

MEMORIAL

Official Journal of the Grand Duchy of Luxembourg

DIGEST OF LEGISLATION A — No. 69 of 12 April 2011

EXTRACTS RELATING TO THE CSSF

Law of 8 April 2011 concerning the implementation of a Consumer Code as amended by the law of 2 April 2014

1. amending
 - the Consumer Code ;
 - the law of 14 August 2000 on electronic commerce, as amended;
 - the law of 30 May 2005 on the specific provisions relating to the protection of individuals with regard to the processing of personal data in the electronic communication sector and amending Articles 88-2 and 88-4 of the Code of Criminal Procedure;
 - the law of 8 April 2011 concerning the implementation of a Consumer Code;
2. repealing the law of 16 July 1987 on canvassing selling, street vending, displaying goods and seeking orders.

Article 4.

(3) Article 28(5), subparagraphs 1 and 2, of the amended law of 27 July 1991 on **electronic media**:

"The judge presiding the Chamber of the District Court (*Chambre du tribunal d'arrondissement*), sitting in commercial matters, may order any measure to stop any action contrary to this article or the Grand-ducal regulation referred to in the above-mentioned paragraph (4) at the request of the organisations referred to in Article L. 313-1 et seq. of the Consumer Code, the Minister responsible for consumer protection, **the CSSF** or the Commissariat aux Assurances. The injunction is initiated according to the procedure applicable before the summary court (*tribunal des référés*). The judge presiding the Chamber of the District Court, sitting in commercial matters, shall decide the matter as a court adjudicating on the substance. The deadline for the appeal is 15 days."

(4) Article 71-1, subparagraphs 1 to 3, of the amended law of 14 August 2000 on **electronic commerce**:

"The judge presiding the Chamber of the District Court (*Chambre du tribunal d'arrondissement*), sitting in commercial matters, may order any measure to stop any action contrary to Articles 1 to 5, 19 to 21, 46 to 52 of this Law at the request of the organisations referred to in Article L. 313-1 et seq. of the Consumer Code, the Minister responsible for consumer protection, **the CSSF** or the Commissariat aux Assurances.

The order may take place regardless of the initiated public prosecution. The measure ordered by the judge presiding the Chamber of the District Court, sitting in commercial matters, ends however in case the criminal judge decided on an acquittal which is *res judicata* (*chose jugée*). The injunction is initiated according to the procedure applicable before the summary court (*tribunal des référés*). The judge presiding the Chamber of the District Court, sitting in commercial matters, shall decide the matter as a court adjudicating on the substance. The deadline for the appeal is 15 days."

(5) Article 23, subparagraphs 1 to 3, of the amended law of 30 July 2002 regulating **certain commercial practices**, sanctioning **unfair competition** and transposing Directive 97/55/EC of the European Parliament and of the Council amending Directive 84/450/EEC concerning **misleading advertising** so as to include comparative advertising:

"The judge presiding the Chamber of the District Court (*Chambre du tribunal d'arrondissement*), sitting in commercial matters, may order, at the request of any person, professional group, organisations referred to in Article L. 313-1 et seq. of the Consumer Code, the Minister responsible for consumer protection, **the CSSF** or the Commissariat aux Assurances, the cessation of actions contrary to the provisions of Articles 1 to 22 of this Law, even in the absence of evidence of a loss or real damage or the intention or negligence by the advertiser.

The order may take place regardless of the initiated public prosecution. The measure ordered by the judge presiding the Chamber of the District Court, sitting in commercial matters, ends however in case the criminal judge decided on an acquittal which is *res judicata* (*chose jugée*). The injunction is initiated according to the procedure applicable before the summary court (*tribunal des référés*). The judge presiding the Chamber of the District Court, sitting in commercial matters, shall decide the matter as a court adjudicating on the substance. The deadline for the appeal is 15 days."

(7) Article 2(1), fifth indent, of the amended law of 10 August 1991 on the **legal profession**:
"- of the Minister responsible for consumer protection, the Minister responsible for health, **the CSSF** and the Commissariat aux Assurances to be represented in the courts deciding on the basis of an action by a civil servant or agent of their administration, duly mandated pursuant to Article L. 313-1 et seq. of the Consumer Code."

Provisions regarding consumer credit agreements

Article 6. The following provisions regarding consumer credit agreements are inserted:

Section 2. Injunction

Article 24. The judge presiding the Chamber of the District Court (*Chambre du tribunal d'arrondissement*), sitting in commercial matters, may order any measure to stop any action contrary to the provisions of this title and to the relevant applicable regulations at the request of the organisations referred to in Article L. 313-1 et seq. of the Consumer Code, the Minister responsible for consumer protection, **the CSSF** or the Commissariat aux Assurances.

The order may take place regardless of the initiated public prosecution. The measure ordered by the judge presiding the Chamber of the District Court, sitting in commercial matters, ends however in case the criminal judge decided on an acquittal which is *res judicata* (*chose jugée*). The proceeding is initiated according to the procedure applicable before the summary court (*tribunal des référés*). The judge presiding the Chamber of the District Court, sitting in commercial matters, shall decide the matter as a court adjudicating on the substance. The deadline for the appeal is 15 days. Articles 2059 to 2066 of the Civil Code are also applicable. The decision may be displayed inside or outside the sale facilities of the offender and at his expense. The decision shall specify the length of the display and may also order the whole or partial publication in newspapers or through other means at the offender's expense. The display and publication may only take place pursuant to a court decision which is *res judicata* (*chose jugée*). Any breaches of the injunctions or prohibitions ordered *via* a decision which is taken pursuant to this article and which is *res judicata* (*chose jugée*) shall be fined between EUR 251 and EUR 50,000.

Section 4. Out-of-court dispute resolution

Article 27. (1) **The CSSF** is competent to receive complaints from clients of lenders subject to its supervision with the aim to amicably settle these complaints where there is an alleged suspicion of breach of the provisions of this title and its implementing regulations.

Any other interested party, including consumer associations, may submit complaints to the CSSF where there is an alleged suspicion of breach of the provisions of this title and its implementing regulations.

In the case of a cross-border dispute, the CSSF is entitled to cooperate with the entities in the other Member States authorised to deal with complaints by consumers in order to amicably settle the complaint in accordance with Article 24(1) of Directive 2008/48/EC.

(2) The procedures laid down in this article shall be exercised without prejudice to the right to redress before ordinary courts.

CONSUMER CODE

as amended by the law of 2 April 2014

1. **amending**
 - **the Consumer Code ;**
 - **the law of 14 August 2000 on electronic commerce, as amended;**
 - **the law of 30 May 2005 on the specific provisions relating to the protection of individuals with regard to the processing of personal data in the electronic communication sector and amending Articles 88-2 and 88-4 of the Code of Criminal Procedure;**
 - **the law of 8 April 2011 concerning the implementation of a Consumer Code;**
2. **repealing the law of 16 July 1987 on canvassing selling, street vending, displaying goods and seeking orders.**

Subsection 3. Out-of-court dispute resolution

Article L. 224-26.

(1) The CSSF is competent to receive complaints from clients of lenders subject to its supervision with the aim to amicably settle these complaints where there is an alleged suspicion of breach of the provisions of this chapter and its implementing regulations.

Any other interested party, including consumer associations, may submit complaints to the CSSF where there is an alleged suspicion of breach of the provisions of this chapter and its implementing regulations.

In the case of a cross-border dispute, the CSSF is entitled to cooperate with the entities in the other Member States authorised to deal with complaints by consumers in order to amicably settle the complaint in accordance with Article 24(1) of Directive 2008/48/EC.

(2) The procedures laid down in this article shall be exercised without prejudice to the right to redress before ordinary courts.

BOOK 3.

IMPLEMENTATION OF CONSUMER RIGHTS

TITLE 1.

Consultative bodies and competent bodies

Chapter 1. *Competent authorities*

Article L. 311-5.

(1) The CSSF is the competent authority, pursuant to Regulation 2006/2004, to ensure compliance with the laws protecting consumer interests by persons subject to its supervision under Article 2 of the amended law of 23 December 1998 establishing a

financial sector supervisory commission ("Commission de surveillance du secteur financier").

Article L. 311-6.

(2) The Executive Board of the CSSF appoints the entitled agents chosen among the *carrière supérieure* civil servants who are referred to in Article 13 of the amended law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier").

Article L. 320-2.

(1) The judge presiding the Chamber of the District Court (*Chambre du tribunal d'arrondissement*), sitting in commercial matters, may order, at the request of any person, professional group, organisations referred to in Article L. 313-1 et seq. of this Code, the Minister responsible for consumer protection, **the CSSF** or the Commissariat aux Assurances, **the cessation of actions contrary to the provisions of Articles L. 121-1 to L. 122-7 of this Code** and to the relevant applicable regulations, even in the absence of evidence of a loss or real damage or the intention or negligence by the advertiser.

The order may take place regardless of the initiated public prosecution. The measure ordered by the judge presiding the Chamber of the District Court, sitting in commercial matters, ends however in case the criminal judge decided on an acquittal which is *res judicata* (*chose jugée*). The proceeding is initiated according to the procedure applicable before the summary court (*tribunal des référés*). The judge presiding the Chamber of the District Court, sitting in commercial matters, shall decide the matter as a court adjudicating on the substance. The deadline for the appeal is 15 days. Articles 2059 to 2066 of the Civil Code are also applicable. In case of misleading advertising or unlawful comparative advertising, the judge presiding the Chamber of the District Court, sitting in commercial matters, may:

a) require the advertiser to furnish evidence as to the accuracy of factual claims in advertising if, taking into account the legitimate interest of the advertiser and any other party to the proceedings, such a requirement appears appropriate on the basis of the circumstances of the particular case and in the case of comparative advertising require the advertiser to furnish such evidence in a short period of time:

b) consider factual claims as inaccurate if the evidence demanded in accordance with point (a) is not furnished or is deemed insufficient.

The decision may be displayed inside or outside the sale facilities of the offender and at his expense. The decision shall specify the length of the display and may also order the whole or partial publication in newspapers or through other means at the offender's expense. The display and publication may only take place pursuant to a court decision which is *res judicata* (*chose jugée*).

(2) Any breaches of the injunctions or prohibitions ordered *via* a decision which is taken pursuant to paragraph (1) of this article and which is *res judicata* (*chose jugée*) shall be fined between EUR 251 and EUR 120,000.

Article L. 320-3.

The judge presiding the Chamber of the District Court, sitting in commercial matters, may, at the request of any person, professional group, organisations referred to in Article L. 313-1 et seq. of this Code, the Minister responsible for consumer protection, **the CSSF** or the Commissariat aux Assurances, find that a **clause** or combination of clauses **is unfair** within the meaning of Articles L. 211-2 and L. 211-3 of this Code and decide that this clause or combination of clauses is deemed null and unwritten. The organisations, the Minister or entities referred to in the previous subparagraph may also request against one or several

professionals of the same economic sector or their professional organisations, an injunction for the abolition of one or several unfair clauses in the agreement models usually presented by the professionals to the consumers or by professional organisations to their members.

The order may take place regardless of the initiated public prosecution. The measure ordered by the judge presiding the Chamber of the District Court, sitting in commercial matters, ends however in case the criminal judge decided on an acquittal which is *res judicata* (*chose jugée*). The proceeding is initiated according to the procedure applicable before the summary court (*tribunal des référés*). The judge presiding the Chamber of the District Court, sitting in commercial matters, shall decide the matter as a court adjudicating on the substance. The deadline for the appeal is 15 days. Articles 2059 to 2066 of the Civil Code are also applicable. The decision may be displayed inside or outside the sale facilities of the offender and at his expense. The decision shall specify the length of the display and may also order the whole or partial publication in newspapers or through other means at the offender's expense. The display and publication may only take place pursuant to a court decision which is *res judicata* (*chose jugée*). Any breaches of the injunctions or prohibitions ordered *via* a decision which is taken pursuant to this article and which is *res judicata* (*chose jugée*) shall be fined between EUR 251 and EUR 50,000.

The persons, professional groups and organisations referred to in Article L. 313-1 et seq. of this Code may appear as civil party before the criminal courts as regards facts damaging their individual or collective interests.

Article L. 320-5.

The judge presiding the Chamber of the District Court, sitting in commercial matters, may order any measure **to stop any action contrary to the provisions of Articles L. 224-1 to L. 224-23 and L. 224-27 of this Code** and to the relevant applicable regulations at the request of the the organisations referred to in Article L. 313-1 et seq. of this Code, the Minister responsible for consumer protection, **the CSSF** or the Commissariat aux Assurances.

The order may take place regardless of the initiated public prosecution. The measure ordered by the judge presiding the Chamber of the District Court, sitting in commercial matters, ends however in case the criminal judge decided on an acquittal which is *res judicata* (*chose jugée*). The proceeding is initiated according to the procedure applicable before the summary court (*tribunal des référés*). The judge presiding the Chamber of the District Court, sitting in commercial matters, shall decide the matter as a court adjudicating on the substance. The deadline for the appeal is 15 days. Articles 2059 to 2066 of the Civil Code are also applicable. The decision may be displayed inside or outside the sale facilities of the offender and at his expense. The decision shall specify the length of the display and may also order the whole or partial publication in newspapers or through other means at the offender's expense. The display and publication may only take place pursuant to a court decision which is *res judicata* (*chose jugée*). Any breaches of the injunctions or prohibitions ordered *via* a decision which is taken pursuant to this article and which is *res judicata* (*chose jugée*) shall be fined between EUR 251 and EUR 50,000.

Article L. 320-6.

The judge presiding the Chamber of the District Court, sitting in commercial matters, may order any measure **to stop any action contrary to the provisions of Articles L. 222-12 to L. 222-22 of this Code** at the request of the organisations referred to in Article L. 313-1 et seq. of this Code or **the CSSF**.

The order may take place regardless of the initiated public prosecution. The measure ordered by the judge presiding the Chamber of the District Court, sitting in commercial matters, ends however in case the criminal judge decided on an acquittal which is *res judicata* (*chose*

jugée). The injunction is initiated according to the procedure applicable before the summary court (*tribunal des référés*). The judge presiding the Chamber of the District Court, sitting in commercial matters, shall decide the matter as a court adjudicating on the substance. The deadline for the appeal is 15 days. Articles 2059 to 2066 of the Civil Code are also applicable. The decision may be displayed inside or outside the sale facilities of the offender and at his expense. The decision shall specify the length of the display and may also order the whole or partial publication in newspapers or through other means at the offender's expense. The display and publication may only take place pursuant to a court decision which is *res judicata* (*chose jugée*). Any breaches of the injunctions or prohibitions ordered *via* a court decision which is taken pursuant to this article and which is *res judicata* (*chose jugée*) shall be fined between EUR 251 and EUR 50,000.