

BOOK VI "Market practices and consumer protection" in the Economic Law Code published.

On 30 December 2013, Book VI ("Market practices and consumer protection") of the Economic Law Code was published in the Belgian Official Journal. Book I ("Definitions"), Book II ("General principles"), Book IV ("Protection of competition"), Book V ("Competition and price evolutions"), Book VIII ("Quality of products and services"), Book IX ("Safety of products and services") and Book XV ("Law enforcement") have already been published. Ultimately the Code is supposed to include a total of 17 volumes. The concrete date of entry into force of this Book VI has yet to be set by the King (art. 14). As of that moment it will replace the Act of 6 April 2010 on Market Practices and Consumer Protection ("WMPC"), most of whose provisions it takes over. However, there are changes with regard to the general obligation to provide information to the consumer, remotely-concluded agreements unrelated to financial services, and agreements concluded away from business premises. This implements the Consumer Rights Directive (2011/83/EU). Actually, that was supposed to have happened already prior to 13 December 2013 (see our newsletter dated 15 December 2011). It is striking that the sales and black-out period regulation remains largely unchanged, as well as the basic prohibition on selling at a loss. Nevertheless, the Court of Justice ruled that the European Unfair Commercial Practices Directive (2005/29/EC) is opposed to a national provision "that generally prohibits announcements of price reductions and suggestions thereof during the black-out period, in so far as this provision is intended to protect consumers". The interpretation of this national provision is a task for the national judge. Within this framework, the Court of Cassation has already ruled that the black-out period regulation under the old Commercial Practices Act was indeed intended (inter alia) to protect consumers, and consequently conflicts with the Directive. However, there could be more room for doubt with regard to regulation under the Market Practices Act. A similar discussion is on-going with regard to the prohibition on selling at a loss. Evidently the Legislature now wishes to close this discussion by expressly providing that the aforementioned provisions have as their exclusive objective to "insure fair market practices between undertakings". There is an explicit disclaimer from any pretension that the black-out period or the prohibition on selling at a loss serves any consumer interest. Hypothetically these provisions would then remain outside the scope of application of the Unfair Commercial Practices Directive. However, it is very much the question whether such a manoeuvre will be enough for the Legislature to save in particular the black-out period, since it would appear all too easy to get around the application of the Unfair Commercial Practices

Directive by means of a mere declaration. To be continued, undoubtedly. No less striking is the fact that this Book VI apparently will apply in full to all undertakings. Nevertheless the practitioners of a liberal profession, dentists and physical therapists were expressly excluded from the Market Practices Act (article 3, §2 WMPC). They continued to be subject to the provisions of the Act of 2 August 2002 on misleading and comparative advertising, unlawful clauses and remotely-concluded agreements with regard to the liberal professions. By decision of 9 July 2013, however, the Constitutional Court nullified this article and this exclusion, because it could find no adequate justification for it. According to reports, the liberal professions will nevertheless be dealt with in a separate volume of the Economic Law Code. With this the government would then satisfy the requirements of their interest organisations, which have long been pushing for this confirmation of their supposed unique character. The room for a substantively divergent regulation appears very limited, however, since the European directives on consumer rights make no distinction between the practitioners of liberal professions and other undertakings.

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