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Belgium – Book XII: Economic Law Code



Full title: Book XII of Code of Economic Law: "Law of the electronic economy" (*Boek XII: Recht van de elektronische economie/ Livre XII: Droit de l'économie électronique*) (Entry into force: 31/05/2014)

Implementing Act: Act of 15th December 2013 concerning the inclusion of Book XII, "Law of the electronic economy" in the Code of Economic Law, and containing insertion of definitions specific to Book XII and enforcement provisions specific to Book XII, in the books I and XV of the Code of Economic Law¹.

Title of relevant section: Book XII; Chapter III (Information and Transparency) –Art. 6; Chapter IV (Advertising) – Arts 12-14

Definitions contained in Book I, Chapter 10 (Specific Definitions in Book XII); Art. I.18

Definitions

(Book I, Chapter 10, Art. I.18)

1. "information society service": any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of the service.
2. "electronic mail": any text, voice, sound or image message sent over a public communications network which can be stored in the network or in the recipient's terminal equipment until it is collected by the recipient
3. "service provider": any natural or legal person providing an information society service
5. "recipient of the service": any natural or legal person who, for professional ends or otherwise uses an information society service, in particular for the purposes of seeking information or making it accessible.
6. "advertising": any form of communication designed to promote, directly or indirectly, the goods, services or image of a company, organization or person pursuing a commercial, industrial or craft activity or exercising a regulated profession.
The following do not in themselves constitute commercial communications:
 - a) information allowing direct access to the activity of the company, organization or person, in particular a domain name or an email address;
 - b) communications relating to the goods, services or image of the company, organization or person compiled in an independent manner, particularly when this is without financial consideration."

Chapter III (Book IV) Information and transparency

Article 6 § 1. In addition to other legal and regulatory information requirements, every service provider shall ensure that the recipients of the service and competent authorities have easy, direct and permanent access to at least the following information:

1. the name or the trade name of the service provider;
2. geographic address at which the service provider is established;

¹ http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2013121551&table_name=loi (French)

URL of source: <http://www.ejustice.just.fgov.be/eli/loi/2013/02/28/2013A11134/justel#LNK0410>

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3. contact information, including his electronic mail address, which allows him to be contacted rapidly and communicated with in a direct and effective manner;
 4. where applicable, the business number (*i.e. business registration number*);
 5. in the case where the activity is subject to an authorisation scheme, the particulars of the relevant supervisory authority;
 6. regarding regulated professions:
 - a) the trade association or professional body to which the service provider is registered;
 - b) the professional title and the state where has been granted;
 - c) a reference to the applicable professional rules and means to access them.
 7. where the service provider undertakes an activity that is subject to value added tax, the identification number referred to in Article 50 of the Code on VAT.
 8. codes of conduct to which he may be subject as well as information on how those codes can be consulted electronically.

§ 2. Notwithstanding other legal and regulatory information requirements in the field of price indication, the information society services that refer to prices shall indicate them clearly and unambiguously, and in particular must indicate whether taxes and shipping costs are included.

Chapter IV

Advertising

Article 12

In addition to other legal and regulatory information requirements, advertising which is part of or constitutes an information society service shall comply with the following conditions:

1. Immediately upon its receipt, the advertising must be clearly identifiable as such, given its general impression, including its presentation. If this is not the case, it shall contain the word: "advertising" ("*reclame / publicité*") in a legible, clearly visible and unambiguous manner;
2. the natural or legal person on whose behalf the advertising is made shall be clearly identifiable;
3. Promotional offers, such as announcements of price reductions and related offers must be clearly identifiable as such and the conditions to be able to take advantage of these offers shall be easily accessible and presented clearly and unambiguously;
4. Promotional competitions or games must be clearly identifiable as such, and their entry conditions must be easily accessible and be presented clearly and unambiguously.

Article 13

§ 1. The use of email for advertising is prohibited without the prior, freely given, specific and informed consent of the recipient of the messages.

On the joint initiative of the Minister of Justice and of the Minister of Economic Affairs, the King may provide exceptions to the prohibition in the first paragraph².

§ 2. When sending advertising via electronic mail, the service provider shall comply with the following:

1. he shall provide clear and understandable information on the right to opt out of receiving further advertising in the future;
2. he shall indicate and provide appropriate means to exercise this right by electronic means.

² See: Royal Decree of 4 April 2003 to regulate the sending of commercial electronic mail (Articles 1 and 2 - in English [here](http://www.ejustice.just.fgov.be/eli/arrete/2003/04/04/2003011238/justel))
<http://www.ejustice.just.fgov.be/eli/arrete/2003/04/04/2003011238/justel> (French)

URL of source: <http://www.ejustice.just.fgov.be/eli/loi/2013/02/28/2013A11134/justel#LNK0410>

Upon the joint initiative of the Minister of Justice and of the Minister of Economic Affairs, the King shall establish the modalities under which the service provider shall respect the choice of the recipient to opt out of receiving advertising by electronic mail³.

§ 3. When sending advertising by electronic mail, it is prohibited to:

1. use the email address or the identity of a third party;
2. falsify or conceal any information that identifies the origin of the e-mail message or its transmission path (i.e. the way it was communicated);
3. encourage the recipient of messages to visit websites violating Article 12 (Book XII)

§ 4. The service provider must provide evidence that advertising by electronic mail was requested.

Article 14

Advertising that is part of, or constitutes an information society service provided by a member of a regulated profession is permitted subject to compliance with professional rules with respect to, in particular, the independence, dignity and honour of the profession, professional secrecy, and fairness towards clients and other members of the profession.

³ See: Royal Decree of 4 April 2003 to regulate the sending of commercial electronic mail (Articles 1 and 2 - in English [here](http://www.ejustice.just.fgov.be/eli/arrete/2003/04/04/2003011238/justel))
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