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# Consumer Protection Act<sup>1</sup>

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Amended by the following acts

Passed	Published	Entry into force
23.02.2016	RT I, 11.03.2016, 1	21.03.2016
14.12.2016	RT I, 31.12.2016, 1	10.01.2017, partially nine months after entry into force of the implementing regulation of the European Commission specified in Article 3(4) of Directive 2014/92/EU of the European Parliament and of the Council on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features (OJ L 257, 28.8.2014, p. 214–246).
07.06.2017	RT I, 21.06.2017, 1	04.07.2017
06.12.2017	RT I, 28.12.2017, 3	01.07.2018, partially 07.01.2018

## Chapter 1 General Provisions

### § 1. Scope of application of Act

(1) This Act regulates the offering and sale, or marketing in any other manner, of goods or services to consumers by traders, provides for the procedure for alternative dispute resolution between consumers and traders, including the organisation of the work of the Consumer Disputes Committee, the organisation and supervision of consumer protection and liability for violations of the Act.

(2) The purpose of this Act is to safeguard consumer rights.

(3) This Act also applies if traders arrange for the transfer of goods or provision of services to consumers.

(4) This Act, the Law of Obligations Act, the Product Conformity Act and other Acts apply to the offering, sale and marketing in any other manner of goods or services to consumers.

(5) The provisions of the Administrative Procedure Act apply to administrative proceedings prescribed in this Act, taking account of the specifications provided for in this Act.

(6) The resolution of a dispute arising from a contract between a consumer and a trader by the Consumer Disputes Committee in conformity with the provisions of Chapter 6 of this Act is not deemed to be an administrative proceeding within the meaning of the Administrative Procedure Act.

### § 2. Terms and definitions

(1) For the purposes of this Act:

1) consumer means a natural person who acts for purposes not related to his or her business or professional activities;

2) trader means a natural or legal person, including a legal person in public law, who acts for purposes related to their business or professional activities;

- 3) goods mean a thing or right which is offered, sold, or marketed in any other manner;
- 4) service means a benefit which is offered, sold, or marketed in any other manner, and which is not goods, or other performance which is offered or made;
- 5) producer means a person defined in clause 4 (1) 9) of the Product Conformity Act;
- 6) consumer dispute means a dispute related to contractual obligations arising from a contract between a consumer and a trader.

(2) Upon application of the regulation on business-to-consumer commercial practices provided for in Division 2 of Chapter 3 of this Act, a person acting in the name or interests of the person specified in clause 2) of subsection (1) of this section is also deemed to be a trader.

(3) Both an invitation to make offers and an offer within the meaning of the Law of Obligations Act are deemed to be an offer of goods or services to a consumer within the meaning of this Act.

### **§ 3. Fundamental consumer rights**

Consumers have the right to:

- 1) demand and obtain goods and services which meet the requirements, are harmless to the life, health and property of the consumers, and are not prohibited from being owned or used;
- 2) obtain necessary and truthful information on the goods and services offered in order to make an informed choice, and timely information on any risks relating to the goods or services;
- 3) obtain information on consumer law and other issues relating to consumption;
- 4) obtain advice and assistance if their rights are violated;
- 5) demand compensation for any patrimonial or non-patrimonial damage caused to them;
- 6) request that their interests be taken into account and that they be represented through consumers' associations and federations in the decision-making process on consumer policy issues.

## **Chapter 2 Informing Consumers**

### **§ 4. Right of consumers to obtain information**

(1) Consumers have the right to obtain information on the safety of goods and services offered as well as on aspects concerning protection of health, property and economic interests.

(2) Before consumers acquire goods or use services, traders and producers are required to provide the consumers with information concerning the characteristics and conditions of use of the goods or services and concerning the contract to be entered into for acquiring the goods or using the services to the extent and pursuant to the procedure corresponding to the obligation to provide precontractual information provided for in the Law of Obligations Act or another Act and the conditions specified in this Act.

(3) Information provided to a consumer shall be in Estonian unless the consumer has agreed to provision of information in another language.

(4) Upon immediate payment for the sale of goods or provision of services, the trader shall provide the consumer with a document certifying the sale of the goods or the provision of the services in writing or with the consent of the consumer in a format which can be reproduced in writing and setting out at least:

- 1) the name or business name of the trader and the address of its place of business;
- 2) the date of sale of the goods or provision of the services;
- 3) the name and price of each of the goods or each service and the total amount paid.

(5) If the total amount to be paid by a consumer is less than 20 euros, the document specified in subsection (4) of this section shall be given to the consumer at their request.

(6) Upon entering into a contract a trader shall provide the consumer with information concerning the amount of the consumer's obligation and the term for payment. If the trader fails to fully perform their obligation immediately after entering into the contract with the consumer or if the consumer may perform their obligation later on, the trader shall provide the consumer with an invoice concerning the amount of the consumer's obligation and the term for payment unless otherwise provided for in another Act. Where goods are sold or services are provided under a contract for an indefinite period, an invoice shall be presented for each calculation period agreed on. The invoice shall be presented at the consumer's postal address or e-mail address as chosen by the consumer.

(7) A trader may refuse to present an invoice in the manner specified in subsection (6) of this section only if the consumer has expressly consented to the availability of the invoice through the trader's electronic customer service environment, the Internet bank or other such environment or data medium. In the case of a dispute the obtaining of the consent from the consumer shall be evidenced by the trader.

(8) The Government of the Republic or a minister authorised thereby may establish by a regulation more specific requirements for providing information to consumers on certain goods or services.

## **§ 5. General requirements for labelling of goods**

(1) The labelling of goods or on the packaging of goods or the label attached to goods offered or sold to consumers shall be clearly legible, understandable and unambiguous and shall meet all the requirements established for the labelling of such goods.

(2) If no requirements have been established by legislation concerning the labelling of particular goods, the labelling on the goods shall at least set out the trade name of the goods, if the lack of this information could mislead the consumer.

(3) The trade name specified in subsection (2) of this section may be the fixed expression used in practice to designate the goods, accompanied, if necessary, by a reference to the intended use of the goods or the materials used in manufacturing the goods, or any other name necessary to identify the goods. The trade name shall not be replaced by a trade mark or an invented name.

(4) In addition to the information specified in subsection (2) of this section and taking into account the type, characteristics and intended purpose of the goods, the following information shall be presented:

- 1) the quantity or dimensions of the goods in relevant units of measurement according to the international system of units;
- 2) the composition of the goods and the quantities of the components;
- 3) instructions for washing, cleaning and maintaining the goods;
- 4) instructions for using the goods and the storage conditions for the goods;
- 5) warnings and precautions to prevent hazards relating to the use or destruction of the goods;
- 6) the shelf life of the goods;
- 7) the main technical information concerning the goods.

(5) The information specified in subsection (4) of this section may be presented on the labelling of the goods, on a label attached to the goods or in the instruction manual accompanying the goods. The information presented shall enable the safe use of the goods for their intended purpose.

(6) The information specified in subsections (2) and (4) of this section shall be presented in writing and in Estonian. Instructive or warning drawings, pictograms, signs and symbols may also be used provided that the information they communicate is understandable to consumers.

(7) The original information presented on the labelling of goods shall not be covered by additional information, pictures, stickers or in any other manner.

(8) The general requirements set out in this section apply to goods offered as movables. The requirements do not apply to second-hand goods unless warnings and precautions relating to the use or destruction of the goods are necessary to ensure the safety of consumers and to protect their health and property.

## **§ 6. Instruction manual**

(1) Goods which are technically complex, contain hazardous substances or require special skills when using them shall be accompanied by an instruction manual from the producer.

(2) The instruction manual shall contain the information necessary for the consumer to use the goods safely, economically and for their intended purpose and to assemble, install, connect, maintain or store and, if necessary, destroy the goods in the correct manner. If the goods consist of several parts, the instruction manual shall contain a list of the parts constituting the goods (the components of the set).

(3) An instruction manual which is in a foreign language must be translated into Estonian at least as far as the information specified in subsection (2) of this section is concerned and it must be unambiguous.

(4) Upon the sale of goods a trader shall provide the consumer with the instruction manual and a translation thereof into Estonian on paper or on another durable medium or, with the consent of the consumer, make the instruction manual available in another manner.

(5) The provisions of this section apply to goods offered as movables.

## **§ 7. Indication of price of goods**

(1) When offering or selling goods, a trader shall indicate the selling price and the unit price of the goods to consumers, unless legislation established on the basis of subsection (8) of this section provides otherwise with regard to the unit price.

(2) The selling price means the final price to be paid by a consumer for a unit of goods or quantity of goods.

(3) The unit price means the final price for one kilogram, one litre, one metre, one square metre or one cubic metre of goods or for a different single unit of quantity of goods which is widely and customarily used in the marketing of the goods. If the goods are not measured in the units specified above, the price for a single unit of the goods may also be considered as the unit price.

(4) The selling price and unit price of the goods shall be indicated in writing in such manner that they are clearly legible as well as unambiguous and easily identifiable for consumers.

(5) In the case of unpackaged goods sold in bulk according to quantity, volume or dimension in accordance with the wishes of the consumer, the unit price shall be indicated before measuring. The selling price shall be indicated after measuring.

(6) If an advertisement addressed to consumers contains information concerning the selling price of goods, the advertisement shall also indicate the unit price of the goods, unless otherwise provided by legislation.

(7) The provisions of this section apply to goods offered as movables.

(8) The minister responsible for the area shall establish by a regulation more specific requirements for indicating the selling and unit prices of goods.

#### **§ 8. Indication of price for services**

(1) When offering a service, the trader shall notify the consumer of the final price to be paid for the service. If the final price of the service cannot be determined beforehand, the trader shall notify the consumer of the components of the price of the service, the rates or the bases on which the price is calculated such as to enable the consumer to calculate the final price of the service with sufficient accuracy.

(2) Upon offering a service, the price list for the services offered or any other document stating the bases on which the price of the service is calculated shall be displayed to consumers visibly at the place of provision of the service or made available to consumers in another manner.

(3) The minister responsible for the area may establish by a regulation more specific requirements for indicating the price for services.

## **Chapter 3 Offering and Sale and Marketing in Other Manner of Goods and Services**

### **Division 1 Safety and Quality of Goods and Services**

#### **§ 9. General requirements**

(1) Goods and services shall meet the established requirements, be harmless to the life, health and property of the consumer if used for their intended purpose and have the characteristics which can normally be expected of them by consumers. Goods sold or services provided to consumers shall conform to the contract in accordance with the provisions of law.

(2) A trader is required to take measures commensurate with the characteristics of the offered goods or services, enabling the trader to:

- 1) be informed of risks which these goods or services might pose;
- 2) choose to take appropriate action to avoid these risks including, if necessary, withdrawal of the goods from the market or termination of provision of the services, warning consumers or recall of the goods from consumers.

(3) A trader is required to co-operate with the market supervisory authority in order to prevent hazards arising from the offered goods or services.

#### **§ 10. Assessment of safety of services**

(1) If no requirements have been established by legislation concerning a service, the supervisory authority shall assess the safety of the service taking into consideration:

- 1) international standards or the standards of European standardisation bodies which have been transposed into Estonian standards;
- 2) original Estonian standards;
- 3) good practice in respect of safety of services in the relevant area;
- 4) the state of the art and technology;
- 5) reasonable consumer expectations concerning safety.

(2) Harmful service is deemed to be a service, where an error related to the manner of its provision or a defect in the structure or composition of a product used in the provision of the service or incorrect, misleading or inadequate information given about the service may cause an injury, intoxication or a disease of a person or otherwise endanger health of a person.

### **§ 11. Warranty on goods or services**

It is permitted to use the word "garantii" [warranty] or any other word with the same meaning in any form or any word combination in connection with ensuring the conformity of goods or services to the prescribed conditions only if the meaning of the word is in compliance with the provisions of the Law of Obligations Act concerning warranty against defects or contractor's guarantee or the provisions of other legislation concerning warranty.

### **§ 12. Defective goods**

(1) For the purposes of this Act, goods are defective if they do not meet the requirements established by legislation or other technical conditions. Goods are also defective if the minimum durability period, including the "best before" date, indicated on the goods has expired.

(2) Defective goods may be offered and sold to consumers only if the goods are harmless to life, health and property and if the consumers are notified of the defects of the goods.

(3) The provisions of subsection (2) of this section also apply to second-hand goods.

(4) Defective or second-hand goods shall be displayed separately from new goods and goods which meet the requirements, and relevant information shall be displayed at the place of sale of such goods. Information concerning a reduction in the price of the goods is not deemed to be information concerning the defects of the goods.

(5) The provisions of this section apply to goods offered as movables.

## **Division 2 Business-to-consumer Commercial Practices**

### **§ 13. Commercial practices**

(1) For the purposes of this Act, commercial practices mean any act, omission, course of conduct or manner of presentation, commercial communication, including advertising, and marketing, by a trader, directly related to the advertising, offering, sale or supply of goods or services to consumers or the purchase of things from consumers.

(2) The provisions of this Division relating to commercial practices do not affect the application of legislation regulating private law. Violation of the prohibition on the use of unfair commercial practices does not result, in itself, in the nullity of the transaction.

(3) The provisions of this Division relating to commercial practices do not affect the application of legislation which, above all, establishes:

- 1) health protection and safety requirements for goods and services or for the offering and marketing of goods and services;
- 2) requirements for the certification and marking of precious metal content in precious metal articles;
- 3) terms of foundation of undertakings, procedure for grant or registration of licences necessary for operation in certain areas of activity, and requirements for regulated professions.

### **§ 14. Prohibition on use of unfair commercial practices**

(1) The offering and sale, and marketing in any other manner, of goods and services to consumers shall follow good trade practice and be honest with regard to consumers. The offering of goods or services shall be planned and carried out in a manner whereby the commercial purpose of the offer is clear to consumers.

(2) The use of unfair commercial practices is prohibited before, during and after making a commercial transaction related to goods or services.

### **§ 15. Unfair commercial practices**

(1) A commercial practice is unfair if it is contrary to the requirements for diligence to be applied by a trader in the business or professional activities thereof (hereinafter *trader's professional diligence*), and it materially

distorts or is likely to materially distort the economic behaviour with regard to the goods or services of the average consumer who comes into contact with the goods or services or to whom they are addressed.

(2) The average consumer specified in subsection (1) of this section is deemed to be a consumer, who is reasonably well-informed and reasonably observant and circumspect, taking into account social, cultural and linguistic factors. Where a commercial practice is specifically aimed at a particular group of consumers, the average consumer is deemed to be an average member of this group of consumers.

(3) A commercial practice likely to distort the economic behaviour only of groups of consumers which members are particularly vulnerable to the commercial practice or to the underlying goods or services due to their mental or physical infirmity, age or credulity in a way that the trader could be reasonably expected to foresee shall be assessed based on the effect of the commercial practice on the average member of that group of consumers.

(4) The provisions of subsection (3) of this section are not applied to the common and legitimate advertising practice of making exaggerated statements or statements which are not meant to be taken literally.

(5) In the case of the trader's professional diligence specified in subsection (1) of this section, the standard of such skills and care which a trader may reasonably be expected to exercise towards consumers and which is commensurate with good trade practice and the principle of good faith shall be taken as the basis.

(6) The code of conduct applicable to the business or professional activities of a trader may be used for assessing the compliance of a trader to the requirements of trader's professional diligence. Code of conduct means a set of rules or an agreement not imposed by legislation which describes the behaviour of the traders in certain business or professional activities and by which the acceded traders undertake to be bound. The entity responsible for the formulation of a code of conduct, including a trader or group of traders, may prescribe the monitoring of the activities of traders who have undertaken to be bound by the code of conduct and the settlement of complaints related to their activities.

(7) Material distortion of the economic behaviour of consumers is deemed to mean using a commercial practice to appreciably impair the consumer's ability to make an informed choice, thereby causing the consumer to make a transactional decision that the consumer would not have taken otherwise.

(8) The transactional decision specified in subsection (7) of this section means a consumer's decision on whether to make a transaction or to refrain from the transaction and on the manner of making and the terms of such transaction, including whether and on what terms to purchase, whether to make payment for the purchase in whole or in parts, whether to retain or give up the goods or services or whether to exercise contractual rights in relation to the goods or services.

(9) In particular, commercial practices are unfair if they mislead consumers or are aggressive with respect to consumers.

## **§ 16. Misleading commercial practices**

(1) Both misleading actions and misleading omissions are deemed to be misleading commercial practices.

(2) A commercial practice is deemed to be misleading if it contains false information or if presentation of factually correct information deceives or is likely to deceive the average consumer and in both cases as a result of it the average consumer makes or is likely to make a transactional decision that the consumer would not have made otherwise. Information is deemed to be false if it is untruthful in relation to one or more of the following elements:

- 1) the existence or nature of goods or services;
- 2) the main characteristics of goods or services;
- 3) the extent of the trader's commitments, the motive for using the commercial practice and the nature of the sales process as well as any statement or symbol associated with direct or indirect sponsorship or approval of the trader, goods or services;
- 4) the price or the bases for calculation of the price, or the existence of a specific price advantage;
- 5) the need for maintenance, spare parts, replacement or repair;
- 6) the features and rights describing the person acting as a trader or a representative thereof, including the trader's name and legal form, the assets, qualifications, status, approval, affiliation or connection thereof and ownership of industrial, commercial or intellectual property rights or received awards and distinctions;
- 7) the consumer's rights, including the right to require replacement or reimbursement under the Law of Obligations Act.

(3) The main characteristics of goods or services specified in clause (2) 2) of this section are, among other things, the following:

- 1) availability;
- 2) deriving benefits;
- 3) involved risks;
- 4) execution, composition and accessories;
- 5) method and time of manufacturing or supply;
- 6) fitness for purpose, usage;

- 7) quantity;
- 8) specification and origin;
- 9) results to be expected from its use;
- 10) results and material features of tests or checks carried out on the goods or services;
- 11) terms of delivery;
- 12) assistance after the transaction related to the goods or services and procedure for settling potential complaints.

(4) A commercial practice is also misleading if, in a specific situation, taking account of all the elements of the commercial practice, it causes the average consumer to make or likely to make a transactional decision that the consumer would not have made otherwise, and the commercial practice involves:

- 1) a method of marketing goods or services, including comparative advertising, which creates confusion with any goods or services, trade marks, business names or other distinguishing features of a competitor;
- 2) non-compliance by a trader with the commitments contained in the code of conduct by which the trader has undertaken to be bound if the trader refers to its connection with the code of conduct.

(5) A commercial practice specified in clause (4) 2) of this section is not deemed to be misleading if the commitment contained in the code of conduct is not precisely observable, but is aspirational and compliance therewith cannot be ascertained.

(6) A commercial practice is also deemed to be misleading if it causes the average consumer to make or likely to make a transactional decision that the consumer would not have made otherwise, and if:

- 1) in the specific situation, taking account of all the elements of the commercial practice and any limitations related to the means of communication, it omits material information that the average consumer needs in order to make an informed transactional decision;
- 2) the trader thereby hides material information or provides information in an unclear, unintelligible, ambiguous or untimely manner; or
- 3) the commercial intent of the commercial practice is not identified and this is not already apparent from the context.

(7) Where the means of communication used to communicate the information imposes limitations of space or time on the communication of information, these limitations and any measures taken by the trader to make the information available to consumers by other means shall be taken into account upon deciding on failure to provide information.

(8) The following commercial practices are always deemed to be misleading and it is prohibited to use these:

- 1) falsely claiming that the trader has acceded to a code of conduct;
- 2) falsely claiming that a code of conduct has been endorsed by a public law agency or another institution;
- 3) displaying a trust mark, quality mark or a mark equivalent thereto without having obtained the necessary authorisation;
- 4) falsely claiming that the trader, the trader's commercial practices or the goods or services offered by the trader have been approved, endorsed or authorised by a public law agency or a private institution or making such a claim without complying with the terms of the approval, endorsement or authorisation;
- 5) making an invitation to purchase goods or services at a specified price without disclosing the existence of any reasonable grounds the trader may have for believing that the trader will not be able to offer or supply, or to procure another trader to supply, those goods or services or equivalent goods or services at that price during the period that is, and in quantities that are, reasonable having regard to the goods or services, the scale of advertising of the goods or services and the price offered (bait advertising);
- 6) making an invitation to purchase goods or services at a specified price and then refusing to show the advertised goods or services, or demonstrating a defective sample thereof, or refusing to take orders for the relevant goods or services or deliver them within a reasonable time with the intention of promoting different goods or services (bait and switch);
- 7) falsely stating that the goods or services will only be available for a very limited time, or that they 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 a service after the transaction to consumers with whom the trader has communicated prior to the transaction in a language other than the official language of the country of its location without informing the consumer that such service can only be used in a language other than the language of communication;
- 9) falsely claiming or otherwise creating a false impression that it is legal to sell the goods or provide the services;
- 10) presenting the rights granted to consumers by legislation as a distinctive feature of the trader's offer;
- 11) communicating in the media of texts which cannot be associated with advertising in order to promote the sale of goods or the provision of services if the trader has paid therefor, but has not made it clear for consumers in the contents of the text or by clearly recognisable images or sounds (advertising text);
- 12) making a materially inaccurate claim concerning the nature and extent of the risk to the security of the consumer or the consumer's family if the consumer does not purchase the goods or use the services;

13) promoting the sale of a product similar to a product of another producer or the provision of a service similar to a service of another service provider in such a manner as deliberately to mislead the consumer into believing that the producer of the product or the provider of the service is that other producer or service provider;

14) creating, using or developing a sales scheme where a consumer pays for the opportunity to receive compensation that is derived primarily from the introduction of other consumers into the scheme rather than from the marketing or consumption of goods or services (pyramid sales scheme);

15) falsely claiming that the trader is about to cease trading or move premises;

16) claiming that the goods or services are able to facilitate winning in games of chance;

17) falsely claiming that the goods or services are able to cure illnesses, dysfunction or malformations;

18) passing on inaccurate information on market conditions or on the possibility of finding the goods or services on the market in order to induce the consumer to acquire the goods or use the services at conditions less favourable than normal market conditions;

19) claiming to offer a prize without awarding the prizes described or a reasonable equivalent;

20) describing goods or services with the words "prij" [free], "tasuta" [without charge] or other similar expressions if the consumer has to pay anything other than the unavoidable cost of responding to the offer and collecting or delivery of the goods;

21) including in marketing material an invoice or similar document referring to payment which gives the consumer a false impression that the consumer has already ordered the offered goods or services;

22) falsely claiming or otherwise creating a false impression that the trader is not acting for the purposes related to the trader's business or professional activities, or falsely representing oneself as a consumer;

23) creating a false impression that services after the transaction relating to the goods or services are available also in a Member State other than the Member State where the goods are sold or the services are provided.

### **§ 17. Material information upon invitation to purchase**

(1) Invitation to purchase means a commercial communication by a trader which indicates the characteristics of the goods or services and the price thereof in a way appropriate to the means of communication used and thereby enables the consumer to make a purchase.

(2) In the case of an invitation to purchase, information concerning the following circumstances shall be regarded as material information within the meaning of subsection 16 (6) of this Act if not already apparent from the context:

1) the main characteristics of the goods or services to an extent appropriate for the goods or services and for the means of communication used for communication of information;

2) the address of place of business and name or business name of the trader and, where applicable, the address and name or business name of the trader on whose behalf the trader is acting;

3) the price of goods or services inclusive of taxes or, where the price cannot be calculated in advance due to the nature of the goods or services, the bases for calculation of the price;

4) transport, postal or delivery costs not included in the price or, where these costs cannot be calculated in advance, information that payment of such costs is required;

5) the procedure for payment for goods or services where it differs from the requirements of the trader's professional diligence;

6) the procedure for delivery of goods or performance of an order and settling of complaints where it differs from the requirements of the trader's professional diligence;

7) the right to withdraw from or cancel the transaction.

(3) In the case of an invitation to purchase, the information the communication of which upon the marketing or advertising of goods or services is required by the Law of Obligations Act or another Act based on the legislation of the European Union shall be regarded as material information in addition to the information specified in subsection (2) of this section.

### **§ 18. Aggressive commercial practices**

(1) A commercial practice is aggressive if, in the specific situation, taking account of all its 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 goods or services and thereby causes or is likely to cause the consumer to make a transactional decision that the consumer would not have made otherwise.

(2) Undue influence specified in subsection (1) of this section means exploiting the trader's position of power so as to apply pressure to the consumer in a way which significantly limits the consumer's ability to make an informed choice. Pressure can be applied to the consumer even without using or threatening to use physical force.

(3) In determining whether a commercial practice uses harassment, coercion, including the use of physical force, or undue influence, account shall be taken of the following circumstances:

1) the timing, location, nature or duration of the commercial practice;

2) threatening or abusive behaviour or language of the same nature;

3) the exploitation by the trader of any specific misfortune or circumstance of such gravity as to impair the consumer's judgement, of which the trader is aware, to influence the consumer's decision with regard to goods or services;



4) any onerous or disproportionate non-contractual barrier imposed by the trader if the consumer wishes to exercise the rights under the contract, including the right to withdraw from the contract or to switch to other goods or services or another trader;

5) any threat to take any action that cannot legally be taken.

(4) The following commercial practices are always deemed to be aggressive and it is prohibited to use these:

- 1) creating the impression that the consumer cannot leave the premises until a contract is formed;
- 2) conducting a personal visit to the consumer's home ignoring the consumer's request to leave or not to return, except to perform a contractual obligation under the conditions and to the extent established by legislation;
- 3) making persistent and unwanted solicitations by phone, fax, e-mail or other means of communication, except to perform a contractual obligation under the conditions and to the extent established by legislation;
- 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 the consumer's contractual rights;
- 5) including in an advertisement a direct exhortation to children to buy, or persuade their parents or other adults to buy, advertised goods or services;
- 6) demanding immediate or deferred payment for or the return or safekeeping of the goods supplied or services provided by the trader, but not solicited by the consumer;
- 7) explicitly informing a consumer that if the consumer does not buy the goods or services, the trader's job or livelihood will be in jeopardy;
- 8) creating a false impression that the consumer has already won, will win, or will on doing a particular act win, a prize or other equivalent benefit, when in fact either there is no prize or other equivalent benefit, or receiving the prize or other equivalent benefit is subject to the consumer paying money or incurring a cost.

## **Chapter 4**

### **Organisation of Consumer Protection**

#### **Division 1**

#### **Non-governmental Consumer Associations**

##### **§ 19. Consumer associations**

(1) Consumer association means a voluntary association of persons which is founded and registered in accordance with the Non-profit Associations Act and the objective of the activities of which is to protect and promote the interests and rights of consumers.

(2) Consumer associations have the right to:

- 1) participate in the development and implementation of consumer protection policy;
- 2) organise the dissemination of information as well as consultation and training relating to consumer protection;
- 3) advise and assist consumers;
- 4) represent consumers in court through the person meeting the criteria provided for in clause 218 (1) 1) or 2) of the Code of Civil Procedure;
- 5) represent a consumer with the consent of the consumer in a state agency not specified in clause 4) of this subsection and in relations with a trader or producer;
- 6) represent a consumer with the consent of the consumer in the settlement of extra-judicial disputes;
- 7) organise surveys relating to consumer protection;
- 8) co-operate with supervisory authorities engaging in consumer protection.

(3) Consumer associations which represent the interests of the consumers on the national or local level and which membership includes at least 50 people and federations of associations, which member associations have a total membership of at least 50 people, have, in addition to the rights specified in subsection (2) of this section, the right to:

- 1) demand through a court, in the cases provided by the Law of Obligations Act and in order to protect the collective interests of consumers, that the application of standard terms which cause unfair harm to consumers be terminated or that other violations be terminated and that any future violations be refrained from;
- 2) participate in negotiations concerning the standard terms of contracts between providers of services of general interest and consumers, including in negotiations relating to price formation.

(4) Provider of services of general interest specified in clause (3) 2) of this section means the person defined in subsection 5 (3) of the General Part of the Economic Activities Code Act.

(5) Within the limits of the funds prescribed in the state budget, the state may support the associations or federations of associations which represent the interests of consumers on the national level and the activities of

which are important for the purpose of improving the promotion of the rights and interests of consumers and the availability of information concerning consumer protection and provision of advice.

(6) The minister responsible for the area shall establish by a regulation the specific conditions and procedure for the grant of support.

(7) Consumer associations shall submit annual reports without information concerning the principal activity in accordance with subsections 36 (5) and 78 (3) of the Non-profit Associations Act.

## **Division 2**

### **Consumer Protection on Local Government Level**

#### **§ 20. Consumer protection activities of local governments**

(1) Local governments shall organise the provision of advice relating to consumer protection for consumers within their administrative territories. Local governments are required to provide advice and assistance to consumers with regard to issues which are connected with the services organised by the local governments pursuant to law.

(2) In order to perform the duties specified in subsection (1) of this section, a local government may form a consumer protection unit, authorise an official to engage in consumer protection or enter into a corresponding contract under public law, in accordance with the Administrative Co-operation Act, with a consumer association specified in subsection 19 (1) of this Act.

## **Division 3**

### **State Consumer Protection**

#### **§ 21. Consumer Protection Board**

(1) The Consumer Protection Board is a government authority within the area of government of the Ministry of Economic Affairs and Communications.

(2) The primary duty of the Consumer Protection Board is to protect the rights and interests of consumers in accordance with this Act and other legislation. The Consumer Protection Board is competent to:

- 1) make proposals to amend or establish legislation relating to consumer protection;
- 2) exercise supervision over compliance with the requirements provided for the protection of consumer rights in this Act, legislation established on the basis of this Act, and other Acts;
- 3) settle complaints submitted to the Board concerning violations of the requirements established to protect consumer rights or forward such complaints to the relevant institutions for settlement;
- 4) inform the public of the activities of a trader or producer which violate consumer rights or damage the legitimate interests of consumers;
- 5) advise consumers, consumer associations and traders and assist in increasing their awareness of consumer protection issues;
- 6) conduct negotiations with undertakings and business organisations, including providers of services of general interest in a dominant position, on issues relating to the quality of the services and reasonable prices for the consumers;
- 7) enter into co-operation agreements with other supervisory authorities and local governments;
- 8) demand through county courts that the application of standard terms which cause unfair harm to the collective interests of consumers and unfair commercial practices be prohibited and that any other activities which violate consumer rights be terminated.

(3) The Consumer Protection Board shall not settle a consumer's complaint the contents of which is settlement of a consumer dispute arising from an agreement between a consumer and a trader. A consumer dispute arising from an agreement entered into between a consumer and a trader shall be settled by the Consumer Disputes Committee operating at the Consumer Protection Board proceeding from the provisions of Chapter 6 of this Act.

#### **§ 22. Consumer Protection Board supervision information system**

(1) The Consumer Protection Board supervision information system is a database, which is maintained for the purpose of electronic storage, systematising and exchanging between relevant authorities of the information related to the activities and procedures associated with the performance of the tasks of the Consumer Protection Board under the legislation and exercising supervision and drawing up reports on the basis of such information.

(2) The chief processor of the database is the Consumer Protection Board.

(3) The following shall be entered in the database:

- 1) information concerning the conducting of proceedings on requests for explanation, requests for information and complaints by persons;
- 2) information concerning administrative proceedings;

- 3) information concerning misdemeanour proceedings;
- 4) information concerning product safety notices.

(4) The detailed composition of the information to be entered in the database shall be provided by the statutes for the maintenance of the database.

(5) The database and its statutes shall be established by a regulation of the minister responsible for the area.

### **§ 23. Maintaining business secrets**

(1) Officials competent to engage in state supervision in the area of consumer protection and representatives of the consumer associations and the federations of consumer associations are required to maintain any business secrets which become known to them in the course of performing the duties related to consumer protection. Information relating to violations of law committed by a trader or information subject to communication pursuant to law is not deemed to be a business secret.

(2) The provisions of subsection (1) of this section also apply to natural persons engaged in the settlement of consumer disputes at alternative dispute resolution entities.

## **Chapter 5 Settlement of Consumer Dispute between Consumer and Trader**

### **Division 1 Settlement of Consumer Complaints at Trader**

#### **§ 24. Submission of complaints to traders**

(1) A consumer may submit a complaint arising from a breach of contract to a trader in any form. The consumer may submit the complaint himself or herself or through a representative.

(2) If a consumer submits a complaint in writing or in a format which can be reproduced in writing, the trader shall confirm the receipt of the complaint. The trader shall also confirm the receipt of a complaint if it enables to submit complaints electronically on its website.

(3) A consumer shall set out in a complaint submitted in writing or in a format which can be reproduced in writing:

- 1) his or her name and contact details;
- 2) the date of submission of the complaint;
- 3) the date of purchase of the goods or receipt of the services;
- 4) the defects of the goods or services;
- 5) the claim submitted to the trader.

(4) A consumer shall refer in a complaint to a document certifying the performance of the transaction or the existence of a warranty against defects or a contractor's guarantee or annex a copy of such document to the complaint. The trader has the right to ask for a copy of the document certifying the performance of the transaction.

(5) If a consumer submits a complaint in writing or in a format which can be reproduced in writing, the trader is required to respond in the same format and provide information concerning satisfying the consumer's complaint or a potential solution to the complaint within 15 days after receipt of the complaint, unless a different time limit is provided by law or in a European Union regulation. A response to the consumer shall be sent at the postal address indicated by the consumer or at the e-mail address unless agreed otherwise with the consumer.

(6) If it is not possible to settle the complaint during the time limit specified in subsection (5) of this section, the trader is required to justify the delay, give corresponding notification to the consumer in writing or in a format which can be reproduced in writing and specify a new reasonable term.

(7) If a trader does not consider the consumer's claim to be justified and refuses to satisfy the claim or agrees to satisfy the claim only in part, the trader is required to justify the full or partial refusal to satisfy the consumer's claim in writing or in a format which can be reproduced in writing.

(8) If a trader has failed to settle a complaint within the time limits specified in subsections (5) and (6) of this section, the trader is deemed to have refused to satisfy the consumer's claim.

(9) If a trader has refused to satisfy the consumer's claim or the consumer does not agree with the solution offered by the trader, the consumer may file a petition to an alternative dispute resolution entity or the county court for settlement of the dispute.

#### **§ 25. Customer service**

A trader shall ensure that appropriate customer service exists to settle consumer complaints and provide information to consumers. A trader may establish its internal procedures for the purpose of processing consumer complaints taking account of the provisions of this Act.

#### **§ 26. Consumer information by traders**

(1) A trader shall make available to the consumer in an appropriate manner the contact details which the consumer can use for contacting the trader and communicating therewith for the purpose of settling a complaint.

(2) A trader shall inform the consumer of an alternative dispute resolution entity, which is recognised pursuant to this Act and which the consumer can contact for the purpose of resolving a dispute arising with the trader. The information must include at least the name of the alternative dispute resolution entity or of the person that has established it, the contact details, the website address and information on where the rules of procedure of the alternative dispute resolution entity are available for examining.

(3) The information specified in subsections (1) and (2) of this section shall be provided in a clear, comprehensible and easily accessible manner on the trader's website if it exists and if necessary in the general terms and conditions of contracts between the trader and the consumer or in the trader's place of business.

(4) If a trader refuses to satisfy a claim contained in the complaint received from the consumer or finds that it is not possible to satisfy the consumer's claim, the trader shall provide the consumer on paper or on another durable medium information concerning a recognised alternative dispute resolution entity which the consumer can contact to resolve the dispute arisen with the trader.

(5) Traders who enter into contracts with consumers through electronic means and information society service providers who enable the entering into contracts between a consumer and a trader through a computer network shall inform consumers of an online dispute resolution platform in accordance with Regulation (EU) No 524/2013 of the European Parliament and of the Council on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR) (OJ L 165, 18.6.2013, p. 1 – 11).

(6) If the obligation of a trader to inform the consumer of an opportunity to commence a procedure for alternative dispute resolution is also provided in other legislation, such provisions apply in addition to the provisions of this section.

#### **§ 27. Assistance to consumers in cross-border disputes**

In the case of cross-border disputes, consumers shall be assisted upon settlement of complaints against a trader operating in another Member State by the European Consumer Centre operating at the Consumer Protection Board. The specified centre helps the consumer to submit a complaint to a trader operating in another Member State and to submit a petition to an alternative dispute resolution entity operating in the Member State where the trader is established.

## **Division 2 Alternative dispute resolution**

#### **§ 28. Alternative dispute resolution procedure**

(1) In the alternative dispute resolution procedure a cross-border or domestic consumer dispute shall be resolved by an alternative dispute resolution entity.

(2) For the purposes of this Act, a domestic dispute means a dispute arisen from a contract between a consumer and a trader related to the contractual obligations in the case of which the residence of the consumer at the time of ordering the goods or services was in the same Member State where the trader has its seat.

(3) For the purposes of this Act, a cross-border dispute means a dispute arisen from a contract between a consumer and a trader related to the contractual obligations in the case of which the residence of the consumer at the time of ordering the goods or services was in the Member State, which is not the country of the seat of the trader.

(4) The following are not deemed to be an alternative consumer dispute resolution procedure in conformity with this Act:

- 1) direct negotiations between a consumer and a trader;
- 2) settlement of consumer complaints by a trader;

- 3) procedures, wherein the natural persons responsible for the resolution of the dispute have been hired or remunerated by the specific trader;
- 4) procedure for resolution of a dispute in judicial proceedings;
- 5) proceedings commenced by a trader against a consumer;
- 6) arbitration proceedings within the meaning of the Code of Civil Procedure.

(5) The provisions concerning the alternative resolution of consumer disputes do not apply to the resolution of disputes which concern the provision of non-economic services of general interest and health care services as well as the education service offered by a person in public law.

(6) The provisions of this Act concerning the alternative consumer dispute resolution procedure do not apply to the procedure for resolution of disputes between traders.

(7) If the provisions of this Chapter concerning the resolution of consumer disputes contradict other legislation regulating alternative procedure for resolution of disputes initiated by a consumer against a trader, the provisions of this Chapter apply to the resolution of the consumer dispute unless otherwise provided in this Act.

### **§ 29. Alternative dispute resolution entity**

(1) For the purposes of this Act, alternative dispute resolution entity means any permanent entity bearing any name which conducts alternative consumer dispute resolution procedures and recommends or decides on a solution or supports the communication of the parties to the consumer dispute with an aim to help them reach an agreement.

(2) An alternative dispute resolution entity may be set up by a legal person, including a non-profit association and a legal person in public law if this is permitted by law regulating the legal person in public law.

(3) In addition to alternative consumer dispute resolution procedure, an alternative dispute resolution entity may also conduct proceedings for resolving other disputes.

(4) The seat of an alternative dispute resolution entity shall be:

- 1) the place where alternative dispute resolution activities are conducted if the operation of the entity is managed by a natural person;
- 2) the place where a legal person conducts alternative dispute resolution activities or where the registered seat of such legal person is if the operation of the entity is managed by a legal person;
- 3) the seat of a legal person in public law if the operation of the entity is managed by a legal person in public law.

(5) The authority competent to recognise alternative dispute resolution entities is the Ministry of Economic Affairs and Communications (hereinafter *competent authority*). Recognition shall be decided by a directive of the minister responsible for the area.

### **§ 30. Application for and deciding on recognition of alternative dispute resolution entity**

(1) Recognition of an alternative dispute resolution entity may be applied for by the person specified in subsection 29 (2) of this Act (hereinafter *applicant*). By recognition, the competent authority confirms that it has assessed that the alternative dispute resolution entity meets the requirements provided in §§ 31 – 36 of this Act.

(2) An applicant shall file an application to the competent authority on paper or electronically which includes at least the following information:

- 1) the name, contact details and website address of the alternative dispute resolution entity;
- 2) the type of disputes concerning which proceedings are conducted;
- 3) information concerning the structure and funding of the entity;
- 4) information concerning the natural persons responsible for conducting proceeding on disputes, including their level of education, the acquired skills and experience, their remuneration, the term of office and employer, taking account of the provisions of § 33 of this Act;
- 5) the procedural rules;
- 6) the grounds for refusing to commence proceedings on a dispute in conformity with the provisions of subsection 32 (1) of this Act;
- 7) information concerning the amount of the processing fee;
- 8) the average duration of the dispute resolution procedure;
- 9) the language or languages in which petitions can be filed and in which the dispute resolution procedure is conducted.

(3) It must become evident from the information submitted by the applicant whether the entity of the applicant qualifies as a recognised alternative dispute resolution entity and whether it meets the requirements provided in §§ 31 – 36 of this Act.

(4) Upon processing the application, the competent authority has the right to demand relevant additional information and documents from the applicant and the making of corrections and modifications to the application and annexes thereof.

(5) The competent authority shall evaluate the conformity of an alternative dispute resolution entity to the requirements provided in this Act within 30 days after receipt of the information provided in subsections (2) and (4) of this section. The competent authority may set up an advisory committee in order to review applications and evaluate alternative dispute resolution entities as well as involve experts in order to evaluate applications.

(6) On the basis of the evaluation conducted in accordance with subsection (5) of this section the decision to recognise or refuse recognition of an alternative dispute resolution entity shall be made by a directive of the minister responsible for the area.

(7) The competent authority shall compile a list of recognised alternative dispute resolution entities and forward it to the European Commission with the following information:

- 1) the name, contact details and website address of the alternative dispute resolution entity;
- 2) the area and type of disputes concerning which proceedings are conducted;
- 3) the amount of the processing fee;
- 4) the language or languages in which petitions can be filed and in which the dispute resolution procedure is conducted;
- 5) the grounds for refusing to commence proceedings on a dispute in conformity with the provisions of § 32 of this Act;
- 6) the need for the parties or their representatives to be physically present, where appropriate, including information concerning the possibility to conduct proceedings in the form of oral or written proceedings;
- 7) the legal effect of the outcome of the procedure.

(8) The competent authority shall make the consolidated list of alternative dispute resolution entities compiled by the European Commission available on its website by providing a link to the relevant website of the European Commission and on a durable medium.

(9) An alternative dispute resolution entity or the person who has formed the entity shall notify the competent authority immediately of any changes in the information serving as the grounds for recognition of the alternative dispute resolution entity and of suspension or termination of its operation by presenting an application on paper or electronically for amending the information or suspension or termination of its operation.

(10) If it appears that an alternative dispute resolution entity does not conform to the requirements provided by this Act, the competent authority shall notify the entity of the requirements to which the entity does not conform and set a term for bringing the entity into conformity with the requirements. The term shall not be longer than three months. If the entity fails to ensure conformity to the requirements within three months after receipt of the notice on failure to conform to the requirements from the competent authority, the minister responsible for the area shall declare the decision to recognise the alternative dispute resolution entity invalid by a directive.

(11) In the event of amendments in the cases specified in subsections (9) and (10) of this section the competent authority shall update the list specified in subsection (7) of this section and forward the relevant information to the European Commission without delay.

(12) The competent authority shall prepare and publish a report every four years on the functioning and development of the alternative dispute resolution entities and forward it to the European Commission. The report shall set out in particular:

- 1) the best practices of alternative dispute resolution entities;
- 2) the deficiencies which hinder the work of alternative dispute resolution entities upon resolving domestic and cross-border disputes if this is relevant on the basis of statistics;
- 3) recommendations for improving the effectiveness and efficiency of operation of alternative dispute resolution entities if this is relevant.

(13) A directive of the minister responsible for the area regarding recognition of an alternative dispute resolution entity or refusal to recognise it or the declaring of the decision to recognise invalid may be contested pursuant to the procedure provided in the Code of Administrative Court Procedure.

## **Division 3**

# **Requirements for Alternative Dispute Resolution Procedure and Alternative Dispute Resolution Entities**

### **§ 31. Access to alternative dispute resolution entities**

(1) Alternative dispute resolution entities shall accept both domestic and cross-border consumer disputes where one of the parties is a trader whose place of establishment is in the Republic of Estonia.

(2) The place of establishment of a trader means:

- 1) the place of business thereof if the trader is a sole proprietor;

2) the registered seat, the location of the management board or the principal place of business thereof, including the location of the branch, representation or other undertaking, if the trader is a company or another legal person.

(3) An alternative dispute resolution entity shall publish updated and relevant information concerning the alternative dispute resolution procedure on its website or on the website of the person that has set up the entity and enable consumers to file a petition and necessary additional documents electronically and, if necessary, on paper.

(4) An alternative dispute resolution entity shall provide the parties with the information specified in subsection (3) of this section at their request on a durable medium.

(5) An alternative dispute resolution entity shall intermediate the information presented by the parties electronically and, if necessary, by post.

(6) An alternative dispute resolution entity shall take necessary measures in order to ensure the processing of personal data in conformity with the Personal Data Protection Act upon conducting proceedings on consumer disputes.

(7) The resolution of disputes at alternative dispute resolution entities shall be free of charge or for a symbolic fee for the consumer.

### **§ 32. Refusal to accept disputes**

(1) An alternative dispute resolution entity may prescribe in its rules of procedure the refusal to accept consumer disputes within the competence thereof on the following grounds:

- 1) the consumer has failed to contact the appropriate trader for settling the complaint in order to solve the problem directly with the trader;
- 2) the dispute is frivolous or vexatious;
- 3) the dispute is being processed by or has been previously processed and decided on by another recognised alternative dispute resolution entity or a court;
- 4) the value of the claim is lower or higher than a predetermined monetary threshold;
- 5) the resolving of the dispute would seriously disturb the efficient functioning of the alternative dispute resolution entity due to the complexity of the dispute;
- 6) more than 12 months have passed from the reference of the complaint by the consumer to the trader.

(2) If the rules of procedure of an alternative dispute resolution entity prescribe predetermined monetary limits for the object of the dispute or the claim, such limits shall not materially obstruct the access of consumers to the proceedings of the alternative dispute resolution entity.

(3) The parties to a dispute shall be notified of refusal to accept the dispute within three weeks after the day of receipt of necessary explanations from the parties to the dispute and the grounds for refusal to accept shall be provided.

### **§ 33. Independence and impartiality of alternative dispute resolution entities**

(1) The natural persons responsible for resolving disputes at an alternative dispute resolution entity shall be independent, impartial and adequately professional.

(2) The requirements specified in subsection (1) of this section are secured if the persons responsible for resolving the disputes:

- 1) have the necessary knowledge and skills in alternative or judicial resolution of consumer disputes and general legal knowledge;
- 2) have been appointed for not less than three years and they cannot be discharged without just cause;
- 3) are remunerated in the manner which is not linked to the outcome of the procedure;
- 4) are not subject to any instructions from either party to the dispute or their representatives;
- 5) disclose without delay any circumstances that may, or may be seen to, affect their independence and impartiality or give rise to a conflict of interest with either party to the dispute they are asked to resolve.

(3) The obligation to disclose circumstances specified in subsection 2 (5) of this section shall be performed during the entire dispute resolution procedure. The rules of procedure of the alternative dispute resolution entity must ensure the replacement of the natural person responsible for resolving the dispute should there appear a conflict of interest referred to in subsection 2 (5) of this section.

(4) If an alternative dispute resolution entity comprises only one natural person and the circumstances referred to in subsection 2 (5) of this section appear, such person shall notify the parties to the dispute thereof and if possible recommend that they contact another alternative dispute resolution entity or shall conduct the dispute

resolution procedure only if the parties have not filed any objections, they have been notified of the above circumstances and of their right to file an objection.

(5) If disputes are being resolved at an alternative dispute resolution entity by a collegial body consisting of natural persons, an equal number of the representatives of the interests of consumers and traders must be represented in such body.

(6) If the employment or remunerating of the natural persons engaged in alternative dispute resolution is decided only by a professional organisation or an association of undertakings, a separate dedicated budget sufficient to fulfil their tasks must be at the disposal of such natural persons.

(7) The requirement for a dedicated budget specified in subsection (6) of this section does not apply if the natural persons employed or remunerated by a professional organisation or an association of undertakings form a part of a collegial body, which comprises an equal number of the representatives of the professional organisation or association of undertakings that has employed or is remunerating them and of the organisations or institutions protecting the interests of consumers.

(8) In order to secure the provisions of clause (2) 1) of this section an alternative dispute resolution entity or the person that has formed the entity shall organise training to the natural persons who are responsible for resolving disputes. The training plans of alternative dispute resolution entities shall be reviewed by the competent authority on the basis of the information submitted thereto in conformity with clause 37 (4) 2) of this Act.

### **§ 34. Transparency of operation of alternative dispute resolution entities**

An alternative dispute resolution entity or the person that has formed it shall make the following information available in a clear and easily understandable manner on its website or, where appropriate, in any other manner and, upon request, also on a durable medium:

- 1) contact details of the entity, including its postal address and e-mail address;
- 2) the circumstance that the entity is recognised and entered in the list in conformity with subsections 30 (6) and (10) of this Act;
- 3) the names of natural persons responsible for alternative resolution of disputes, the method of their appointment and the term of office;
- 4) the area and types of disputes in the competence of the entity in accordance with the contents of the complaint, including limits of claims, where appropriate;
- 5) the rules of procedure of the entity and the requirements for commencement of proceedings;
- 6) the grounds for refusing to commence proceedings on a dispute in conformity with the provisions of § 32 of this Act;
- 7) the language or languages in which petitions for resolution of disputes can be filed and in which proceedings are conducted;
- 8) an opportunity for the parties to the dispute to withdraw from the procedure;
- 9) the fee for commencement of proceedings and other initial requirements for commencement of proceedings, including the requirement that the consumer must first try to resolve the problem directly with the trader;
- 10) the costs to be covered by the parties to the dispute, including the procedure for compensating for costs at the end of the procedure, where appropriate;
- 11) the average duration of the procedure;
- 12) the standards taken as a basis upon conducting proceedings on disputes, for example legal provisions, considerations of equity, codes of good practices or appropriate guidelines;
- 13) the legal consequence of the outcome of the procedure, including measures to be implemented in respect of the party failing to comply with the decision if necessary;
- 14) the securing of enforcement of the decision to be made as an outcome of the procedure, where appropriate;
- 15) the participation in the networks of alternative dispute resolution entities, where appropriate.

### **§ 35. Participation of consumers and traders in alternative dispute resolution procedures and terms in proceedings**

(1) The parties to the dispute shall be allowed to participate in the procedure of the alternative dispute resolution entity both electronically and in another manner, regardless of where they are situated.

(2) The parties shall not be subjected to an obligation to use a representative with special legal knowledge but they have the right to obtain advice from an independent person or to be represented or assisted by such person in all stages of the procedure. The parties shall be informed of that right before the procedure commences.

(3) If an alternative dispute resolution entity resolves disputes with a proposal containing a recommended solution, the consumer shall be notified of an opportunity to withdraw from alternative dispute resolution at any time. The consumer shall be informed of that right before the procedure commences.

(4) In the case of the procedure specified in subsection (3) of this section, the parties to the dispute shall be notified, before accepting or complying with the recommended solution, of an opportunity to refer the same dispute to the court if they do not accept the outcome of the procedure as well as of the circumstance that the solution offered as an outcome of the procedure may differ from the outcome of judicial proceedings.



The parties to the dispute shall also be notified of the legal consequence of accepting or complying with the recommended solution.

(5) An alternative dispute resolution entity that has received a petition for resolving a dispute shall notify the parties to the dispute immediately when the consumer has submitted all the documents necessary for resolving the dispute.

(6) The parties to the dispute shall be given an opportunity to express their positions within reasonable time and obtain objections thereto and to submit objections to the position submitted by the other party, to comment on the evidence submitted by the other party and the factual circumstances as well as expert opinions. The parties shall be granted a reasonable period of time to reflect before expressing their consent to the agreement.

(7) The results of resolving a dispute shall be made available to the parties within 90 days after the alternative dispute resolution entity obtains the complete information required for resolution of the dispute from the consumer. In the case of complex disputes the alternative dispute resolution entity may extend the specified term. The parties shall be notified of the extension of the term and of the expected due date of ending the dispute procedure.

(8) The parties to the dispute shall be notified of the outcome of the procedure and of the reasons underlying the outcome in writing or on a durable medium.

### **§ 36. Outcome of alternative dispute resolution procedure**

(1) The outcome of an alternative dispute resolution procedure shall not be a decision which is legally binding on the consumer.

(2) In an alternative dispute resolution procedure, where the aim is to resolve a dispute with a decision which is mandatory or recommended, such contract law provisions must be taken into account which, if derogated therefrom to the detriment of the consumer, shall void an agreement.

(3) If there is a conflict of laws upon resolution of a dispute and the law applicable to the contract between the consumer and the trader is determined in conformity with paragraphs 1 and 2 of Article 6 of Regulation (EC) No 593/2008 of the European Parliament and of the Council on the law applicable to contractual obligations (OJ L 177, 4.7.2008, p. 6 – 16), account shall be taken of the contract law provisions of the Member State of the habitual residence of the consumer and an agreement which derogates therefrom to the detriment of the consumer is void.

(4) The habitual residence of the consumer specified in subsection (3) of this section shall be determined in conformity with Regulation (EC) No 593/2008 of the European Parliament and of the Council.

### **§ 37. Notification and reporting obligations of alternative dispute resolution entities**

(1) An alternative dispute resolution entity or the person who has formed the entity shall make the consolidated list of recognised alternative dispute resolution entities available on its website by providing a link to the appropriate website of the European Commission and if possible shall also make the list available on a durable medium at its premises.

(2) An alternative dispute resolution entity or the person who has formed the entity shall make the annual reports concerning the operation of the entity available on its website or, where appropriate, in any other manner. The annual report shall be presented on a durable medium upon request.

(3) The annual report specified in subsection (2) of this section includes the following information concerning both domestic and cross-border disputes:

- 1) the number of petitions for resolution of disputes received and the types of complaints that have caused disputes in accordance with the contents of the complaint;
- 2) more frequently occurring systematic or significant problems which cause disputes between consumers and traders and possible recommendations to avoid or resolve such problems in the future;
- 3) the number of disputes which the entity refused to accept and the percentage share of the types of grounds for refusal as specified in subsection 32 (1) of this Act;
- 4) the percentage share of procedures which were discontinued before reaching a solution and, if known, the reasons for their discontinuation;
- 5) the average time taken to resolve disputes;
- 6) the rate of compliance with the solutions reached or decisions made as an outcome of the procedure, if known;
- 7) cooperation in the networks of alternative dispute resolution entities set up in order to facilitate the resolution of cross-border disputes, where appropriate.

(4) An alternative dispute resolution entity shall provide the following information to the competent authority every two years:

- 1) the information specified in clauses (3) 1) – 7) of this section;
- 2) trainings organised to the natural persons responsible for resolution of disputes in conformity with subsection 33 (8) of this Act, where appropriate;
- 3) assessment of the effectiveness of the alternative dispute resolution procedure of the entity and possibilities for its improvement.

### **§ 38. Cooperation of alternative dispute resolution entities with supervisory authorities**

(1) Alternative dispute resolution entities shall cooperate with the authorities performing the duty of state supervision and engaged in the enforcement of consumer rights legislation.

(2) The cooperation shall include primarily mutual exchange of information on the complaints submitted repeatedly by consumers in connection with the practice used in the specific business sector. The cooperation shall also include the provision of alternative dispute resolution entities with the technical assessments and information by the authorities performing the duty of state supervision if such assessment or information is necessary in order to settle a particular dispute and can be provided.

(3) In the case of mutual cooperation and exchange of information specified in subsections (1) and (2) of this section, the provisions of the Personal Data Protection Act and, as regards business secret, of the Competition Act shall be complied with.

## **Division 4 Online Resolution of Disputes**

### **§ 39. Alternative resolution of disputes arising from online contracts**

(1) Disputes related to the contractual obligations arising from online contracts on the sale of goods, provision or services or another performance may be resolved in accordance with Regulation (EU) No 524/2013 of the European Parliament and of the Council through an online dispute resolution platform.

(2) The functions of the online dispute resolution contact point under Article 7(1) of the regulation specified in subsection (1) of this section shall be performed by the European Consumer Centre operating at the Consumer Protection Board. The European Consumer Centre shall make a consolidated list of alternative dispute resolution entities available on its website by providing a link to the relevant website of the European Commission and if possible on a durable medium at its premises.

## **Chapter 6 Consumer Disputes Committee**

### **Division 1 General Provisions**

### **§ 40. Status and competence of Consumer Disputes Committee**

(1) The Consumer Disputes Committee (hereinafter *committee*) is an independent and impartial entity resolving consumer disputes.

(2) The committee operates at the Consumer Protection Board within the area of government of the Ministry of Economic Affairs and Communications and resolves disputes independently pursuant to Acts and other legislation.

(3) The committee is competent to resolve both domestic and cross-border consumer disputes which arise from contracts between consumers and traders and which are initiated by a consumer if one of the parties to the dispute is a trader whose place of establishment is in the Republic of Estonia.

(4) The committee shall not resolve a dispute related to:

- 1) the provision of non-economic services of general interest;
- 2) the education service offered by legal persons in public law;
- 3) the health care service provided by health care professionals to patients to assess, maintain or restore their state of health, including the prescription, dispensation and provision of medicinal products and medical devices.

(5) The committee shall not resolve a dispute if the claim arises from an event of death, physical injury or damage to health, or a dispute for which the resolution procedure is prescribed by other Acts in conformity with the requirements provided in this Act.

(6) The disputes specified in subsections (4) and (5) of this section shall be settled by county courts or other competent institutions.

#### **§ 41. Members of the committee and composition of the committee**

(1) The committee consists of a chairman of the committee and members in the form of representatives of business or professional associations and organisations and institutions representing the interests of consumers.

(2) The chairman of the committee must be a person who has a Master's degree in the field of study of law or a corresponding qualification in accordance with subsection 28 (2<sup>2</sup>) of the Republic of Estonia Education Act, who is proficient in consumer law and who has the required skilled in the area of resolving disputes.

(3) Proposals to enter a person in the list of chairmen of the committee shall be made by the professional associations of persons related to administration of justice or provision of legal services and state agencies by presenting the following information concerning the candidate to the minister responsible for the area:

- 1) the given names and surname of the person;
- 2) the place of employment and contact details.

(4) A candidate for the chairman of the committee shall submit a written consent to be entered in the list of chairmen of the committee with a curriculum vitae to the minister responsible for the area. The minister responsible for the area may form a committee that shall elect from among the candidates the persons who are suitable as chairmen of the committee.

(5) The minister responsible for the area shall coordinate the list of chairmen of the committee with the minister of justice and approve it for five years by a directive.

(6) Proposals to enter a person in the list of members of the committee shall be made by business or professional associations and organisations or institutions representing the interests of consumers by submitting the following information concerning the person with the consent of the person to the Consumer Protection Board:

- 1) the given names and surname of the person;
- 2) the place of employment and contact details.

(7) The list of members of the committee shall be approved for four years by the Director General of the Consumer Protection Board by a directive.

(8) A chairman of the committee shall be excluded from the list at the chairman's own written request which shall be submitted to the minister responsible for the area.

(9) A member of the committee shall be excluded from the list at the written request of the organisation which nominated the member or of the member himself or herself which shall be submitted to the Consumer Protection Board.

(10) New chairmen and members may be added to the list of chairmen of the committee and the list of members if necessary.

(11) In order to hear a complaint, the Director General of the Consumer Protection Board or an official authorised by him or her shall approve the composition of the committee, consisting of at least three members. The composition of the committee shall comprise a chairman and an equal number of representatives of undertakings and representatives of consumers.

(12) The chairmen and members of the committee shall not disclose the information which disclosure is prohibited by law and which has become known to them in the proceedings of the committee.

#### **§ 42. Obligation of chairman and members of committee to remove themselves**

(1) The chairman of the committee or a member shall not participate in a resolution of a dispute and is required to remove himself or herself if there appear any circumstances that may, or may be seen to, affect the independence and impartiality of the chairman or the member or give rise to a conflict of interest with either party to the dispute they are asked to resolve.

(2) The chairman or a member of the committee is obliged to remove himself or herself:

- 1) in the matter of a complaint by his or her spouse or cohabitee, and in the matter of a complaint by a sister, brother or direct blood relative of his or her spouse or cohabitee even if the marriage or cohabitation has been terminated;
- 2) in the matter of a complaint by a direct blood relative or collateral blood relative or by a spouse or cohabitee of such person;

3) if any other circumstances exist which give reason to doubt the impartiality of the chairman or member of the committee.

(3) In addition to the provisions of subsection (2) of this section, a person who is a member of the committee as a representative of the interests of undertakings shall not participate in resolving a dispute and is required to remove himself or herself:

1) in a matter where the complaint of a consumer is directed against a trader to whom he or she or the persons specified in clauses (2) 1) and 2) of this section are directly related, including as a shareholder, a member of the supervisory board or management board of the company;

2) in a matter in which he or she has provided an opinion as an expert.

#### **§ 43. Resolving of removal notice**

If the chairman or a member of the committee finds that there exists a circumstance which serves as grounds for removing himself or herself, he or she shall make it known to the Director General of the Consumer Protection Board or a person authorised by him or her who shall replace the chairman or member of the committee at the earliest opportunity and approve a new composition of the committee in accordance with subsection 41 (11) of this Act.

#### **§ 44. Secretariat of committee**

(1) The functions of the secretariat of the committee shall be performed by the Consumer Protection Board.

(2) The secretariat of the committee shall engage in the preparation of resolving consumer disputes, ensure the administration of the committee, the availability of a room for sittings, the taking of minutes at the sittings and the publication of the decisions of the committee, organise the publication of the required information concerning the committee and the activities of the committee and the submission of reports.

(3) The Consumer Protection Board shall publish on its website and, upon request, shall make available on a durable medium and through other appropriate means the information specified in §§ 34 and 37 of this Act concerning the committee and the annual report of the committee.

#### **§ 45. Costs related to work of committee and conducting proceeding on disputes**

(1) The activities of the committee shall be funded from the state budget out of the funds allocated to the Consumer Protection Board for that purpose.

(2) The rates of remuneration for the work of the chairman of the committee shall be established by a regulation of the minister responsible for the area.

(3) No remuneration shall be paid for the work of the members of the committee.

(4) The resolving of a dispute by the Consumer Disputes Committee shall be free of charge for the parties.

(5) The expenses of the parties related to participation thereof in the proceedings, such as travel, postal, telecommunications, accommodation and other similar costs as well as the costs related to interpreters and translators, if necessary, shall be covered by the parties themselves.

## **Division 2**

### **Filing of Petitions to Consumer Disputes Committee**

#### **§ 46. Filing of petitions**

(1) A petition for resolution of a consumer dispute at the Consumer Disputes Committee can be filed by a consumer if the trader has refused to satisfy a claim of the consumer or the consumer does not consent to the solution proposed by the trader.

(2) A consumer shall file a petition to the committee in writing on paper or on another durable medium and the secretariat of the committee shall register the filed petition.

(3) A petition shall set out:

1) the name, residence and other contact details of the consumer;

2) the name or business name of the trader and the address of its place of business;

3) the contents of the dispute and a clearly expressed claim of the consumer and the facts on which it is based;

4) the consumer's confirmation that proceedings on the dispute are not being conducted by another recognised dispute resolution entity or that proceedings on the dispute are not being or have not been conducted by a court;

5) the consumer's confirmation that he or she has previously contacted the trader;

6) in the case of wishing an oral hearing of the dispute, the corresponding declaration of intention of the consumer.

(4) Upon filing a claim a consumer can rely on the legal remedies provided in § 101 of the Law of Obligations Act.

(5) Any evidence, including if possible a copy of the document certifying the performance of the transaction and copies of the complaint submitted to the trader and of the reply received, shall be annexed to a petition.

(6) If the representative of a consumer filed a petition on behalf of the consumer, an authorisation document proving the right of representation shall also be appended to the petition.

(7) The secretariat of the committee shall register the petitions filed by consumers.

(8) If a petition does not meet the requirements provided in subsections (3), (5) and (6) of this section, the secretariat of the committee shall set a reasonable term for eliminating the deficiencies. As a rule, a term of 14 days is considered to be reasonable.

(9) The secretariat of the committee may make a proposal to the consumer who has filed the petition to withdraw the application if on the basis of the applicable legislation, decisions of the committee or court judgments that have entered into force, it can be reasonably assumed that the dispute shall be resolved to the detriment of the consumer.

(10) The Consumer Protection Board has the right to prepare the format of the petition to be presented to the Consumer Disputes Committee and to make it available on its website.

#### **§ 47. Refusal to accept petition and termination of proceedings**

(1) The secretariat of the committee refuses to accept a petition if:

- 1) the consumer has not previously contacted the trader with the complaint;
- 2) the consumer fails to eliminate the deficiencies in the petition within the set term;
- 3) the resolving of the dispute is not in the competence of the committee on the basis of subsections 40 (4) and (5) of this Act;
- 4) proceedings on the same dispute on the same grounds and between the same parties are being conducted by another recognised dispute resolution entity or by a court or have been conducted by a court;
- 5) a bankruptcy or liquidation proceeding has been initiated against the counterparty of the consumer.

(2) A consumer shall be notified of refusal to accept a petition on the grounds specified in subsection (1) of this section in writing within five business days after the day of receiving the consumer's petition or after the expiry of the term for elimination of deficiencies in the petition. A refusal to accept must be reasoned in writing.

(3) The committee may refuse to accept a petition or terminate the proceedings if:

- 1) the petition is not filed in order to protect a right or interest of the consumer protected by law;
- 2) the achievement of the objective sought by the consumer in an alternative procedure is unpromising;
- 3) the dispute cannot be resolved without thorough investigation and hearing of witnesses and it would be more expedient to resolve it in the county court;
- 4) the value of the disputed goods or services or the amount of the consumer's claim is less than 30 euros and resolution of the dispute is not important from the point of view of forming practice or necessity to significantly change the current practice, the dispute is of no meaning for other potential consumers or the dispute does not involve a claim to perform the contract or to establish nullity of the contract.

(4) Refusal to accept a petition of the consumer on the grounds specified in subsection (3) of this section shall be decided by the chairman of the committee on the proposal of the secretariat. The parties shall be notified of refusal to accept a petition in writing within 21 days after the day of receiving the consumer's petition or after the expiry of the term for elimination of deficiencies in the petition. A refusal to accept a petition and the termination of a procedure must be reasoned in writing.

## **Division 3 Consumer Dispute Resolution Procedure**

#### **§ 48. Beginning of consumer dispute resolution procedure and preparation for committee sitting**

(1) A dispute resolution procedure begins with acceptance of a petition filed by a consumer.

(2) The secretariat of the committee shall notify the consumer of acceptance of a petition in writing within five business days after the day of receiving the petition or after the expiry of the term for elimination of deficiencies in the petition.

(3) The secretariat of the committee shall send a copy of the petition filed by the consumer after acceptance of the petition to the trader indicated in the petition who shall provide a written response thereto. In the response the trader shall take a position on the allegations contained in the petition and the claim of the consumer and provide a possible solution to end the dispute. A copy of the written response of the trader shall be sent to the consumer who has filed the petition and who shall notify in writing about the acceptance of or refusal to agree with the decision proposed by the trader and who shall provide his or her opinion.

(4) The secretariat shall explain the need to present additional evidence to the parties or collect evidence at its own initiative and if necessary ask for an opinion of the competent supervisory authority on the issues relevant to the resolution of the dispute. The secretariat has the right to contact the consumer who has filed the petition and the trader specified in the petition in order to conciliate the parties.

(5) The secretariat shall forward the opinion of the competent supervisory authority, the collected evidence and the information presented by the other party to the parties to the dispute.

(6) The secretariat shall set a reasonable term during which the parties to the dispute must present the opinions specified in subsections (3) and (4) of this section and other information requested by the secretariat. If the trader fails to present an opinion within the term, the resolution of the dispute shall be based on the petition of the consumer and the existing information. If the consumer fails to notify within the set term whether the consumer accepts or refuses to agree with the decision proposed by the trader, the consumer shall be regarded to have withdrawn the petition.

(7) A consumer dispute is resolved and the secretariat ends the procedure if:

- 1) the trader satisfies the claim of the consumer;
- 2) the consumer accepts the solution proposed by the trader;
- 3) the consumer withdraws the petition.

(8) The secretariat also ends the procedure if the grounds for refusing to accept the petition specified in subsection 47 (1) of this Act appear during the procedure.

(9) If the parties fail to reach a solution in the course of preparation of hearing the dispute, the secretariat shall forward the petition of the consumer together with the materials belonging thereto for resolving at the sitting of the committee.

#### **§ 49. Joinder of disputes**

If the committee conducts simultaneous proceedings on the petitions filed by several consumers for resolving similar disputes related to the same trader, such petitions may be joined into a single procedure if the claims are legally related to each other and the joint procedure enables to resolve the disputes more expeditiously.

#### **§ 50. Participation of consumer and trader in procedure**

(1) The consumer and the trader have the right to use a person with special legal knowledge or a legal advisor during the procedure or to use an opportunity that another person assists or represents them. The parties may use experts at their own expense and present written expert opinions.

(2) When accepting a petition of the consumer, the secretariat shall inform the consumer of an opportunity to notify the secretariat about the wish to withdraw the petition. The parties shall be informed of an opportunity to refer the same dispute to the county court if they do not accept the outcome of the procedure.

#### **§ 51. Resolution of dispute at committee sitting and appointment to composition of committee**

(1) A dispute shall be resolved at the committee sitting on the basis of the information presented in writing by the parties and collected by the secretariat. Hearing of a dispute with the participation of the parties or their representatives shall be organised if the consumer has expressed such wish or if the committee considers it necessary for the resolution of the dispute.

(2) The composition of the committee shall be determined for the resolution of a dispute in accordance with subsection 41 (11) of this Act. A representative of a business or professional association shall be appointed to the composition of the committee depending on the area of activity of the trader related to the dispute. The official who has prepared the hearing of the dispute shall not be appointed as a representative of the consumers to the composition of the committee.

(3) If a consumer has expressed a wish for oral hearing of the matter or if the committee considers it necessary, the parties to the dispute shall also be invited to the sitting.

(4) If a party to the dispute does not appear at the sitting of the committee with good reason and provides a notice thereof before the beginning of the sitting and provides reasons for the impediment to appear, the resolution of the dispute shall be adjourned.

(5) If a party to the dispute fails to appear at the sitting without good reason, the dispute shall be heard and a decision shall be made without the presence of the party.

(6) The chairman of the committee may organise a separate preliminary hearing if necessary in order to ascertain the absence of the grounds for refusal to accept the dispute.

#### **§ 52. Committee sitting**

(1) The committee shall hear a dispute at the sitting, where Estonian is used as the working language. The sitting shall be chaired by the chairman of the committee. The chairman shall announce the contents of the petition of the consumer and the composition of the committee and explain the obligation of removal.

(2) If the parties to the dispute have also been invited to the sitting, the chairman of the committee shall ascertain the identity of the persons present and the authorisation of the representatives and explain the legal effect of the outcome of the procedure to the parties.

(3) The chairman of the committee shall explain the nature of the dispute and the appropriate legal norms at the sitting. At a sitting, documents and other evidence are examined and assessed.

(4) Experts may be summoned to and heard at the sitting. The official who has prepared the hearing may also participate in the sitting.

(5) The parties to the dispute may present additional evidence at the sitting.

(6) At the sitting which is held with the participation of the parties, the parties may, in the course of hearing the dispute, make their proposals on resolving the dispute by entering into an agreement. A conciliation proposal may also be presented by the committee if it is reasonable considering the circumstances of the particular dispute.

(7) If the parties reach an agreement, the chairman of the committee shall execute an agreement in writing and terminate the procedure.

(8) The committee may adjourn the hearing of a matter if:

- 1) a member of the committee removes himself or herself at the sitting of the committee;
- 2) it is necessary to obtain an expert opinion for the resolution of the dispute;
- 3) another impediment which cannot be eliminated in the given sitting becomes evident.

#### **§ 53. Expert opinion**

(1) If necessary and if the parties to the dispute consent thereto, the committee has the right to order an expert opinion on the disputed goods or services. The committee shall take into consideration the opinions of the parties when ordering an expert opinion. The term for conducting the expert assessment shall be determined by the chairman of the committee and agreed with the expert.

(2) The expert opinion shall be sent to both parties to the dispute.

(3) The expenses related to providing an expert opinion on the goods or services shall be borne by the parties to the dispute in equal parts and shall be paid by them before the conduct of the expert assessment unless the committee decides otherwise.

(4) The committee may decide that the expenses related to the provision of the expert opinion shall be paid by the trader if the defects of the goods or services appeared within six months after the day of delivering the goods or providing the services to the consumer and the trader failed to order an expert opinion on ascertaining the nature and causes of the defect of the goods or services.

(5) The committee also has the right to order an expert opinion on the disputed goods or services if the expert opinion is requested by one of the parties to the dispute and the party agrees to pay the expenses relating thereto.

#### **§ 54. Minutes of committee sitting**

(1) The minutes of a committee sitting shall set out the following information:

- 1) the date and place of the sitting;
- 2) the time at which the sitting begins and ends;
- 3) the names of the chairman and members of the committee and the name of the person taking the minutes;
- 4) the names of the parties to the dispute;
- 5) information on whether the parties to the dispute participated in the sitting;
- 6) the essential content of the explanations, demands and objections of the parties;
- 7) information on an agreement between the parties, where appropriate;
- 8) the date on which the minutes are signed.

(2) The minutes shall be signed by the chairman of the committee and the person taking the minutes.

(3) The minutes of sittings shall be preserved at the Consumer Protection Board.

#### **§ 55. Ending of consumer dispute resolution procedure at committee**

(1) The committee procedure ends:

- 1) upon withdrawal of the petition by the consumer;
- 2) upon entering into an agreement between the parties at the committee sitting;
- 3) upon the making of a decision by the committee.

(2) The committee may terminate the dispute resolution procedure if the grounds provided in subsection 47 (1) or (3) of this Act appear before the sitting, at the sitting or during the time between sittings.

(3) The ending of the dispute resolution procedure on the grounds specified in subsection (2) of this section shall be decided by the chairman of the committee. The parties to the dispute shall be notified of the ending of the procedure and of the grounds for ending immediately in writing.

#### **§ 56. Term for dispute resolution procedure**

(1) A petition filed by a consumer shall be heard and the outcome of the dispute resolution procedure shall be made available to the parties within 90 days after the acceptance of the petition of the consumer.

(2) In the case of complex disputes the committee may extend the term specified in subsection (1) of this section. The parties to the dispute shall be notified of the extension of the term and of the expected due date of ending the dispute procedure.

## **Division 4 Decision of committee, publication thereof and compliance therewith**

#### **§ 57. Making of decision**

(1) The committee shall make a decision after hearing the dispute at the sitting. Only members of the committee shall be present while the decision is made.

(2) The decisions of the committee shall be reasoned and be based on legal assessment of the circumstances of the dispute. The committee shall evaluate all evidence from all perspectives, thoroughly and objectively, when making a decision.

(3) If there is a conflict of laws in the case of a cross-border dispute and the law applicable to the contract between the consumer and the trader is determined in conformity with paragraphs 1 and 2 of Article 6 of Regulation (EC) No 593/2008 of the European Parliament and of the Council, account shall be taken upon making a decision of the contract law provisions of the Member State of the residence of the consumer and an agreement which derogates therefrom is void.

(4) Decisions shall be made by a simple majority of votes. Members of the committee who maintain a minority position have the right to dissent which shall be reflected in the decision of the committee.

(5) Members of the committee do not have the right to remain undecided.

#### **§ 58. Preparation of decisions**

(1) Decisions of the committee shall be prepared by the chairman of the committee in writing and consist of an introduction, a descriptive part, the statement of reasons of the committee and a conclusion. Decisions shall be signed by all the members of the committee.

(2) A decision shall set out:

- 1) the date of making the decision and the names of the parties;
- 2) the claim of the consumer and the objections of the trader;
- 3) the facts and evidence established by the committee, the conclusions reached by the committee on the basis thereof, and the legislation and the particular provisions of the legislation applied by the committee;
- 4) the position of the committee concerning the satisfaction, partial satisfaction or dismissal of the claim of the consumer.

#### **§ 59. Communication and publication of decisions**

(1) A copy of a decision shall be sent to the parties by post or e-mail within two business days after the signing thereof.

(2) A decision of the committee without the personal data of the consumer participating in the dispute shall be published on the website of the Consumer Protection Board within two business days after the signing thereof.



## **§ 60. Compliance with decisions**

(1) A decision of the committee shall be complied with by the trader within 30 days after the day following the day of its publication on the website of the Consumer Protection Board unless a different term is specified in the decision.

(2) If the parties do not consent to the decision of the committee or fail to comply therewith, they may refer the same dispute to the county court for a hearing.

(3) A trader shall notify the Consumer Protection Board in writing of compliance with the decision or of referring the same matter to the county court enclosing a copy of the statement of claim filed with the county court.

(4) A list of the traders who have failed to comply with the decisions of the committee shall be published on the website of the Consumer Protection Board. A trader shall be entered in the list of traders who fail to comply with the decisions of the committee if the trader has failed to notify the Consumer Protection Board in accordance with subsection (3) of this section within the term specified in subsection (1) of this section.

(5) A trader entered in the list shall be deleted from the list when:

- 1) the trader complies with the decision of the committee after being entered in the list;
- 2) more than 12 months have passed from the entering of the trader in the list.

(6) The Consumer Protection Board has the right, with the consent of the consumer and as the representative of the consumer, to refer the dispute resolved at the committee to a county court for the dispute to be heard if the trader has failed to comply with the decision and the dispute is relevant to the application of an Act or other legislation or to the collective interests of consumers.

## **Chapter 7 State Supervision**

### **§ 61. State supervision**

(1) State supervision over the safeguarding of the rights granted to consumers on the basis of this Act and other legislation shall be exercised by the Consumer Protection Board.

(2) In addition to the provisions of subsection (1) of this section, state supervision shall also be exercised by the following law enforcement authorities:

- 1) the Health Board with regard to compliance with the health protection requirements for the services provided to consumers;
- 2) the rural municipality or city government with regard to compliance with the requirements for indicating the prices of the goods offered or services provided to consumers and the requirements relating to the labelling and instruction manuals of goods within their administrative territory.

(3) State supervision shall not be exercised over the compliance with the requirements to which the recognition procedure applies.

### **§ 62. Special state supervision measures**

(1) In order to exercise state supervision provided for in this Act, the Consumer Protection Board and the Health Board may apply the special state supervision measures provided in §§ 30 – 32 and 49 – 53 of the Law Enforcement Act on the basis of and pursuant to the procedure provided for in the Law Enforcement Act.

(2) In order to exercise state supervision provided for in this Act, the rural municipality or city government may apply the special state supervision measures provided in §§ 30 – 32 and 49 – 51 of the Law Enforcement Act on the basis of and pursuant to the procedure provided for in the Law Enforcement Act.

### **§ 63. Transaction for purpose of monitoring compliance**

[RT I, 21.06.2017, 1 - entry into force 04.07.2017]

(1) The Consumer Protection Board and the law enforcement authorities specified in subsection 61 (2) of this Act have the right to make transactions for the purpose of monitoring compliance if the special measures specified in § 62 of this Act do not enable or make it especially complicated to conduct supervision over the requirements of this Act but it is necessary for ascertaining a violation. The Consumer Protection Board is also entitled to make transactions for the purpose of monitoring compliance upon conducting supervision on the bases and pursuant to the procedure provided for in this section over the requirements under other legislation protecting the interests of consumers, insofar as adherence to such requirements is part of public order within

the meaning of subsection 4 (2) of the Law Enforcement Act. The making of a transaction for the purpose of monitoring compliance shall be decided by the Director General of the supervisory authority or an official authorised by him or her.

[RT I, 28.12.2017, 3 - entry into force 07.01.2018]

(2) An official making a transaction for the purpose of monitoring compliance need not introduce himself or herself upon making the transaction and need not carry a uniform; the official is under no obligation to present his or her professional certificate prior to achievement of the purpose of the transaction for the purpose of monitoring compliance. Upon making a transaction for the purpose of monitoring compliance, it is prohibited to conduct surveillance activities, abet a person to commit an offence or commit an act with elements of an offence, it is also prohibited to use a person recruited for secret cooperation for ensuring the making of a transaction for the purpose of monitoring compliance, simulate a legal person, use an undercover agent or covert measures within the meaning of §§ 7<sup>51</sup> and 7<sup>54</sup>–7<sup>57</sup> of the Police and Border Guard Act.

(3) The person making a transaction for the purpose of monitoring compliance shall notify the person in respect of whom the transaction for the purpose of monitoring compliance was made, immediately after achievement of the purpose of the transaction for the purpose of monitoring compliance, of the fact that a transaction for the purpose of monitoring compliance has been applied to the person. By a written reasoned decision, the notification of the person may be postponed if this is indispensable for continuation of supervision related to the activities of the same person or for monitoring by other persons of compliance with the requirements imposed on the making of such transactions. The notification shall not be postponed by more than three months after the day of making the transaction.

(4) A transaction for the purpose of monitoring compliance shall be recorded in the minutes pursuant to the procedure provided for in § 12 of the Law Enforcement Act. The minutes shall set out the decision that served as a basis for the transaction for the purpose of monitoring compliance, officials who have participated in the transaction for the purpose of monitoring compliance and the person in respect of whom the transaction for the purpose of monitoring compliance was made as well as other participants in the proceedings and recruited persons, testimony by the officials concerning the circumstances and results, the description of things and documents transferred or received and testimony, statements and opinions by other participants in the proceedings and persons recruited in the proceedings. If notification of the transaction for the purpose of monitoring compliance is postponed, the decision to postpone shall be referred to in the minutes for the transaction for the purpose of monitoring compliance. The minutes shall be served on the person in respect of whom the transaction for the purpose of monitoring compliance was made.

(5) A transaction made in the course of a transaction for the purpose of monitoring compliance is void.

[RT I, 21.06.2017, 1 - entry into force 04.07.2017]

#### **§ 64. Termination of activities harmful to collective interests of consumers**

(1) To require termination of or refraining from activities harmful to the collective interests of consumers, the Director General of the Consumer Protection Board or an official authorised by him or her may issue precepts or the Consumer Protection Board may file an action with a county court on behalf of the Republic of Estonia.

(2) Any act which prejudices or may prejudice the common interests of an undefined number of consumers and is in conflict with the provisions of this Act, the Law of Obligations Act or any other Act, primarily the use of or the intention to use unfair commercial practices, is an activity harmful to collective interests.

(3) A precept shall be communicated to a trader and delivered against a signature or sent to the trader by registered mail with advice of delivery within two business days as of the day of issue of the precept.

(4) It is mandatory for a trader to comply with a precept issued thereto by the Director General of the Consumer Protection Board or an official authorised by him or her. Contestation of the precept does not release the trader from the obligation to comply with the precept unless a court decides otherwise.

#### **§ 65. Termination of activities which are in conflict with provisions of Law of Obligations Act and harmful to collective interests of consumers**

(1) The Director General of the Consumer Protection Board or an official authorised by him or her may issue a precept and require a trader having violated the notification obligations provided for in §§ 14<sup>1</sup>, 48, 48<sup>1</sup>, subsection 49 (2<sup>3</sup>), §§ 54–55<sup>1</sup>, subsection 56 (2<sup>4</sup>), §§ 62<sup>1</sup>, 62<sup>2</sup>, 380, 403<sup>1</sup>–404<sup>1</sup>, 406–408, 417<sup>1</sup>, 418, 711, 711<sup>1</sup>, 711<sup>3</sup>, 711<sup>5</sup>, 711<sup>6</sup>, 718<sup>1</sup>, 727, 727<sup>1</sup> and 867–870 of the Law of Obligations Act to terminate the violation and refrain from further violation.

[RT I, 31.12.2016, 1 - entry into force 10.01.2017]

(2) The Director General of the Consumer Protection Board or an official authorised by him or her may issue a precept and require a trader having violated the provisions of §§ 28<sup>1</sup>, 42, 113<sup>2</sup>, 401<sup>2</sup>, 406<sup>2</sup>, 419<sup>2</sup>, 419<sup>3</sup>, 710<sup>1</sup>, 711<sup>4</sup> and 721<sup>1</sup>–721<sup>5</sup> of the Law of Obligations Act to terminate the violation and refrain from further violation.

[RT I, 28.12.2017, 3 - entry into force 07.01.2018]

(3) The Consumer Protection Board may file an action with a county court on behalf of the Republic of Estonia and require a trader to terminate the violation of the rights of consumers and refrain from such violation in accordance with the provisions of §§ 45, 50, 61, 236, 387, 420, 656, 733<sup>13</sup> and 881 of the Law of Obligations Act.

(4) Before filing an action with a county court, the Consumer Protection Board shall notify a trader of the intent to file an action with a county court and enable the trader to express a position thereon.

(5) The rights granted by this section to the Director General of the Consumer Protection Board or an official authorised by him or her apply to the management board of the Financial Supervision Authority or an official authorised thereby upon exercising supervision over creditors and credit intermediaries to the extent of the rights and obligations provided in the Creditors and Credit Intermediaries Act.

#### **§ 66. Termination of cross-border activities harmful to collective interests of consumers**

(1) The provisions of this section apply if the activities of a trader operating in one of the Member States of the European Union are in conflict with the provisions of certain directives as transposed into the legislation applicable in that Member State and if the consequences of the infringement become apparent in another Member State.

(2) A list of the directives specified in subsection (1) of this section shall be established by a regulation of the minister responsible for the area.

(3) The authorities and organisations of the Member States as published in the Official Journal of the European Union have the right to apply to the Consumer Protection Board for filing an action or for issuing a precept or to file an action itself for the termination of such activities of a trader operating in Estonia as are in conflict with the provisions of a directive specified in subsection (2) of this section as transposed into the legislation applicable in Estonia and which are harmful to the collective interests of consumers in the Member State concerned.

(4) The minister responsible for the area shall appoint by a regulation the Estonian authorities and persons who have the right to apply for the termination of such activities of a trader operating in a Member State of the European Union as are in conflict with the provisions of a directive specified in subsection (2) of this section as transposed into the legislation applicable in that Member State and which are harmful to the collective interests of consumers in Estonia.

#### **§ 67. Cooperation in supervision**

(1) Co-operation between the competent authorities designated as responsible for enforcement of the legislation protecting the interests of consumers in the Member States of the European Union shall be effected pursuant 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 Regulation on consumer protection cooperation) (OJ L 364, 9.12.2004, p. 1 – 11).

(2) The Consumer Protection Board shall be the liaison office in the implementation of the Regulation specified in subsection (1) of this section.

(3) The minister responsible for the area shall designate by a regulation the competent authorities responsible for the implementation of the Regulation specified in subsection (1) of this section.

(4) The Minister of Economic Affairs and Communications shall notify the European Commission and the Member States of the European Union of the competent authorities appointed as responsible for the implementation of the Regulation specified in subsection (1) of this section and the single liaison office.

## **Chapter 8 Liability**

#### **§ 68. Violation of requirements for goods, sale of goods or provision of services**

(1) Violation of the requirements for the expiry dates, labelling, instruction manuals or disclosure of prices of goods or of other requirements established for the sale of goods or provision of services is punishable by a fine of up to 200 fine units.

(2) The same act, if committed by a legal person, is punishable by a fine of up to 3200 euros.

### **§ 69. Deceiving consumers**

(1) Inaccurate weighing, inaccurate measuring or miscalculation upon the sale of goods or provision of services to a consumer is punishable by a fine of up to 200 fine units.

(2) The same act, if committed by a legal person, is punishable by a fine of up to 3200 euros.

### **§ 70. Violation of prohibition on use of unfair commercial practices**

(1) Use of a misleading commercial practice specified in § 16 of this Act or an aggressive commercial practice specified in § 18 of this Act is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal person, is punishable by a fine of up to 32,000 euros.

### **§ 71. Failure to implement principle of responsible lending**

(1) Failure to implement the principle of responsible lending provided for in § 403<sup>4</sup> of the Law of Obligations Act – is punishable by a fine of up to 300 fine units.  
[RT I, 11.03.2016, 1 - entry into force 21.03.2016]

(2) The same act, if committed by a legal person, is punishable by a fine of up to 32,000 euros.

### **§ 72. Failure to comply with maximum annual percentage rate and limitations on compensation for collection costs required from consumer**

(1) Failure to comply with the maximum annual percentage rate provided for in § 406<sup>2</sup> of the Law of Obligations Act or the limitations on the compensation for collection costs required from the consumer provided for in § 113<sup>2</sup> of the Law of Obligations Act is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal person, is punishable by a fine of up to 32,000 euros.

### **§ 72<sup>1</sup>. Violation of requirements for comparability of fees related to payment accounts, payment service transfer and entry into basic payment services contract**

(1) Violation of the requirements for entry into the basic payment services contract provided for in §§ 710<sup>1</sup> and 711<sup>4</sup> of the Law of Obligations Act is punishable by a fine of up to 300 fine units .

(2) The same act, if committed by a legal person, – is punishable by a fine of up to 32,000 euros.  
[RT I, 31.12.2016, 1 - entry into force 10.01.2017]

### **§ 72<sup>2</sup>. Violation of requirements for transparency and comparability of fees related to payment accounts**

(1) Violation of the requirements for transparency and comparability of the fees related to payment accounts provided for in §§ 711<sup>3</sup>, 711<sup>6</sup> and 718<sup>1</sup> of the Law of Obligations Act – is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal person, – is punishable by a fine of up to 32,000 euros.  
[RT I, 31.12.2016, 1 - enters into force nine months after entry into force of the implementing regulation of the European Commission specified in Article 3(4) of Directive 2014/92/EU of the European Parliament and of the Council on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features (OJ L 257, 28.8.2014, p. 214–246).]

### **§ 72<sup>3</sup>. Violation of requirements for transfer of payment services**

(1) Violation of the requirements for transfer of payment services provided for in §§ 711<sup>5</sup> and 721<sup>1</sup>–721<sup>5</sup> of the Law of Obligations Act – is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal person, –

is punishable by a fine of up to 32,000 euros.  
[RT I, 31.12.2016, 1 - entry into force 10.01.2017]

### **§ 73. Failure to provide information concerning alternative dispute resolution entity and online alternative dispute resolution platform**

(1) Failure to provide information concerning the alternative dispute resolution entity and the online alternative dispute resolution platform is punishable by a fine of up to 100 fine units.

(2) The same act, if committed by a legal person, is punishable by a fine of up to 2000 euros.

### **§ 74. Refusal to accept legal tender**

(1) Refusal to accept legal tender, upon the sale of goods or payment for services, to the extent established in § 2 of the Act on Introduction of Euro is punishable by a fine of up to 200 fine units.

(2) The same act, if committed by a legal person, is punishable by a fine of up to 2000 euros.

### **§ 75. Proceedings**

(1) Extra-judicial proceedings concerning the misdemeanours provided for in § 68 of this Act shall be conducted by:

- 1) the Consumer Protection Board;
- 2) the Health Board;
- 3) the rural municipality or city government.

(2) Extra-judicial proceedings concerning the misdemeanours provided for in § 69 of this Act shall be conducted by:

- 1) the Consumer Protection Board;
- 2) the rural municipality or city government.

(3) Extra-judicial proceedings concerning the misdemeanours provided for in §§ 70 – 74 of this Act shall be conducted by the Consumer Protection Board.

(4) In the case of subjects of financial supervision specified in the Financial Supervision Authority Act, extra-judicial proceedings concerning the misdemeanours provided for in § 70 of this Act shall also be conducted by the Financial Supervision Authority in addition to the Consumer Protection Board.

## **Chapter 9 Implementing Provisions**

### **§ 76. Publication of report specified in subsection 30 (12) of this Act**

The Ministry of Economic Affairs and Communications shall prepare and publish the first report on the functioning and development of the alternative dispute resolution entities recognised under this Act by 9 July 2018.

### **§ 77. Preparation and notification of list of alternative dispute resolution entities recognised under this Act**

(1) The Ministry of Economic Affairs and Communications shall enter the Consumer Disputes Committee operating at the Consumer Protection Board and the alternative dispute resolution entities recognised under subsection 30 (6) of this Act in the list of recognised alternative dispute resolution entities. The list shall be forwarded to the European Commission.

(2) A list of recognised alternative dispute resolution entities shall be published on the websites of the Ministry of Economic Affairs and Communications and the Consumer Protection Board.

§ 78. –§ 81. The provisions on amendment of other Acts omitted from this translation

## **§ 82. Repeal of Consumer Protection Act**

The Consumer Protection Act (RT I 2004, 13, 86) is repealed.

§ 83. –§ 84. The provisions on amendment of other Acts omitted from this translation

## **§ 85. Entry into force of Act**

This Act enters into force on 1 March 2016.

<sup>1</sup>Directive 2013/11/EU of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR) (OJ L 165, 18.6.2013, p. 63–79); Directive 2009/22/EC of the European Parliament and of the Council on injunctions for the protection of consumers' interests (Codified version) (OJ L 110, 1.5.2009, p. 30–37); Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (Unfair Commercial Practices Directive) (OJ L 149, 11.6.2005, p. 22–39); Directive 98/6/EC of the European Parliament and of the Council on consumer protection in the indication of the prices of products offered to consumers (OJ L 80, 18.3.1998, p. 27–30); Directive 2014/92/EU of the European Parliament and of the Council on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features (OJ L 257, 28.8.2014, p. 214–246).

Eiki Nestor  
President of the Riigikogu