from the Agreement.

The Ministry shall designate the relevant authority that is to enforce the provisions of the Regulation and a central liaison office.

### **Chapter 9. Penalties and civil sanctions**

#### **Section 48. Penalties**

A person who materially infringes section 6, fourth paragraph, see also first paragraph, regulations issued

pursuant to section 6, fifth paragraph, section 11, section 12, section 13, section 15, section 16 a, first paragraph a), see also section 12 and section 13, section 20, second paragraph, section 26, section 27, section 28, section 29, or section 30, shall be subject to fines, imprisonment of up to six months, or both, unless a stricter penal provision applies.

Negligent material infringement of section 7 or section 8, see also section 6, fourth paragraph, see also first paragraph, section 11, first paragraph, section 26 or section 27 shall be subject to fines, imprisonment of up to six months, or both, unless a stricter penal provision applies.

In the assessment of whether an infringement is material, particular emphasis shall be given to the scope and effects of the infringement and the degree of guilt. If the person or business has previously been ordered to pay a fine or infringement penalty for infringement of this Act or regulations issued pursuant to this Act, penalties pursuant to the first and second paragraphs may be applied even if the infringement is not material.

A person who intentionally or negligently breaches a decision made pursuant to this Act shall be subject to fines, imprisonment of up to six months, or both, unless a stricter penal provision applies.

No penalty shall be imposed in relation to an infringement committed by a sales assistant, office assistant or similar subordinate employee if the infringement has essentially resulted from that person's dependent relationship with the trader.

No penalty shall be imposed in the event of an infringement of section 28 if knowledge or possession of the trade secret was acquired in a position of employment or trust, or through a breach of duty in such position, and more than two years have elapsed since the position ceased to exist.

#### ***Section 48 a. Penalties and civil sanctions in the event of unlawful use of geographical descriptions***

Use of geographical descriptions in infringement of sections 25, 26 or 31 shall be subject to fines or imprisonment of up to one year.

In the case of aggravating circumstances, the punishment shall consist of fines or imprisonment of up to three years. In the assessment of whether aggravating circumstances exist, particular emphasis shall be given to the damage to the injured party, including the harm to said party's business reputation, the gain obtained by the infringing party, and the scope of the offense in general.

In the case of infringement of the first and second paragraphs, prosecution may be waived if it is deemed to be not required in the public interest, cf. section 62a of the Criminal Procedure Act.

Provisions regarding sanctions in response to trademark infringement in chapter 8 of the Trademarks Act,<sup>1</sup> except for sections 60, 61 and 61a, shall apply correspondingly to the use of geographical descriptions in infringement of sections 25, 26, or 31.

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#### ***Section 48 b. Remuneration and compensation in the event of infringement of certain provisions in chapter 6***

In the event of wilful or negligent infringement of sections 28, 29 and 30, the infringing party shall pay to the injured party:

- a. Remuneration equivalent to a reasonable license fee for use, as well as compensation for damages resulting from the infringement that would not have occurred in the event of licensing,
- b. Compensation for damages resulting from the infringement, or
- c. Remuneration corresponding to the gain obtained as a result of the infringement.

Remuneration and compensation shall be set in accordance with the element in litras a through c that is most beneficial for the injured party.

The first paragraph shall apply correspondingly for cases involving aiding and abetting.

The first and second paragraphs shall apply correspondingly to infringements of sections 25 and 26 that consist of imitating another party's product, distinguishing marks, advertising material or other produced items.

#### **Section 49. *Rules relating to criminal procedure***

The prosecuting authority may in connection with criminal proceedings apply for a court order to secure the cessation of the unlawful act and to prevent its repetition.

### **Chapter 10. Entry into force etc.**

0 Not included in this translation.

#### **Section 50. *Entry into force<sup>1</sup> etc.***

0 Not included in this translation.

1 1 June 2009

#### **Section 51.**

0 Not included in this translation.