

CONSUMER CODE

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Legislative Part

BOOK I**Consumer information and contract formation****Articles L111-1 to L141-3****TITLE I****Consumer information****Articles L111-1 to L115-33****CHAPTER I**

General obligation of information

Articles L111-1 to L111-3

Article L111-1

All business suppliers of goods or services must, prior to conclusion of the contract, ensure that the consumer is made aware of the essential characteristics of the goods or services.

Article L111-2

Business suppliers of personal property must, in addition, inform the consumer of the period during which parts that are essential for use of the goods are likely to be on the market. The business must, compulsorily, be notified of this period by the manufacturer or importer.

Article L111-3

The provisions of the previous two articles are applicable without prejudice to provisions that are more favourable to consumers which subject certain activities to special regulations regarding consumer information.

CHAPTER II

Manner of presentation and labelling

Articles L112-1 to L112-7

Article L112-1

(inserted by Act no. 99-574 of 9 July 1999 art. 82 Journal officiel of 10 July 1999)

Product labelling referring to an appellation d'origine contrôlée fromagère must compulsorily include the name and address of the manufacturer.

Article L112-2

(Act no. 99-574 of 9 July 1999 art. 83 Journal officiel of 10 July 1999)

(Act no. 2001-420 of 15 May 2001 art. 61 Journal officiel of 16 May 2001)

An official visual identification mark, known as the appellation d'origine contrôlée logo, in the sense of point 2 of article 6B of the Paris convention of 20 March 1883 for protection of industrial property, must be used in any display of agricultural produce and foodstuffs that have an appellation d'origine contrôlée, with the exception of wines, spirits and intermediary products.

A Council of State decree fixes, subsequent to consultation of the Institut national des appellations d'origine, the specimen official logo and its procedures for use.

Article L112-3

(inserted by Act no. 2001-6 of 4 January 2001 art. 18 II Journal officiel of 5 January 2001)

Conditions for use of wording relating to poultry rearing methods are determined by article L. 640-4 of the code rural, reproduced hereinafter:

Art. L. 640-4 "For poultry with no identification mark in the sense of article L. 640-2, reference to rearing methods relating to foodstuffs can only be used, in accordance with current community legislation, under the terms fixed by decree relating, in particular, to regular control procedures.

Reference to the "extensive indoor (barn reared)" and "free range" rearing methods, as well as to the age of slaughter, can only be used on poultry for which an identification mark resulting in the issue by the administrative authority of an identification mark

The words "farm – traditional free range" or "farm – free range, total freedom" can only be used on poultry with a label, an appellation d'origine contrôlée or certification of the method of organic production.

These provisions do not, however, apply to small-scale productions intended for the direct or local sale referred to in

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article 3, paragraph 5 of the directive 71/118/CEE.”

Article L112-4

(inserted by Act no. 2001-420 of 15 May 2001, art. 59 I Journal officiel of 16 May 2001)

Conditions for simultaneous use, for labelling of a foodstuff or a non-food, non-processed agricultural product, with the exception of wines, spirits and intermediary products, of a commercial brand and an identification mark, in the sense of article L. 640-2 of the code rural, are laid down by Council of State decree.

Article L112-5

(inserted by Act no. 2001-420 of 15 May 2001, art. 59 I Journal officiel of 16 May 2001)

Research and verification of breaches of the provisions laid down in this chapter are exercised in accordance with the conditions provided for in article L.215-3 by the agents mentioned in article L.215-1.

Article L112-6

(inserted by Act no. 2001-420 of 15 May 2001, art. 62 Journal officiel of 16 May 2001)

Labeling of a product sold under an own brand must mention the name and address of the manufacturer if the latter so requests.

Products with characteristics defined by the company or the group of companies that retail the product and own the brand name under which it is sold are deemed to be products sold under an own brand.

Article L112-7

(inserted by Act no. 2001-420 of 15 May 2001, art. 63 Journal officiel of 16 May 2001)

The designations “chocolat pur beurre de cacao” and “chocolat traditionnel” and any other equivalent denominations are reserved for chocolate manufactured only from fats extracted from cocoa beans, without the addition of vegetable fats.

CHAPTER III

Price and conditions of sales

Articles L113-1 to
L113-4

Article L113-1

The rules relating to the determination of prices are fixed by the provisions of article 1 of order no. 86-1243 of 1 December 1986 relating to freedom of prices and competition, reproduced hereinafter:

Prices of goods, products and services are freely determined by economic forces. In sectors or areas where price competition is limited due, either to monopolistic situations or sustained procurement difficulties, or legislative or regulatory provisions, a Council of State decree may regulate prices subsequent to consultation of the conseil de la concurrence.

The provisions of the first two paragraphs shall not form an obstacle to Government rulings, made by virtue of Council of State decrees, against excessive price rises or falls, temporary measures caused by crisis situations, exceptional circumstances, a public disasters or a manifestly abnormal market situation in a determined sector. The decree is issued subsequent to consultation of the Conseil national de la consommation. It states its period of validity which may not exceed six months”.

Nota : Article 1 of order n° 86-1243 of 1 December 1986 reproduced above, has been repealed by order n° 2000-912 of 18 September 2000.

Article L113-2

Aforementioned rules relating to the field of application of order no. 86-1243 of 1 December 1986 are fixed by article 53 of this order, reproduced hereinafter:

“Art. 53: The rules defined by this order apply to all production, distribution and service activities, including those which are performed by public entities, in particular, within the scope of public service delegation agreements.”

N.B.: Article 53 of order no. 86-1243 of 1 December 1986 reproduced above, has been repealed by order no. 2000-912 of 18 September 2000.

Article L113-3

All product vendors or service providers must, by means of marking, labelling, bill-posting or by any other appropriate procedure, inform the consumer of prices, any limitations of contractual liability and special terms of sale, in accordance with the procedures laid down by orders issued by the ministre chargé de l'économie, subsequent to consultation with the Conseil national de la consommation.

This provision applies to all the activities referred to in the last paragraph of article L.113-2.

Article L113-4

(Act No. 2004-575 of 21 June 2004 Article 53 Official Journal of 22 June 2004)

(Act No. 2004-669 of 9 July 2004 Article 1 Official Journal of 10 July 2004)

All voice telephony operators shall be required to make an equitable proposal to consumers subscribing to an electronic telephone service in which commuted calls within metropolitan France are billed per second, from the first second, save for any fixed connection charge.

Consumers who have opted for a prepaid mode of settlement shall be billed per second, from the first second, for their commuted voice telephony calls within metropolitan France. Such consumers may avail themselves, upon request, of any other billing method offered by that operator.

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Clear information on the billing system applied to calls shall be provided before any service is subscribed to, regardless of the method of payment chosen.

With effect from the first day of the sixth month following the promulgation of the Act for Confidence in the Digital Economy, No. 2004-575, of 21 June 2004, consumers must be able to avail themselves of the aforementioned terms when any new subscription is entered into.

CHAPTER IV

Information on delivery dates

Article L114-1

Article L114-1

In any contract for the sale of goods or the supply of services to a consumer, the business must, when the delivery of the goods or the supply of the services is not immediate and if the agreed price exceeds the thresholds fixed by regulation, indicate the final date by which it undertakes to deliver the goods or perform the services.

The consumer may terminate the contract for the sale of goods or the supply of services, by recorded delivery letter should the delivery date for supply of the goods or services be exceeded by seven days and should this not be due to a case of "force majeure".

This contract is, if necessary, considered to have been broken upon receipt, by the vendor or by the service provider, of the letter in which the consumer informs the latter of its decision, if the delivery or service provision has not taken place between the sending and the receipt of this letter. The consumer has sixty working days from the date given for delivery of the goods or services in which to exercise this right.

Unless stipulated otherwise in the contract, sums paid in advance are deposits, with the effect that each of the contracting parties may go back on their obligation, the consumer by losing the deposit, the business by returning twice the amount of said deposit.

CHAPTER V

Development of products and services

Articles L115-1 to

L115-33

SECTION I

"Appellations d'origine"

Articles L115-1 to

L115-20

Subsection 1

Definition

Article L115-1

Article L115-1

An appellation d'origine is constituted by the name of a country, of a region or of a locality serving to designate a product which originates from there and the quality or character of which is due to the geographical location, comprising natural and man-made factors.

Subsection 2

Administrative protection procedure

Articles L115-2 to

L115-7

Article L115-2

Failing a definitive legal decision on the basic issues in application of articles L. 115-8 to L. 115-15, a Council of State decree may limit the geographical production area and determine the qualities or characteristics of a product bearing an appellation d'origine on the basis of local, honest and constant usage.

Publication of this decree poses an obstacle for the future institution of proceedings provided for in articles L. 115-8 to L. 115-15.

Article L115-3

The decree provided for in article L. 115-2 may prohibit from appearing on products other than those bearing an appellation d'origine or on the packages which contain them and labels, business stationery and invoices thereto related, any information liable to cause confusion with regard to the origin of the products.

Article L115-4

The decree provided for in article L. 115-2 is issued subsequent to a public inquiry involving the consultation of those professional groups with direct involvement. A Council of State decree fixes the procedures of this inquiry.

Article L115-5

(Act no. 98-565 of 8 July 1998 art. 4 | Journal officiel of 9 July 1998)

The procedure for the issue of an appellation d'origine contrôlée is defined in article L. 641-2 of the code rural, reproduced hereinafter:

"Art. L. 641-2. – Only raw or processed agricultural or food products may be acknowledged by an appellation d'origine contrôlée. The provisions of article L. 115-2 to L. 115-4 and L. 115-8 to L. 115-15 of the consumer code do not apply to them.

In accordance with the terms provided for hereinafter, these products may receive an appellation d'origine contrôlée

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if they adhere to the provisions of article L. 115-1 of the consumer code, have a duly established reputation and are the subject of approval procedures.

The appellation d'origine contrôlée may never be considered to be of a generic nature and fall within the public domain.

The geographical name which constitutes the appellation d'origine or any other wording evoking said mark, may not be used for any similar product, without prejudice to legislative or regulatory provisions in force on 6 July 1990, nor for any other product or service where this use is likely to detract from or debase the standing of the appellation d'origine.

The appellation d'origine contrôlée for wines of superior quality mentioned in article L. 641-24 and those which are in force on, 1 July 1990, in overseas departments shall retain their status.

Article L115-6

(Act no. 98-565 of 8 July 1998 art. 4 I Journal officiel of 9 July 1998)

The procedure for defining an appellation d'origine contrôlée is fixed by article L. 641-3 of the code rural, reproduced hereinafter:

“Art. L. 641-3. – Each appellation d'origine contrôlée is defined by decree on the proposal of the Institut national des appellations d'origine, without prejudice, for wines and eaux de vie, ciders, perry, or aperitifs based on cider, perry or wine, to the provisions of article L. 641-15.

The decree limits the geographical production area and determines the terms for production and approval of the product”.

Article L115-7

(Act no. 96-314 of 12 April 1996 art. 61 Journal officiel of 13 April 1996)

(Act no. 98-565 of 8 July 1998 art. 4 I Journal officiel of 9 July 1998)

The transitional provisions relating to agricultural and agro-alimentary appellations d'origine are defined in article L. 641-4 of the code rural, reproduced hereinafter:

“Art. L. 641-4. - appellations d'origine defined by legislation or regulation prior to 1 July 1990 are considered to meet the terms of article L. 641-3. Any subsequent modification of the tests defining these appellations must be made in accordance with the procedure provided for in the same article.

Prior to 1 July 2000, products whose appellation d'origine was defined by judicial means prior to 1 July 1990, or was acquired in application of articles 14 and 15 of the Act of 6 May 1919 relating to the protection of appellations d'origine written prior to Act no. 90-558 of 2 July 1990 relating to appellations d'origine contrôlée for raw or processed agricultural or food products, and for which an application for acknowledgement by way of appellation d'origine contrôlée has been lodged with the Institut national des appellations d'origine prior to 31 December 1996, will be given this acknowledgement, by decree, if they satisfy the conditions fixed by article L. 641-3. As of 1 July 2000, or in the event of the acknowledgement by way of appellation d'origine contrôlée being refused, these appellations shall become null and void”.

Subsection 3

Judicial protection procedure

Articles L115-8 to
L115-15

Article L115-8

Any entity claiming that an appellation d'origine has been applied, to its direct or indirect prejudice and in contravention of its right, to a natural or manufactured product, contrary to the origin of this product, may institute proceedings to prohibit the use of this appellation.

Unions and associations that have been regularly constituted for at least six months shall be entitled to take the same course of action in respect of rights that they wish to defend.

On the basis of local, loyal and constant usage, the judge may limit the geographical production area and determine the qualities or characteristics of the product referred to in the first paragraph.

Article L115-9

The court to which a case has been referred by virtue of article L. 115-8 may hear and determine a case inclined to prohibit the display, in products other than those with an appellation d'origine or on packages which contain them and labels, business stationery and related invoices, any information likely to cause confusion over the origin of the products.

This action is open even if the geographical area of production has been definitively limited in application of articles L. 115-8 to L. 115-15.

Article L115-10

The proceedings will be brought before the tribunal de grande instance for the place of origin of the product for which the appellation is being contested. The claim will be exempt from preliminary conciliation proceedings and investigated judged according to procedure on the appointed day.

Article L115-11

Within eight days of the summons, the claimant must have published in a journal d'annonces légales in the district in which he is domiciled and in the district of the local Court, a brief note giving surname, first names, profession and domicile, the surname, first names and domicile of his representative, those of the defendant and the latter's representative if one has been appointed, and the purpose of the claim.

Proceedings may not commence until fifteen days after publications of the note provided for in the previous

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paragraph.

Article L115-12

Any person, any union and association satisfying the conditions in respect of term and interest provided for in article L. 115-8 may take part in the proceedings.

Article L115-13

Within eight days of notification of the appeal, the appellant or appellants must publish the information provided for in article L. 115-11.

Proceedings may not commence before the court until fifteen days after this information has been published.

Article L115-14

The Cour de cassation, to which an appeal has been referred, shall be competent to assess whether or not the practices cited for the use of an appellation d'origine have all the legal characteristics required in this section.

The appeal shall be suspensive.

Article L115-15

Final judgements shall reach a decision in respect of all the inhabitants and proprietors of the same region, the same commune, or, if necessary, of a part of the same commune.

Subsection 4
Criminal procedures

Articles L115-16 to
L115-20

Article L115-16

(Act no. 92-1336 of 16 December 1992 art. 322, art. 329 Journal officiel of 23 December 1992 in force on 1 March 1994)

(Act no. (4-2 of 3 January 1994 art. 1 Journal officiel of 4 January 1994)

(Act no. 99-574 of 9 July 1999 art. 85 I Journal officiel of 10 July 1999)

Anyone who has either affixed or displayed, by means of any addition, excision, or alteration whatsoever, on natural or manufactured products intended for sale, of appellations d'origine that said person knows to be inaccurate will be punishable with the penalties provided for in article L. 213-1.

Anyone who may have used a display method leading to believe, or of a nature likely to lead to believe, that a product has an appellation d'origine contrôlée will be punishable with the same penalties.

The court may, on the other hand, order the posting of the judgement in all the places designated by it and its publication, in its entirety, or in extracts, in the journals listed by said court, all at the expense of the convicted person.

Any one who may have knowingly sold, put on sale or into circulation, natural or manufactured products bearing an inaccurate appellation d'origine will be punishable by the same penalties.

Article L115-7

The persons, unions and associations referred to in the first two paragraphs of article L. 115-8 which claim to have been damaged by the offence provided for in article L. 115-16 may bring a civil action in accordance with the provisions of the Code de procédure pénale.

Article L115-18

(Act no. 98-565 of 8 July 1998 art. 4 II Journal officiel of 9 July 1998)

(Act no. 99-574 of 9 July 1999 art. 85 II Journal officiel of 10 July 1999)

The penalties provided for in article L. 115-16 as well as the provisions of article L. 115-17 are applicable in the event of use of the wording prohibited by virtue of articles L. 115-3 and L. 115-9.

The penalties provided for by article L. 115-16 are also applicable in the event of use of any wording prohibited by virtue of the fourth paragraph of article L. 641-2 of the code rural.

The provisions of article L. 115-25 are apply to section I of this chapter.

Article L115-19

(Act no. 98-565 of 8 July 1998 art. 4 III Journal officiel of 9 July 1998)

The organisation and operation of the Institut national des appellations d'origine are defined in article L. 641-5 of the code rural, reproduced hereinafter:

“Art. L. 641-5. – The Institut national des appellations d'origine is a public administrative institution and a legal entity. It comprises:

A national committee with jurisdiction over wines, eaux de vie, ciders, perrys, cider and aperitifs based on cider, perry or wine;

A national committee for dairy products;

A national committee for products other than those covered by the authorities mentioned hereinabove.

These committees are made up of professional representatives, representatives of government departments and qualified entities for the representation, in particular, of consumers.

Each of these committees acts for the products over which it has jurisdiction in respect of the questions mentioned in article L. 641-6.

The members of these committees meet for a plenary session for the presentation of the budget and general policy of the institute.

A permanent committee made up of members belonging to the same categories as those specified for the national

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committees and selected from within these committees compiles the institute's budget and determines the general policy relating to appellations d'origine contrôlées.

Chairpersons of national committees and of the permanent council are appointed by joint order of the ministre chargé de l'économie and the ministre de l'agriculture. The chair of the permanent council is appointed for two years. He is successively selected within each of the national committees.

Organisational and operational regulations for the Institut national des appellations d'origine are fixed by decrees issued by the Conseil d'Etat.

Article L115-20

(Act no. 94-2 of 3 January 1994 art. 2 Journal officiel of 4 January 1994)

(Act no. 98-565 of 8 July 1998 art. 4 III Journal officiel of 9 July 1998)

The jurisdiction of the Institut national des appellations d'origine is defined in article L. 641-6 of the code rural, reproduced hereinafter:

"Art. L. 641-6. – The Institut national des appellations d'origine has jurisdiction over all raw or processed agricultural or food products. The provisions of articles L. 641-15 and L. 641-16 apply to all these products.

Upon advice from the relevant defence unions, the Institut national des appellations d'origine proposes recognition of appellations d'origine contrôlées, which include the delimitation of the geographical production areas and the determination of production and approval conditions for each of these appellations d'origine contrôlées.

It gives its opinion on national provisions relating to labelling and to the display of each of the products under its jurisdiction. It may be consulted on any other question relating to appellations d'origine.

It contributes, in France and abroad, to the promotion and defence of the protected appellations d'origine and protected geographical information mentioned in chapter II of this part.."

Subsection 5

"L'institut national des appellations d'origine"

SECTION II

Labels and certification of food and agricultural product

Articles L115-21 to
L115-26

Article L115-21

(Act no. 94-2 of 3 January 1994 art. 1 Journal officiel of 4 January 1994)

(Act no. 98-565 of 8 July 1998 art. 4 III Journal officiel of 9 July 1998)

Products likely to benefit from an agricultural label or conformity certification are defined in article L. 643-1 of the code rural, reproduced hereinafter:

"Article L. 643-1. – Foodstuffs and non-food, unprocessed agricultural produce, may benefit from an agricultural label or be the subject of conformity certification in accordance with the rules defined in the specifications".

Article L115-22

(Act no. 94-2 of 3 January 1994 art. 1 Journal officiel of 4 January 1994)

(Act no. 98-565 of 8 July 1998 art. 4 III Journal officiel of 9 July 1998)

The purpose of agricultural labels is defined in article L.643-2 of the code rural, reproduced hereinafter:

"Art. L. 643-2. – Agricultural labels attest to the fact that a foodstuff or a non-food, unprocessed agricultural product possesses a distinct set of qualities and specific characteristics which have been fixed beforehand in specifications and establishing a superior level of quality.

The geographical origin may only appear amongst the specific characteristics if it is registered as a protected geographical indication, subject to the provisions of the second paragraph of article L. 643-4.

This product must be different from similar products of the type usually sold, in particular, in respect of its special production or manufacturing conditions and, possibly, in respect of its geographical origin.

Only producers or processors organised in groups, whatever their legal form, are authorised to apply for the issued of a label".

Article L115-23

(Act no. 94-2 of 3 January 1994 art. 1 Journal officiel of 4 January 1994)

(Act no. 98-545 of 8 July 1998 art. 4 III Journal officiel of 9 July 1998)

The purpose of the conformity certification is defined in article L. 643-3 of the code rural, reproduced hereinafter:

Art. L. 643-3 – Conformity certification attests to the fact that a foodstuff or a non-food unprocessed agricultural product conforms to specific characteristics or rules fixed beforehand in specifications relating, as the case may be, to the production, processing or packaging and, if necessary, the geographical origin of the foodstuff or the product when this origin is registered as a protected geographical indication, subject to the provisions of the second paragraph of article L. 643-4".

Article L115-23-1

(Act no. 94-2 of 3 January 1994 art. 1 Journal officiel of 4 January 1994)

(Act no. 98-565 of 8 July art. 4 III Journal officiel of 9 July 1998)

The principle of prohibiting the appearance in a label or a conformity certification of geographical wording not registered as a protected geographical indication is given in article 643-4 of the code rural, reproduced hereinafter:

Art. L. 643-4. – The label or conformity certification may not include geographical wording unless the latter has been

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registered as a protected geographical indication.

If, however, the local authority has requested the registration of this geographical wording as a protected geographical indication, the label or conformity certification may include this wording, included in the specific characteristics, until the date of the decision relating to its registration.

The prohibition mentioned in the first paragraph does not apply when the name which incorporates this wording is generic or designates a product benefiting from an certificate of special character.

Agricultural products or foodstuffs benefiting, prior to 4 January 1994, from an agricultural label or conformity certification may continue to bear a geographical origin wording without having a protected geographical indication for a period of eight years from the aforementioned date”.

Article L115-23-2

(Act no. 94-2 of 3 January 1994 art. 1 Journal officiel of 4 January 1994)

(Act no. 98-565 of 8 July 1998 art. 4 III Journal officiel of 9 July 1998)

The procedure for issuing agricultural labels and conformity certificates is defined in article L. 643-5 of the code rural, reproduced hereinafter:

“Art. L. 643-5. – Agricultural labels and conformity certificates are issued by certifying bodies approved by the administrative authority.

Certifying bodies must offer guarantees of impartiality and independence and must not, in particular, be producers, manufacturers, importers or vendors of product of the same kind and must prove their competence and the efficacy of their controls.

Approval can only be given upon verification of these conditions and of the capacity of the body to provide quality controls for products which have labels or conformity certificates”.

Article L115-23-3

(Act no. 94-2 of 3 January 1994 art. 1 Journal officiel of 4 January 1994)

(Act no. 98-565 of 8 July 1998 art. 4 III Journal officiel of 9 July 1998)

The purpose of interdepartmental approval of agricultural labels and conformity certificates is defined in article L. 643-6 of the code rural, reproduced hereinafter:

“Art. L. 643-6. – Agricultural labels may only be used if they have been the subject of approval by interdepartmental order.

Likewise for conformity certificates attesting to the geographical origin..”

Article L115-23-4

(Act no. 94-2 of 3 January 1994 art. 1 Journal officiel of 4 January 1994)

(Act no. 98-565 of 8 July 1998 art. 4 III Journal officiel of 9 July 1998)

Procedures for applying provisions relating to agricultural labels and conformity certificates are referred to decrees issued by the Conseil d'Etat as provided for by article L. 643-7 of the code rural, reproduced hereinafter:

“Art. L. 643-7. – Decrees issued by the Conseil d'Etat specify, as appropriate, the procedures for applying articles L. 643-2 to L. 643-6 and, in particular, the conditions to be met by specifications, their examination and, if necessary, approval procedures, characteristics of certifying bodies, their operating procedures and the terms of their approval etc.”.

Article L115-24

(Act no. 98-565 of 8 July 1998 art. 4 III Journal officiel of 9 July 1998)

The penalties provided for in article L. 213-1 shall apply to anyone who may have:

Fraudulently used or attempted to use an agricultural label or certificate;

Issued, used or attempted to use an agricultural label which has not been approved;

Provided certification without satisfying the conditions provided for in articles L. 643-3 to L. 643-7 of the code rural;

Used a mode of presentation leading to believe, or of a nature to lead to believe, that a product has an agricultural label or certification;

Led to believe or attempted to lead to believe that a product with an agricultural label is guaranteed by the Government or by a public body.

Article L115-25

(Act no. 98-565 of 8 July 1998 art. 4 III Journal officiel of 9 July 1998)

(Act no. 2001-6 of 4 January 2001 art. 18 III Journal officiel of 5 January 2001)

The provisions of chapters II to VI of part I of volume II of this code, relating to the research and recording of breaches are applicable to the prescriptions of part IV of volume VI of the code rural and L. 115-24 of this code and the texts issued for their application.

Article L115-26

(Act no. 98-565 of 8 July 1998 art. 4 IV Journal officiel of 9 July 1998)

Bans on the use of agricultural labels and conformity certificates for products which have an appellation d'origine or for certain wines are defined in article L. 643-8 of the code rural, reproduced hereinafter:

“Art. L. 643-8. – Agricultural labels and conformity certificates may not be used for products with an appellation d'origine, les vins délimités de qualité supérieure and table wines.

SECTION III

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Protected appellations d'origine, protected geographical information and attestations de spécificité

Articles L115-26-1 to L115-26-4

Article L115-26-1

(Act no. 94-2 of 3 January 1994 art. 4 Journal officiel of 4 January 1994)

(Act no. 98-565 of 8 July 1998 art. 4 VI Journal officiel of 9 July 1998)

The protected designation of origin or protected geographical indication and certificate of specific character are defined in article L. 642-1 of the code rural, reproduced hereinafter:

“Art. L.642-1. – A protected designation of origin or a protected geographical indication are constituted by the name listed in the register of protected designations of origin and protected geographical indications kept by the Commission of the European Communities.

A certificate of specific character is constituted by the name of the product which appears in the register of certificates of specific character held by the Commission of the European Communities.

Only the designations of origin mentioned in articles L. 641-1 to L 641-6 may be the subject of an application with a view to their registration as protected designations of origin.

The application for registration of a geographical indication or a certificate of specific character may only be made within the scope of the provisions of chapter III of this part.”

Article L115-26-2

(Act no. 94-2 of 3 January 1994 art. 4 Journal officiel of 4 January 1994)

(Act no. 98-565 of 8 July 1998 art. 4 VI Journal officiel of 9 July 1998)

Procedures for monitoring adherence to specifications for protected geographical indications and certificates of specific character are defined in article L. 642-2 of the code rural, reproduced hereinafter:

“Art. L. 642-2. – The approved certifying bodies mentioned in article L. 643-5 monitor adherence to specifications for protected geographical indications and certificates of specific character.

“A Council of State decree does, however, define, as appropriate, special monitoring procedures for agricultural producers and craftspeople retailing their production in small quantities on the local market.

Article L115-26-3

(inserted by Act no. 94-2 of 3 January 1994 art. 4 Journal officiel of 4 January 1994)

The provisions of article L. 115-16 apply to protected designations of origin, protected geographical indications and certificates of specific character.

Article L115-26-4

(Act no. 94-2 of 3 January 1994 art. 4 Official Journal of 4 January 1994)

(Act no. 98-565 of 8 July 1998 art. 4 VII Official Journal of 9 July 1998)

Conditions of use of an indication of origin or of provenance are defined in article L. 642-4 of the rural code, reproduced hereinafter:

“Art. L. 642-4. – Use of an indication of origin or of provenance must not be likely to mislead the consumer in respect of the products' characteristics, nor to detract from or diminish the reputation of a name registered as a protected geographical indication or as a certificate of specific character.

A Council of State decree issued in application of article L. 214-1 of the consumer code fixes, as appropriate, the conditions for application of the previous paragraph”.

SECTION IV

Certification of services and non-food products

Articles L115-27 to L115-33

Article L115-27

(Act no. 94-2 of 3 January 1994 art. 3 Official Journal of 4 January 1994)

(Act no. 94-442 of 3 June 1994 art. 1 Official Journal of 4 June 1994)

Certification of a product or service subject to the provisions of this section is constituted by the activity by which an organisation, independent of the manufacturer, the importer, the supplier or the service provider attests, at the latter's request and carried out for commercial ends, to the fact that a product or a service conforms to the characteristics described in a benchmark and being subject to checks.

The benchmark is a technical document defining the characteristics that a product or a service must display and procedures for checking conformity of the product or service to these characteristics.

Article L115-28

(Act no. 94-2 of 3 January 1994 art. 3 Official Journal of 4 January 1994)

(Act no. 94-442 of 3 June 1994 art. 2 Official Journal of 4 June 1994)

Only organisations which have lodged a declaration with a local authority relating to their activity and containing, in particular, all necessary information regarding the measures intended to guarantee their impartiality and their competence, may proceed with certification of products or services.

Organisations accredited by an authority recognised for this purpose by the government are exempt from supplying this information.

Any reference to certification in the advertising, labelling or presentation of any product or service, as well as on

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related business stationery, must be accompanied by clear information as to the nature and extend of the certified characteristics.

The existence of benchmarks is the subject of a mention in the Journal Officiel de la République française. They can be consulted either, for free, on-site at the premises of the certifying body, or copies can be sent out, at the expense of the applicant.

Certifying bodies register the distinctive mark which, when appropriate, accompanies or materialises the certification, as collective certification marks, in accordance with legislation on trademarks, manufacturer's brands, service marks.

Article L115-29

(Act no. 94-2 of 3 January 1994 art. 3 Journal officiel of 4 January 1994)

(Act no. 94-442 of 3 June 1994 art. 3 Journal officiel of 4 June 1994)

The provisions of articles L. 115-27 and L. 115-28 are not applicable:

- 1° to the certification of foodstuffs and non-food, unprocessed agricultural produce mentioned in article L. 115-21;
- 2° to authorisations to market the drugs for human or veterinary use which are the subject of the provisions of volume V of the Public health code;
- 3° to the issue of punched marks, stamps, visas, approval certificates, collective marks or certificates of conformity to community provisions, by the public authorities or by organisation designated for this purpose and subject to technical or administrative monitoring by the public authorities by virtue of legislative or regulatory provisions;
- 4° to the issue of the labels or marks provided for by article L. 413-1 of the Labour code as well as craftsman and master craftsman's marks in so far as these marks only tend to certify the origin of a product or a service and implementation of professional practices when these are specific to them.

Article L115-30

(Act no. 94-2 of 3 January 1994 art. 3 Journal officiel of 4 January 1994)

(Act no. 94-442 of 3 June 1994 art. 3 Journal officiel of 4 June 1994)

The following are punishable by the penalties provided for in article L. 213-1:

- 1° Advertising, labelling or presentation of any product or service, as well as in commercial documents of any kind relating thereto, of referring to a certification which has not been issued in accordance with the terms defined by articles L. 115-27 and L. 115-28;
- 2° Issuing, in breach of the provisions provided for in articles L. 115-27 and L. 115-28, a title, a certificate or any other document attesting to the fact that a product or a service presents certain characteristics which have been the subject of certification;
- 3° Using any means likely to lead to the erroneous belief that an organisation satisfies the terms defined in articles L. 115-27 and L. 115-28;
- 4° Using any means likely to mislead a consumer or a user into thinking that a product or a service has been certified;
- 5° Falsely presenting any product or service which has been certified as being guaranteed by the government or by a public body.

Article L115-31

(Act no. 94-2 of 3 January 1994 art. 3 Journal officiel of 4 January 1994)

The following are qualified to proceed with research and ascertainment of breaches of the provisions of this section and text issued for its application:

- officers and agents of the judiciary police;
- agents of the metrology sub-division of the department of industry as well as those belonging to regional departments of industry, research and the environment;
- agents from the directorate general for competition, consumer protection and fraud prevention, from the directorate general of customs and indirect taxation;
- pharmacy inspectors and doctors/health inspectors from the department of health;
- labour inspectors;
- the agents mentioned in article 22 of Act no. 76-663 of 19 July 1976 relating to installations classed as being for the protection of the environment.

These agents are invested with the powers provided for by chapters II to VI of part I of volume II of this code and their implementing texts on the sites listed in article L. 213-4 (first paragraph).

Article L115-32

(Act no. 94-2 of 3 January 1994 art. 3 Journal officiel of 4 January 1994)

(Act no. 94-442 of 3 June 1994 art. 5 Journal officiel of 4 June 1994)

Implementation procedures for articles L. 115-27 and L. 115-28 are fixed by Council of State decree, in particular:

- 1° Activity declaration procedures for certifying bodies and the contents of their declaration;
- 2° Terms of recognition of the accreditation authority;
- 3° Contents of benchmarks and terms under which they are established and validated;
- 4° Procedures for consultation between interested partners prior to the establishment or validation of benchmarks;
- 5° Procedures for consumer information on certification.

Article L115-33

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(Act no. 94-2 of 3 January 1994 art. 3 Journal officiel of 4 January 1994)

Proprietors of trademarks, manufacturer's brands or service marks may oppose the circulation of publicity texts referring to their mark by name where the use of this mark aims to mislead the consumer or where it is used with a lack of good faith.

TITLE II

Commercial practices

Articles L121-1 to
L122-10

CHAPTER I

Regulated commercial practices

Articles L121-1 to
L121-85

SECTION I

Advertising

Articles L121-1 to
L121-15-3

Article L121-1

All advertising comprising, in any form whatsoever, representations, information or presentations which are false or likely to mislead, is prohibited, where the latter cover one or more of the items listed hereinafter: existence, nature, composition, substantial qualities, content in useful principles, species, origin, quantity, mode and date of manufacture, properties, price and terms of sale of goods or services which are the subject of advertising, conditions for their use, results which may be expected from their use, reasons for sale or service provision, sale or service provision procedures, scope of obligations undertaken by the advertiser, the identity, qualities or aptitude of the manufacturer, retailers, promoters or service providers.

Article L121-2

(Order No. 2005-1086 of 1 September 2005 Art. 3 Official Journal of 2 September 2005)

The agents of the Directorate-General for Fair Trading, Consumer Affairs and Fraud Prevention, those of the Directorate-General of Food of the Ministry of Agriculture and those of the Department of Metrology of the Ministry of Industry are authorised to establish violations of Article L. 121-1 throughout France by means of statements. They may require advertisers to make available to them any elements which substantiate their advertising claims, indications or presentations. They may require advertisers, advertising agencies or media operators to make the advertising messages disseminated available to them.

Statements drawn up pursuant to the present article are sent to the Public Prosecutor.

Article L121-3

Discontinuance of the advertising may be ordered by the juge d'instruction or by the court to which the proceedings have been referred, either by requisition of the public prosecutor or on its own initiative. The order taken in this way is enforceable, notwithstanding all rights of appeal. The order may be lifted by the jurisdiction that ordered it or to which the case has been referred. The measure ceases to have any effect in the event of a decision of non-suit or release being taken.

Decisions ruling on applications for lifting of said measures may be the subject of an appeal before the chambre d'accusation or before an appeal court depending on whether they were pronounced by a juge d'instruction or by the court to which the proceedings were referred.

The chambre d'accusation or the court of appeal rules within ten days of receiving the documents.

Article L121-4

In the event of sentencing, the court orders publication of the judgment. It may, in addition, order the publication, at the expense of the convicted party, of one or more corrective statements. The judgment prescribes the terms of these statements and the procedures by which they are to be circulated and gives the convicted party a deadline for their issue. In the event of non-application, and without prejudice to the penalties provided for in article L. 121-7, this circulation is implemented at the behest of the public prosecutor at the expense of the convicted party.

Article L121-5

The advertiser on behalf of whom the advertising is circulated is principally responsible for the offence committed. If the offender is a legal person, the responsibility lies with its directors. Complicity is punishable under the same conditions of common law.

The offence is committed as soon as the advertisement is published out, received or perceived in France.

Article L121-6

(Act no. 2001-504 of 12 June 2001 art. 3 II Journal Officiel of 16 June 2001)

Breaches of the provisions of article L. 121-1 are punishable by the penalties provided for in article L. 213-1.

The maximum fine provided for in this article may be as much as 50% of the cost of the advertising constituting the offence.

The provisions of article L. 213-6 providing for the criminal liability of legal persons are applicable to these offences.

Article L121-7

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For the application of article L. 121-6, the court may ask both the parties and the advertiser to supply all relevant documents. In the event of refusal, it may order the seizure of these documents or any appropriate preparatory inquiry. It may, in addition, order a penalty of € 4,500 for every day of delay after the date that it has designated for production of these documents.

The penalties provided for in the first paragraph of article 121-6 are also applicable in the event of refusal to supply items of proof or of advertising circulated, requested in accordance with the conditions provided for in the first paragraph of article L. 121-1 as well as in the event of failure to adhere to decisions ordering the discontinuance of the advertising or the non-performance within the appointed deadline of corrective statements.

Article L121-8

(Order no. 2001-741 of 23 August 2001 art. 1 Journal officiel of 25 August 2001)

Any advertising which makes a comparison between goods or services by identifying, implicitly or explicitly, a competitor or goods and services offered by a competitor is only legal if:

- 1° It is not false or likely to mislead;
- 2° It relates to goods or services fulfilling the same requirements or having the same objective;
- 3° It objectively compares one or more essential, pertinent, verifiable and representative characteristics of these goods or services, one of which may be price.

Any comparative advertising referring to a special offer must clearly state the dates when the goods and services offered are to be available, where appropriate, the fact that the offer is limited to available stocks and the specific terms applicable.

Article L121-9

(Order no. 2001-741 of 23 August 2001 art. 1 Journal officiel of 25 August 2001)

Comparative advertising may not:

- 1° Take unfair advantage of the reputation attached to a trademark, manufacturer's brand or service mark, to a trade name, to other distinctive marks of a competitor or to the designation of origin as well as the protected geographical indication of a competing product;
- 2° Lead to the discrediting or denigration of marks, trade names, other distinctive signs, goods, services, activity or situation of a competitor;
- 3° Engender confusion between the advertiser and a competitor or between the advertiser's marks, trade names, other distinctive signs, goods or services and those of a competitor;
- 4° Present goods or services as an imitation or reproduction of goods or services with a protected mark or trade name.

Article L121-10

(Order no. 2001-741 of 23 August 2001 art. 3 Journal officiel of 25 August 2001)

For products with a protected designation of origin or geographical indication, comparison is only authorized between products each with the same designation of origin or the same indication.

Article L121-11

The display of comparative statements as defined in articles L 121-8 and L 121-9 on packages, invoices, travel tickets, means of payment or tickets giving access to shows or sites open to the public, is prohibited.

Article L121-12

(Order no. 2001-741 of 23 August 2001 art. 1 Journal officiel of 25 August 2001)

Without prejudice to the provisions of article L. 121-2, the advertiser on behalf of which the comparative advertising is being circulated must be in a position to prove, within a short time, the physical accuracy of the statements, indications and presentations contained within the advertising.

Article L121-13

Publication in the press of advertising defined in articles L. 121-8 and L. 121-9 do not give rise to the application of article 13 of the Act of 29 July 1881 on the freedom of the press and article 6 of Act no. 82-652 of 29 July 1982 on audiovisual communication.

Article L121-14

Without prejudice to the application of article 1382 of the civil code, breaches of the provisions of articles L. 121-8 to L. 121-12 are, as appropriate, punishable by the penalties provided for, on the one hand, in articles L. 121-1 to L. 121-7 and, on the other hand, in articles 422 and 423 of the penal code.

A Council of State decree specifies, as required, procedures for implementing articles L. 121-8 to L. 121-13.

Article L121-15

(Act No. 92-1336 of 16 December 1992 Article 322 Official Journal of 23 December 1992 effective 1 March 1994)

(Act No. 96-603 of 5 July 1996 Article 33 Official Journal of 6 July 1996)

(Order No. 2000-916 of 19 September 2000 Article 3 Official Journal of 22 September 2000 effective 1 January 2002)

(Order No. 2004-274 of 25 March 2004 Article 32 Official Journal of 27 March 2004)

In addition, all advertising is prohibited in relation to:

1. Business transactions subject to authorization by virtue either of articles 26, 27, 28, 29 and 30 of Act no. 96-603 of 5 July 1996 relating to the development and promotion of trade and the craft sector, or articles 29 and 32 of Act no. 73-1193 of 27 December 1973 on guidelines for trade and the craft sector, which have not been so authorized;

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2. Business transactions necessitating the involvement of employees who require authorisation by virtue of Chapter I of Part II of Book II of the Labour Code which are carried out without obtaining such authorisation beforehand or which are in breach of articles 41a, 41b, and 105a to 105i of the code des professions applicable in the departments of Moselle, Bas-Rhin and Haut-Rhin;

3. Business transactions carried out or due to be carried out in breach of the provisions of article L. 221-17 of the Labour Code;

4. Trade events subject to the declaration referred to in Article L. 740-2 of the Commercial Code in respect of which no such declaration has been made.

Any advertiser who carries out or arranges advertising that is prohibited by virtue of the preceding paragraphs is liable to a fine of 37,500 euros. The maximum fine may be increased to 50% of the full cost of the illegal advertising.

The court may order the cessation of prohibited advertising at the expense of persons found guilty of the offences described in the preceding paragraphs.

Article L121-15-1

(inserted by Act No. 2004-575 of 21 June 2004 Article 21 Official Journal of 22 June 2004)

Advertising approaches made via electronic mail, and in particular promotional offers such as discounts, premiums or gifts, and likewise competitions or promotional games, must be clearly and unequivocally identified upon receipt or, if this is technically impossible, in the body of the message.

Article L121-15-2

(inserted by Act No. 2004-575 of 21 June 2004 Article 21 Official Journal of 22 June 2004)

Without prejudice to the measures to curb fraudulent advertising provided for in Article L. 121-1, the conditions applicable to the possibility of benefiting from promotional offers or participating in competitions or promotional games, when such offers, competitions or games are proposed by electronic mail, must be clearly stated and readily accessible.

Article L121-15-3

(inserted by Act No. 2004-575 of 21 June 2004 Article 21 Official Journal of 22 June 2004)

Articles L. 121-15-1 and L. 121-15-2 also apply to advertising, offers, competitions and games directed at professionals.

Breaches of the provisions of Articles L. 121-15-1 and L. 121-15-2 shall incur the penalties provided for in Article L. 121-6. They are sought and established as indicated in Article L. 121-2. Articles L. 121-3 and L. 121-4 also apply.

SECTION II

Distance selling of goods and services

Articles L121-16 to
L121-20-16

Subsection 1

Dispositions relatives aux contrats ne portant pas sur des services

Articles L121-16 to
L121-20-7

financiers

Article L121-16

(Order No. 2001-741 of 23 August 2001 Art. 5, Art. 7 Official Journal of 25 August 2001)

(Order No. 2005-648 of 6 June 2005 Art. 1 I Official Journal of 7 June 2005 effective 1 December 2005)

The provisions of the present subsection apply to any sale of goods or any provision of a service that takes place without the simultaneous physical presence of the parties between a consumer and a professional who, in concluding that contract, use one or more distance communication systems to the exclusion of any other means.

NB: Order 2005-648 2005-06-06 Art. 1 I 2: a clerical error crept into the wording of the text concerning the reference of the article to be amended. It is in fact Article L121-16 and not L121-20-16 as written.

The present article is amended accordingly.

Article L121-17

(Act No. 92-1336 of 16 December 1992 Art. 322 Official Journal of 23 December 1992 effective 1 March 1994)

(Order No. 2001-741 of 23 August 2001 Art. 5, Art. 8 Official Journal of 25 August 2001)

(Order No. 2005-648 of 6 June 2005 Art. 1 I Official Journal of 7 June 2005 effective 1 December 2005)

The following contracts are not subject to the provisions of the present section:

1 Those entered into through automatic distributors and those covering services provided in automated commercial premises;

2 Those entered into with telecommunications operators for the use of public call boxes;

3 Those entered into for the construction and sale of real property or relating to other rights attaching to real property, with the exception of letting;

4 Those entered into at public auctions.

NB: Order 2005-648 2005-06-06 Art. 1 I 3: a clerical error crept into the wording of the text concerning the reference of the article to be amended. It is in fact Article L121-17 and not L121-20-17 as written.

The present article is amended accordingly.

Article L121-18

(Order No. 2001-741 of 23 August 2001 Art. 5, Art. 9 Official Journal of 25 August 2001)

(Order No. 2005-648 of 6 June 2005 Art. 1 I Official Journal of 7 June 2005 effective 1 December 2005)

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Without prejudice to the information referred to in Articles L. 111-1 and L. 113-3 and that provided under Article L. 214-1, the contract offer must contain the following information:

- 1 The name of the seller of the product or the service provider, his telephone number, his address or, in the case of a legal entity, its registered office and, if different, the address of the establishment responsible for the offer;
- 2 The delivery costs, where applicable;
- 3 The terms of payment, delivery or execution;
- 4 The existence of any right of withdrawal, save for cases in which the provisions of the present section exclude the exercise of such a right;
- 5 The price and term of validity of the offer;
- 6 The cost of using the distance communication system when it is not calculated in reference to the standard rate;
- 7 Where applicable, the minimum term of the proposed contract, when it relates to the continuous or periodic supply of goods or services.

Such information, the commercial nature of which must be indicated unequivocally, shall be communicated to the consumer clearly and comprehensibly by any means compatible with the distance communication system used.

If telephone canvassing or any similar technique is used, the professional must explicitly indicate his identity and the commercial nature of the call at the beginning of the conversation.

Article L121-19

(Order No. 2001-741 of 23 August 2001 Art. 5, Art. 10 Official Journal of 25 August 2001)

(Order No. 2005-648 of 6 June 2005 Art. 1 I Official Journal of 7 June 2005 effective 1 December 2005)

I. - The consumer must receive the following in writing or on some other durable medium available to him, in good time and upon delivery at the latest:

- 1 Confirmation of the information referred to 1 to 4 of Article L. 121-18 as well as that indicated in Articles L. 111-1 and L. 113-3 and that provided pursuant to Article L. 214-1, unless the professional fulfilled that obligation before the contract was concluded;
- 2 Information concerning the terms and conditions applicable to exercise of the right of withdrawal;
- 3 The address of the supplier's establishment at which the consumer may make any complaints;
- 4 Information concerning after-sales service and commercial guarantees;
- 5 The conditions applicable to cancellation of the contract if it is open-ended or has a term or more than one year.

II. - The provisions of the present article are not applicable to services which are provided once only via a distance communication system and invoiced through that system by the operator, with the exception of 3.

Article L121-20

(Order No. 2001-741 of 23 August 2001 Art. 5, Art. 11 Official Journal of 25 August 2001)

(Order No. 2005-648 of 6 June 2005 Art. 1 I Official Journal of 7 June 2005 effective 1 December 2005)

(Act No. 2005-841 of 26 July 2005 Art. 3 Official Journal of 27 July 2005)

The consumer has seven clear days in which to exercise his right of withdrawal without giving a reason therefor or incurring a penalty, with the exception, where applicable, of the cost of returning the goods. The consumer may exceed this time limit in the event of him being unable to travel and simultaneously needing to call for an immediate service which is essential to his conditions of existence. In which case, he shall continue to exercise his right of withdrawal without giving a reason therefor or incurring a penalty.

The time limit indicated in the preceding paragraph runs with effect from receipt of the goods or, for services, from acceptance of the offer.

When the information referred to in Article L. 121-19 has not been provided, the time limit applicable to exercise of the right of withdrawal is increased to three months. If such information is provided within three months of receipt of the goods or acceptance of the offer, however, this shall activate the seven-day time limit referred to in the first paragraph.

If the seven-day time limit expires on a Saturday, Sunday or public holiday, it is extended to the next working day.

Article L121-20-1

(Order No. 2001-741 of 23 August 2001 Art. 5, Art. 12 Official Journal of 25 August 2001)

(Order No. 2005-648 of 6 June 2005 Art. 1 I Official Journal of 7 June 2005 effective 1 December 2005)

When the right of withdrawal is exercised, the professional is required to repay the consumer without delay and within thirty days, at the latest, of the date on which the said right was exercised. Any sum outstanding thereafter shall bear interest at the legal rate in force.

Article L121-20-2

(Order No. 2001-741 of 23 August 2001 Art. 5, Art. 12 Official Journal of 25 August 2001)

(Order No. 2005-648 of 6 June 2005 Art. 1 I Official Journal of 7 June 2005 effective 1 December 2005)

Unless otherwise agreed between the parties, the right of withdrawal cannot be exercised in respect of the following:

- 1 Contracts for services whose performance began, with the consumer's consent, before expiry of the seven-clear-day time limit;
- 2 Contracts for goods or services whose price depends on the fluctuations of financial-market rates;
- 3 Supply contracts for goods made to the consumer's specifications or substantially personalised or which, given the nature thereof, cannot be re-dispatched or are likely to rapidly deteriorate or become outdated;
- 4 Supply contracts for audio or video recordings or computer software where the products have been unsealed by the consumer;

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- 5 Supply contracts for newspapers, periodicals or magazines;
- 6 Contracts covering betting services or authorised lotteries.

Article L121-20-3

(Order No. 2001-741 of 23 August 2001 Art. 5, Art. 12 Official Journal of 25 August 2001)

(Act No. 2004-575 of 21 June 2004 Art. 15 II Official Journal of 22 June 2004)

(Order No. 2005-648 of 6 June 2005 Art. 1 I Official Journal of 7 June 2005 effective 1 December 2005)

Unless otherwise agreed between the parties, the supplier shall fulfil the order within thirty days of the day following that on which the consumer placed his order for goods or services.

In the event of a supplier failing to perform a contract on account of the goods or services ordered being unavailable, the consumer shall be informed of such unavailability and, where applicable, shall be reimbursed for any sum paid without delay, and within thirty days at the latest. Any sum outstanding thereafter shall bear interest at the legal rate.

However, if such an eventuality was foreseen prior to conclusion of the contract or is provided for therein, the supplier may provide goods or services of equivalent quality and price. The consumer shall be informed of that eventuality clearly and comprehensibly. The cost of returning goods following exercise of the right of withdrawal shall be borne by the supplier in such cases and the consumer shall be informed thereof.

The professional is automatically liable towards the consumer for the proper fulfilment of the obligations deriving from a distance contract, whether such obligations are to be fulfilled by the professional who concluded the contract or by other service providers, without prejudice to his right of recourse against the latter.

He may gain exemption from some or all of his liability, however, by proving that the non-performance or poor performance of the contract was attributable to the consumer, to an unforeseeable and insurmountable fact of a third party, or to an instance of force majeure.

Article L121-20-4

(Order No. 2001-741 of 23 August 2001 Art. 5, Art. 12 Official Journal of 25 August 2001)

(Act No. 2004-575 of 21 June 2004 Art. 23 Official Journal of 22 June 2004)

(Order No. 2005-648 of 6 June 2005 Art. 1 I Official Journal of 7 June 2005 effective 1 December 2005)

The provisions of Articles L. 121-18, L. 121-19, L. 121-20 and L. 121-20-1 do not apply to contracts relating to:

1. The supply of standard consumer goods to the consumer's residence or workplace by distributors making frequent and regular rounds;
2. The provision of accommodation, transport, catering or leisure services which must be provided on a given date or at regular intervals;

The provisions of Articles L. 121-18 and L. 121-19 nevertheless apply to contracts entered into by electronic means when they relate to provision of the services referred to in 2.

Article L121-20-5

(Order No. 2001-741 of 23 August 2001 Art. 5, Art. 12 Official Journal of 25 August 2001)

(Act No. 2004-575 of 21 June 2004 Art. 22 II Official Journal of 22 June 2004)

(Act No. 2004-669 of 9 July 2004 Art. 10 I Official Journal of 10 July 2004)

(Order No. 2005-648 of 6 June 2005 Art. 1 I Official Journal of 7 June 2005 effective 1 December 2005)

The provisions of Article L. 34-5 of the Electronic Mail and Communications Code, reproduced hereunder, are applicable:

"Article L. 34-5 - Direct canvassing, via an automatic calling machine, a facsimile machine or an electronic mail system, using the contact details of a natural person who has not consented to being canvassed by such means is prohibited.

"For the purposes of the present article, consent shall be taken to mean any specific and informed manifestation of free will through which a person agrees to personal data relating to himself being used for direct canvassing.

"The sending of any message intended to directly or indirectly promote goods, services or the image of a person selling goods or providing services constitutes direct canvassing.

"Direct canvassing by electronic mail is nevertheless authorised if the recipient's contact details were obtained directly from him pursuant to the provisions of Act No. 78-17 of 6 January 1978 on information technology, computer records and freedom in connection with a sale or the provision of services, if such direct canvassing relates to similar products or services provided by the same natural person or legal entity and if the recipient is expressly and unambiguously given an opportunity, via a simple means and at no cost to himself other than the cost of transmitting a refusal, to oppose the use of his details when they are collected and each time that an electronic mail is sent to him for canvassing purposes.

"In all instances, the sending of direct canvassing messages via an automatic calling machine, a facsimile machine or an electronic mail system without providing the recipient with a valid means through which he may effectively request that such communications cease, at no cost other than that of transmitting the said request, is prohibited. Concealment of the identity of the person on behalf of whom the message is transmitted and reference to an object unrelated to the product or service offered are also prohibited.

"In regard to direct canvassing which makes use of a natural person's contact details, the National Commission for Information Technology and Freedom of Information oversees compliance with the provisions of the present article using the powers conferred on it by the aforementioned Act No. 78-17 of 6 January 1978. To that end, it may, inter alia, receive complaints relating to breaches of the provisions of the present article by any means.

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"Breaches of the provisions of the present article are detected and established as indicated in the first, third and fourth paragraphs of Article L. 450-1 and in Articles L. 450-2, L. 450-3, L. 450-4, L. 450-7, L. 450-8, L. 470-1 and L. 470-5 of the Commercial Code.

"A Conseil d'Etat decree stipulates the present article's implementing regulations, as necessary, having regard, inter alia, to the different technologies used".

Article L121-20-6

(Order No. 2001-741 of 23 August 2001 Art. 5, Art. 12 Official Journal of 25 August 2001)

(Order No. 2005-648 of 6 June 2005 Art. 1 I Official Journal of 7 June 2005 effective 1 December 2005)

(Order No. 2005-648 of 6 June 2005 Art. 1 I Official Journal of 7 June 2005 effective 1 December 2005)

The rules relating to the liability of the de facto or de jure manager of a radio or television broadcasting service are set forth in Article 3 II of Act No. 88-21 of 6 January 1988 relating to telepromotion activities concerning "teleshopping" sales offers, reproduced below:

Article 3 II of Act No. 88-21 of 6 January 1988 was revoked by Article 25 of Act No. 2000-719 of 1 August 2000 published in the JORF of 2 August 2000 and incorporated within Article L. 121-17 of the Consumer Code.

Article L121-20-7

(Order No. 2001-741 of 23 August 2001 Art. 5, Art. 12 Official Journal of 25 August 2001)

(Order No. 2005-648 of 6 June 2005 Art. 1 I Official Journal of 7 June 2005 effective 1 December 2005)

(Order No. 2005-648 of 6 June 2005 Art. 1 I Official Journal of 7 June 2005 effective 1 December 2005)

The rules relating to determination of the programming rules for broadcasts are set forth in Article 2 of the aforementioned Act No. 88-21 of 6 January 1988 reproduced below:

NB: Article 2 of Act No. 88-21 of 6 January 1988 was revoked by Act No. 2000-719 of 1 August 2000.

Subsection 2

Dispositions relatives aux contrats portant sur des services financiers

Articles L121-20-8 to
L121-20-14

Article L121-20-8

(Order No. 2001-741 of 23 August 2001 Art. 5, Art. 6 Official Journal of 25 August 2001)

(Order No. 2005-648 of 6 June 2005 Art. 1 I Official Journal of 7 June 2005 effective 1 December 2005)

(Order No. 2005-648 of 6 June 2005 Art. 1 I Official Journal of 7 June 2005 effective 1 December 2005)

The present subsection governs the provision of financial services to a consumer in the context of a system selling or providing distance services organised by the supplier or by an intermediary which relies exclusively on one or more distance communication systems right through to conclusion of the contract.

It applies to the services referred to in Books I to III and Part V of Book V of the Monetary and Financial Code, the transactions carried out by companies governed by the Insurance Code, the mutual insurance companies and unions governed by Book II of the Mutuality Code and the provident institutions and unions governed by Part III of Book IX of the Social Security Code, without prejudice to the specific provisions of the said codes.

Article L121-20-9

(Order No. 2001-741 of 23 August 2001 Art. 5, Art. 6 Official Journal of 25 August 2001)

(Order No. 2005-648 of 6 June 2005 Art. 1 I Official Journal of 7 June 2005 effective 1 December 2005)

(Order No. 2005-648 of 6 June 2005 Art. 1 I Official Journal of 7 June 2005 effective 1 December 2005)

For contracts covering financial services consisting of an initial service agreement followed by successive transactions or a series of distinct transactions of the same kind spread over time, the provisions of the present subsection apply to the initial service agreement only. For tacitly renewable contracts, the provisions of the present subsection apply to the initial contract only.

Failing any initial service agreement, when successive or distinct transactions of the same kind spread over time are carried out between the same parties, the provisions of Article L. 121-20-10 apply to the initial transaction only. When no transaction of the same kind is carried out for more than one year, however, these provisions apply to the next transaction, which is deemed to be an initial transaction.

Article L121-20-10

(Order No. 2001-741 of 23 August 2001 Art. 5, Art. 13 Official Journal of 25 August 2001)

(Order No. 2005-648 of 6 June 2005 Art. 1 I Official Journal of 7 June 2005 effective 1 December 2005)

(Order No. 2005-648 of 6 June 2005 Art. 1 I Official Journal of 7 June 2005 effective 1 December 2005)

In good time and before he is bound by a contract, the consumer shall receive information as determined in a Conseil d'Etat decree relating, inter alia, to:

1 The name and business address of the supplier and, where applicable, its representative and intermediary;

2 The documents containing the specific information relating to the products, financial instruments and services offered, as required by the applicable laws and regulations or, in the absence of such documents, a prospectus on each product, financial instrument and service offered indicating, where applicable, the specific risks that the products offered might entail;

3 The conditions of the contractual offer, including the total price effectively payable by the consumer, or, when it is not possible to indicate an exact price, the basis of the price calculation, to enable the consumer to verify it, as well as the terms and conditions of the contract, including the place and date of its signing;

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4 Information relating to any right of withdrawal and the terms and conditions under which it may be exercised;

5 The law applicable to the pre-contractual relations and to the contract, as well as any clause relating to election of jurisdiction.

The information sent to the consumer by the supplier concerning the contractual obligations shall comply with the law that will govern the contract if it is concluded.

Such information, the commercial nature of which must be indicated unequivocally, shall be communicated to the consumer clearly and comprehensibly by any means compatible with the distance communication system used.

The provisions of the present article are applicable without prejudice to application of the legal and regulatory obligations specific to each product, financial instrument or service offered.

The Conseil d'Etat decree referred to in the first paragraph also determines the specific terms applicable in the event of communication by voice telephony.

Article L121-20-11

(inserted by Order No. 2005-648 of 6 June 2005 Art. 1 I Official Journal of 7 June 2005 effective 1 December 2005)

In good time, and before any commitment is made, the consumer shall receive the contractual conditions and the information referred to in Article L. 121-20-10 in writing or on any durable medium available to it. The supplier may fulfil its obligations under Article L. 121-20-10 and the present article by sending the consumer a single document provided that it is in printed form or on some other durable medium and that the information provided does not change between receipt thereof and conclusion of the contract.

The supplier shall fulfil its communication obligations immediately after the contract is concluded when it was entered into at the consumer's request via a distance communication system unable to transmit pre-contractual and contractual information on paper or some other durable medium.

At any time during the contractual relationship, the consumer is entitled, if he so requests, to receive the contractual conditions on paper. Moreover, the consumer may change the distance communication system used unless this is incompatible with the distance contract concluded or with the nature of the financial service provided.

Article L121-20-12

(inserted by Order No. 2005-648 of 6 June 2005 Art. 1 I Official Journal of 7 June 2005 effective 1 December 2005)

I. - The consumer has a period of fourteen clear calendar days in which to exercise his right of withdrawal without being required to give a reason therefor or bear a penalty.

The period during which the right of withdrawal may be exercised commences:

1 Either on the day on which the distance contract is concluded;

2 Or on the day on which the consumer receives the contractual conditions and information pursuant to Article L. 121-20-11, if the latter date is subsequent to that referred to in 1.

II. - The right of withdrawal does not apply to:

1 The provision of financial instruments referred to in Article L. 211-1 of the Monetary and Financial Code or the receipt-transmission and order-processing services provided for third parties referred to in Article L. 321-1 of that same code;

2 Contracts fully performed by both parties at the consumer's express request before he exercises his right of withdrawal;

3 The real-property loan agreements described in Article L. 312-2.

III. - The present article does not apply to the contracts referred to in Article L. 121-60.

IV. - For the allocated credit agreements described in Article L. 311-20 concluded via a distance communication system, notwithstanding the provisions of Article L. 311-24, the cooling-off period of fourteen days cannot be reduced.

Notwithstanding the provisions of Article L. 311-25, exercise of the right of withdrawal only entails automatic cancellation of the contract of sale or service contract if it takes place within seven days of conclusion of the loan agreement. Moreover, when the consumer makes an express request for immediate delivery or supply of the goods or services, exercise of the right of withdrawal only entails automatic cancellation of the contract of sale or service contract if it takes place within three days of conclusion of the loan agreement. Any early delivery or supply is the responsibility of the seller, who bears all risks associated therewith.

Article L121-20-13

(inserted by Order No. 2005-648 of 6 June 2005 Art. 1 I Official Journal of 7 June 2005 effective 1 December 2005)

I. - Performance of contracts to which the cooling-off period referred to in Article L. 121-20-12 applies cannot commence until the said period has expired unless the consumer so consents. When he exercises his right of withdrawal, he is only required to effect payment proportional to the financial service actually provided, and no penalty shall apply.

The supplier can only demand that the consumer pay for the service referred to in the first paragraph if it can prove that the consumer was informed of the amount due in accordance with Article L. 121-20-10. It cannot demand such payment, however, if it commenced performance of the contract prior to expiry of the cooling-off period without the consumer so requesting beforehand.

For the consumer-credit agreements provided for in Chapter I of Part I of Book III, even with the consumer's consent there can be no commencement of performance during the first seven days, with the exception of the allocated credit agreements referred to in IV of Article L. 121-20-12, in respect of which performance cannot commence during the first three days.

II. - The supplier is required to repay to the consumer all the sums it received from him under the contract as soon

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as possible and within thirty days at the latest, with the exception of the sum referred to in the first paragraph of I. This time limit commences on the day on which the supplier receives the consumer's notification of its wish to withdraw. Any sum outstanding beyond that thirty-day period shall automatically bear interest at the legal rate in force.

The consumer shall return to the supplier any sum and any goods he received from it as soon as possible and within thirty days at the latest. This time limit commences on the day on which the consumer informs the supplier of its wish to withdraw.

Article L121-20-14

(inserted by Order No. 2005-648 of 6 June 2005 Art. 1 I Official Journal of 7 June 2005 effective 1 December 2005)

The provisions of Article L. 34-5 of the Post and Electronic Communications Code, reproduced in Article L. 121-20-5, are applicable to financial services.

Distance communication systems used to market financial services other than the systems referred to in Article L. 34-5 of the Post and Electronic Communications Code may only be used if the consumer has not objected thereto.

The measures provided for in the present article shall not give rise to costs for the consumer.

Subsection 3

Common Provisions

Articles L121-20-15 to
L121-20-16

Article L121-20-15

(inserted by Order No. 2005-648 of 6 June 2005 Art. 1 I Official Journal of 7 June 2005 effective 1 December 2005)

When the parties have determined that the contract shall be governed by the law of a State which is not a member of the European Community, a judge before whom that law is invoked is required to disregard it and apply the more protective provisions of the law applicable at the consumer's normal place of residence deriving from transposition of Directive 97/7/EC of the European Parliament and Council dated 20 May 1997 concerning consumer protection in regard to distance contracts, and Directive 2002/65/EC of the European Parliament and Council dated 23 September 2002 concerning distance marketing of financial services to consumers, when the contract has a close link with the territory of one or more European Community Member States; this condition is deemed to have been met if the consumers are resident in a Member State.

Article L121-20-16

(inserted by Order No. 2005-648 of 6 June 2005 Art. 1 I Official Journal of 7 June 2005 effective 1 December 2005)

The provisions of the present section are a matter of public policy.

NB: Order 2005-648 2005-06-06 Art. 1 I 3: a clerical error crept into the wording of the text concerning the reference of the article to be amended. It is in fact Article L121-16 and not L121-20-16 as written.

The amendment is thus included in Article L121-16 and not in the present article.

SECTION III

Canvassing

Articles L121-21 to
L121-33

Article L121-21

Anyone who carries out canvassing, or has canvassing carried out by third parties, at the domicile of a natural person, at their residence or at their workplace, even if this is at their request, so as to make them an offer for the purchase, sale, rental, hire -purchase or rent to buy of goods or services is subject to the provisions of this section.

Canvassing in places not intended for the marketing of the goods or services being offered and, in particular, the organization by a trader, or to the latter's benefit, of meetings or excursions with a view to carrying out the transactions defined in the previous paragraph is also subject to the provisions of this section.

Article L121-22

(Act no. 95-96 of 1 February 1995 art. 7 Journal officiel of 2 February 1995)

Activities for which canvassing is regulated by a particular legislative text are not subject to the provisions of articles L. 121-23 to L. 121-29.

The following are not subject to the provisions of articles L. 121-23 to L. 121-28:

1°. Door-to-door sales of foodstuffs or ordinary consumer goods by business or their employees during the course of frequent or periodic rounds within the conurbation in which their establishment is set up or within its neighbourhood;

2°. and 3°. (paragraphs annulled)

4°. Sales, leases or hire-purchase of goods or services where these have a direct link with the activities performed within the scope of an agricultural, industrial, commercial or craft industry concern or that of any other profession.

Article L121-23

The transactions referred to in article L. 121-21 must be the subject of a contract, a copy of which must be sent to the client when the contract is concluded and must include the following information: otherwise they are null and void:

1° Names of supplier and canvasser;

2° Supplier's address;

3° Address of the place where the contract was concluded;

4° Precise description of the nature and characteristics of the goods offered or the services proposed;

5° Contract performance terms, in particular delivery procedures and deadlines for goods or performance

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procedures and deadlines for services;

6° Overall price to pay and payment methods. In the event of sales on instalment credit terms or on credit, the forms required by credit sales regulations, as well as the nominal rate of interest and the annual percentage rate of charge determined in accordance with the conditions provided for in article L. 313-1;

7° Option of cancellation provided for in article L. 121-25, as well as the conditions under which said option may be exercised and, clearly stated, the full text of articles L. 121-23, L. 121-24, L. 121-25 and L. 121-26.

Article L121-24

The contract referred to in article L. 121-23 must include a detachable form intended to facilitate the exercising of the option of waiver in accordance with the conditions provided for in article L. 121-25. A Council of State decree will specify the wording which must appear on this form.

This contract may not include any jurisdictional clause.

All copies of this contract must be signed and dated by the client, in person.

Article L121-25

Within seven days, including bank holiday, of the order or the undertaking to buy, the customer has the right to withdraw by means of recorded delivery letter. If this deadline normally expires on a Saturday, Sunday or bank holiday or non-working day, it is extended until the next working day.

Any contractual clause by virtue of which the customer waives his/her right to withdraw his/her order or his/her undertaking to buy is null and void.

This article does not apply to contracts concluded under the circumstances provided for in article L. 121-27.

Article L121-26

(Act No. 95-96 of 1 February 1995 Art. 8 Official Journal of 2 February 1995)

(Act No. 2005-841 of 26 July 2005 Art. 4 Official Journal of 27 July 2005)

Prior to expiry of the cooling-off period provided for in Article L. 121-25, no person shall demand or obtain from the client, directly or indirectly, for whatever reason and in whatever form, any remuneration or any commitment or the provision of services of any kind.

However, a subscription taken out at home to an assimilated daily publication within the meaning of Article 39 bis of the General Tax Code is not subject to the provisions of the preceding paragraph if the consumer has a permanent right of cancellation at no cost and without penalty combined with repayment, within fifteen days, of the sums paid for the portion of the subscription period which has not elapsed.

Moreover, undertakings or orders to pay must not be executed prior to expiry of the time limit stipulated in Article L. 121-25 and must be returned to the consumer within fifteen days of his withdrawal.

The provisions of the second paragraph apply to subscriptions taken out at home offered by State-approved associations and companies with the object of providing services referred to in Article L. 129-1 of the Labour Code.

Article L121-27

(Act No. 2004-575 of 21 June 2004 Article 24 Official Journal of 22 June 2004)

Subsequent to telephone canvassing or canvassing by any similar technical means, the canvasser shall send the consumer confirmation of the offer made to him. The consumer is bound only by his signature. He then benefits from the provisions of Articles L. 121-18, L. 121-19, L. 121-20, L. 121-20-1 and L. 121-20-3.

Article L121-28

(Act no. 92-1336 of 16 December 1992 art. 322 Journal officiel of 23 December 1992 in force on 1 March 1994)

Any breach of the provisions of articles L. 121-23, L. 121-24, L. 121-25 and L. 212-26 will be punishable by imprisonment of one year and a fine of € 3,750 or just one of these two penalties.

Article L121-29

(Order No. 2005-428 of 6 May 2005 Art. 4 Official Journal of 7 May 2005)

The provisions of chapter VIII of Part II of Book 1 of the Commercial Code are applicable to persons engaged in door-to-door selling.

The company is legally responsible for the canvassers acting on its behalf, even if they are self-employed.

Article L121-31

Upon the occasion of criminal proceedings instituted in application of this section against the seller, the service provider or the canvasser, it is admissible for the customer who is bringing the civil action to apply to the criminal court for a sum equal to the full amount of payments made or bills signed, without prejudice to compensation.

Article L121-32

Council of state decrees shall regulate, as appropriate, implementation procedures for this section.

Article L121-33

(Act no. 94-442 of 3 June 1994 art. 6 Journal officiel of 4 June 1994)

It is prohibited to visit the domicile of a natural person, his/her residence or workplace to propose the sale, rental or hire-purchase of any documents or materials whatsoever, likely to meet the same needs as the service provisions for which canvassing is prohibited by a particular text, due to its purpose.

Any breach of the provisions of the previous paragraph results, in addition to the nullity of the agreement, in the application of the sanctions provided for in article L. 121-28.

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The provisions of the previous paragraphs do not cover support materials for foreign or regional language learning intended for home learning, without assistance or follow-up teaching, the presentation of which does not refer to an educational level, a teaching activity, to success at school, to training, to obtaining a diploma or a professional post. In this event, the seven day cooling-off period is extended by an additional period expiring fifteen days after receipt of the product by the customer so that said product may be returned and reimbursed. In the event of this right of return being exercised, the equipment is returned to the vendor without cost or compensation other than the cost of forwarding the product. The contract provided for in article L. 121-23 must, in addition, reproduce the text of this paragraph concerning the right to cancel the order.

The consumer must be notified of the results of aptitude tests relating to use of language methods carried out by the vendor or the manufacturer under the supervision of an independent third party prior to conclusion of the contract.

SECTION IV

Direct selling

Article L121-34

Article L121-34

Rules relating to direct sales to consumers as well as marketing of substandard productions are fixed by article 39 of Act no. 73-1193 of 27 December 1973 relating to business and craft guidelines reproduced hereinafter:

“Art. 39: Sales direct to consumers and the marketing of substandard faulty productions, made by industrialists, are subject to regulations fixed by decree”.

N.B.: Article 39 of Act no. 73-1193 reproduced below was repealed by Act no. 96-603 of 5 July 1996.

SECTION V

Sales or services with free gifts

Article L121-35

Article L121-35

All sales or offers for sale of goods or any provision or offer to provide services made to consumers and giving entitlement, free of charge, immediately or at the end of a fixed period, to a bonus consisting of products, goods or services, if these are identical to those forming the subject of the sale or the service provision, are prohibited.

This provision does not apply to small objects or low value services or samples.

This provision applies to all the activities referred to in the last paragraph of article L. 113-2.

SECTION VI

Lottery and sweepstake advertising

Articles L121-36 to
L121-41

Article L121-36

Written sales promotions which are likely to engender hope of gain for each of the participants, whatever the procedures of random selection, may only be practised if they do not require any financial consideration or expense whatsoever from participants.

The entry form must be separate from any purchase order for goods or services.

Article L121-37

The documents presenting the sales promotion must not be likely to engender confusion with an administrative or banking document made out in the name of the addressee or with an informative press article.

They must include a legible inventory of the lots which may be won specifying, for each one, their nature, their exact number and their commercial value.

They must also reproduce the following wording: “Rules governing the promotion will be sent, free of charge, to anyone who asks for them”. They must, in addition, specify the address to which this request may be sent as well as the name of the public officer with whom said regulations have been lodged in application of article L. 121-38.

Article L121-38

The sales promotions rules as well as a copy of the documents sent out to the public must be lodged with a public officer who checks that they are in order. The above rules must be sent, free of charge, to anyone who requests them.

Article L121-39

A Council of State decree states, where appropriate, the conditions under which the documents mentioned in the first paragraph of article L. 121-37 are to be presented.

Article L121-41

(Act no. 92-1336 of 16 December 1992 art. 322 331 Journal officiel of 23 December in force on 1 March 1994)

Organisers of the promotions defined in the first paragraph of article L. 121-36 who have failed to adhere to the conditions required by this section shall be punished with a fine of € 37,500. The court may order its decision to be published, at the expense of the convicted party, by any appropriate means. In the event of a particularly serious breach, it may order the decision to be sent to all persons solicited by said promotions.

Where the court orders the decision to be displayed on a poster, this is carried out in accordance with the conditions and subject to the penalties provided for by article 131-35 of the Penal code.

SECTION VIII

Article L121-50

(inserted by Act no. 94-442 of 3 June 1994 art. 7 Journal officiel of 4 June 1994)

Baby food means, in the sense of this section, foodstuffs intended to feed children up to the age of four months prepared and presented as meeting, by themselves, all the nutritional needs of said children.

Article L121-51

(inserted by Act no. 94-442 of 3 June 1994 art. 7 Journal officiel of 4 June 1994)

Advertising baby food is authorized only in journals intended for health professionals.

Article L121-52

(inserted by Act no. 94-442 of 3 June 1994 art. 7 Journal officiel of 4 June 1994)

It is prohibited, in the retail trade, to distribute samples of infant formulae, free of charge, as well as, any other promotional practice encouraging the direct sale of these formulae.

Manufacturers and distributors are also prohibited from supplying the public, free of charge, with infant formulae, samples of these products or any other promotional gift, whether this is direct, or indirect, through the intermediary of health services or their agents.

Article L121-53

(inserted by Act no. 94-442 of 3 June 1994 art. 7 Journal officiel of 4 June 1994)

A Council of State decree fixes:

1° The conditions for free distribution of documentation concerning infant formulae and display materials for the latter;

2° Exceptional circumstances under which the ban contained in the second paragraph of article L. 121-52 may be waived, in the interest of the health of mothers and babies.

SECTION IX

Timeshare contracts

Article L121-60

(inserted by Act no. 94-566 of 8 April 1998 art. 1 Journal officiel of 9 July 1998)

Any contract of group of contracts, concluded for a fee, by which a business grants a consumer, directly or indirectly, possession of one or more properties for use as a dwelling, for determined or determinable periods, for at least three years or for an indeterminate period, are subject to the provisions of this section.

Share subscription or share transfer contracts for companies allocating possession of time-share properties governed by Act no. 86-18 of 6 January 1986 relating to companies allocation possession of time-share properties, are subject to the provisions of this section.

Article L121-61

(inserted by Act no. 94-566 of 8 April 1998 art. 1 Journal officiel of 9 July 1998)

The offer to contract is made in writing and indicates:

1° The identity and the domicile of the business or, if this is a legal entity, its name, legal form and registered office and, if necessary, those of the owner of the property and of the intermediary, as well as the legal relationship existing between them;

2° The name and a precise description of the property or properties and their surroundings or identifying features and, if the property is under construction, essential information relating to deadlines for performance of the works, for connection of various networks, to completion guarantees and reimbursement in the event of failure to complete and to planning permission;

3° Essential information relating to management of the building;

4° The purpose of the contract, the legal nature of the right by virtue of which the consumer is to possess the property, the duration of this entitlement, the date on which it comes into effect and the main legal conditions under which it may be exercised with any indication of conditions still to be met;

5° The final date and terms under which the final deed is to be drawn up if the offer is likely to result in the drafting of a pre-contract;

6° The duration and frequency of the period of tenure;

7° Dates of occupation or, if appropriate, procedures for fixing said dates as well as procedures for determining the premises to be occupied;

8° Share facilities and equipment made available to the consumer and services provided, as incidentals, as well as the service provider, conditions of access to said equipment and facilities and an estimate of the cost of this access for the consumer;

9° The original price, the costs as well as the detailed amount of all sums due periodically or the criteria by which they are determined; annual rates of change in said sums during the course of the three year period preceding the offer or, if this information is not available, a statement warning of the risk of rises; the amount or determining elements for duties, taxes and mandatory fees, on the date of the offer;

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10° The method of payment of the price and, where appropriate, the availability of credit in whatever form this may be;

11° The affiliation or non-affiliation of the professional with an exchange pool and the possibility offered to the consumer to participate in said pool, as well as the terms, particularly financial terms, and essential effects of this participation.

12° Mention of the non-exhaustive nature of the list of expenses, charges and obligations of a contractual nature.

The offer is signed by the professional. It gives the date and place of issue.

The words that must appear in the offer are specified by law.

Article L121-62

(inserted by Act no. 98-566 of 8 April 1998 art. 1 Journal officiel of 9 July 1998)

The offer reproduces the provisions of articles L. 121-63 to L. 121-68 very clearly.

Article L121-63

(inserted by Act no. 98-566 of 8 April 1998 art. 1 Journal officiel of 9 July 1998)

The offer, complete with the consumer's identity and domicile, is handed or sent to the latter in two copies, one of which is to be kept by the consumer and has a detachable slip designed to facilitate the exercise of the right of cancellation provided for in article L.121-64. This coupon states the identity and domicile of the professional's registered office.

The offer is valid for at least seven days from its receipt by the consumer. The professional is responsible for proving the date receipt.

Article L121-64

(inserted by Act no. 98-566 of 8 April 1998 art. 1 Journal officiel of 9 July 1998)

Acceptance of the offer takes effect when the offer is signed by the consumer, preceded by the handwritten date and place, and is then sent to the professional by recorded delivery letter or, failing this, by any other means providing equivalent guarantees in respect of determining the date of sending.

The consumer may, by the same means, withdraw within ten days of sending the accepted offer to the professional, without compensation or expense, with the possible exception of stated costs necessarily incurred.

Article L121-65

(inserted by Act no. 98-566 of 8 April 1998 art. 1 Journal officiel of 9 July 1998)

Deadlines provided for by articles L. 121-63 and L. 121-64, expiring on a Saturday, Sunday or a Bank holiday or non-working day, are extended until the next working day.

Article L121-66

(inserted by Act no. 98-566 of 8 July 1998 art. 1 Journal officiel of 9 July 1998)

Prior to the expiry of the deadline for withdrawal provided for in article L. 121-64, nothing may be requested or received from the consumer, directly or indirectly, no payment or payment obligations on whatever grounds or in whatever form this may be.

Article L121-67

(inserted by Act no. 98-566 of 8 July 1998 art. 1 Journal officiel of 9 July 1998)

Where financed by a loan of which the professional has been made aware, the contract is formed under the condition precedent of this loan being obtained.

The exercise, on the part of the consumer, of the cancellation option provided for in article L. 121-64 involves automatic cancellation of the loan contract for financing of the time-share contract, without cost or compensation, with the possible exception of stated costs necessarily incurred.

Article L121-68

(inserted by Act no. 98-566 of 8 July 1998 art. 1 Journal officiel of 9 July 1998)

Where the consumer resides in France or when the property or one of the properties is located on French territory, the offer is written in French.

The offer is, in addition, written, at the consumer's choice, in the language, or one of the languages, of the Member state in which he resides or of which he is a national, from the official languages of the European community.

When, in application of the paragraphs that precede the offer, the offer is written in two languages, the consumer signs, at his own choice, one or other of the versions.

Where the property or one of the properties is located in a Member state of the European community other than France and the contract has not been written in the language of this State in application of this article, a true translation in this language is sent to the consumer.

Article L121-69

(inserted by Act no. 98-566 of 8 July 1998 art. 1 Journal officiel of 9 July 1998)

Any advertising relating to any contract or group of contracts referred to in article L. 121-60 states the possibility of obtaining the text of the offers made as well as the address of the place where it can be withdrawn.

Article L121-70

(inserted by Act no. 98-566 of 8 July 1998 art. 1 Journal officiel of 9 July 1998)

There is a € 15,000 fine for the act:

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1° on the part of any business, of submitting an offer to a consumer likely to lead to the conclusion of a contract or group of contracts referred to in article L. 121-60 without this offer being made in writing and containing the statements listed in article L. 121-61 and clearly reproducing the provisions of articles L. 121-63 to L. 121-68;

2° on the part of any advertiser, of circulating or having circulated on its behalf, advertising that does not conform to the provisions of article L. 121-69.

Article L121-71

(inserted by Act no. 98-566 of 8 July 1998 art. 1 Journal officiel of 9 July 1998)

There is a € 30,000 fine for the act, on the part of any business, of requesting or receiving from the consumer, directly or indirectly, any payment or payment obligation, on any grounds and in any form whatsoever, prior to the expiry of the withdrawal period provided for in article L. 121-64.

Article L121-72

(inserted by Act no. 98-566 of 8 July 1998 art. 1 Journal officiel of 9 July 1998)

Legal entities may be declared criminally liable, under the circumstances provided for by article 121-2 of the Penal code, for offences defined in articles L. 121-70 and L. 121-71. The penalties incurred by legal persons are:

1° A fine, in accordance with the procedure provided for by article 131-38 of the Penal code;

2° The penalties mentioned in article 131-39 of the Penal code.

Article L121-73

(inserted by Act no. 98-566 of 8 July 1998 art. 1 Journal officiel of 9 July 1998)

Any clause assigning jurisdiction to a court in a State which is not party to the Brussels convention of 27 September 1968 and the Lugano convention of 16 September 1988 concerning legal jurisdiction and the implementation of decisions on civil and commercial matters, where the consumer is domiciled or usually resides in France or where the property or one of the properties is located on the territory of a State that is party to these conventions.

Article L121-74

(inserted by Act no. 98-566 of 8 July 1998 art. 1 Journal officiel of 9 July 1998)

Where the property or one of the properties is located on the territory of a Member state of the European community, and where the law governing the contract does not include regulations complying with European Parliament and Council directive 94/47/CE of 26 October 1994, concerning the protection of acquirers for certain aspects of contracts for the acquisition of the right to use time-share property, it is vital that the provisions brought into force are applied, in order to adhere to said directive, by the State in which the property is located or, failing this, the provisions of this section.

Article L121-75

(inserted by Act no. 98-566 of 8 July 1998 art. 1 Journal officiel of 9 July 1998)

Where the property or one of the properties is not located within a Member state of the European community, the consumer normally residing in a Member state of the European community cannot be deprived, whatever the applicable law, of the protection afforded by the mandatory provisions issued by this State in application of the aforementioned European Parliament and Council directive 94/47/CE of 26 October 1994:

if the contract was concluded in the State in which the consumer normally resides;

if the contract was preceded in this State by a special offer or by advertising and actions implemented by the consumer required for the conclusion of said contract;

if the contract was concluded in a State where the consumer was located subsequent to a travel or holiday offer made, directly or indirectly, by the professional to encourage the consumer to conclude the contract.

Article L121-76

(inserted by Act no. 98-566 of 8 July 1998 art. 1 Journal officiel of 9 July 1998)

The provisions of this section are public policy. Failure to adhere to the provisions provided for by articles L. 121-61, L. 121-62, by the first paragraph of article L. 121-63 and by articles L. 121-64 and L. 121-68 is sanctioned by invalidity of the contract.

SECTION X

Appellation de boulanger and "enseigne de boulangerie"

Articles L121-80 to
L121-85

Article L121-80

(inserted by Act no. 98-405 of 25 May 1998 art. 1 Journal officiel of 26 May 1998)

The title of "baker" and the commercial sign of "bakery" or a name likely to cause confusion, at the place of sale of the bread to the end consumer or in advertising, with the exception of commercial documents strictly for professional use, may not be used by businesses who do not, themselves, knead dough from selected raw materials, leave it to rise, shape it, and bake bread at the place of sale to the end user. The products may not, at any stage of the production or sale, be deep-frozen or frozen.

Article L121-81

(inserted by Act no. 98-405 of 25 May 1998 art. 1 Journal officiel of 26 May 1998)

This designation may also be used when the bread is sold by an itinerant business, or under his/her responsibility, when said business meets the requirements specified in article L. 121-80.

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Article L121-82

(inserted by Act no. 98-405 of 25 May 1998 art. 1 Journal officiel of 26 May 1998)

Research into, and establishment of, breaches of the provisions of articles L. 121-80 and L. 121-81 are carried out in accordance with the conditions provided for by article L. 121-2 and are punishable by the penalties provided for in article L. 213-1 and, where appropriate, the second paragraph of article L. 121-6.

Article L121-83

(inserted by Act No. 2004-669 of 9 July 2004 Article 114 Official Journal of 10 July 2004)

Any contract subscribed to by a consumer with a supplier of electronic communications services within the meaning of 6 of Article L. 32 of the Electronic Mail and Communications Code shall contain at least the following information:

- a) The supplier's identity and address;
- b) The services offered, the quality thereof and the time needed to make them available;
- c) Details of the schedule of charges and the means through which updated information on all applicable charges and maintenance costs may be obtained;
- d) The arrangements for compensation and reimbursement if the service quality stipulated in the contract is not achieved;
- e) The term of the contract and the conditions applicable to renewal and interruption of the services and of the contract itself;
- f) The arrangements for amicable settlement of disputes.

A joint order of the Minister for Consumer Affairs and the Minister for Electronic Communications, issued on advice from the National Consumer Council, details this information as appropriate.

Article L121-84

(inserted by Act No. 2004-669 of 9 July 2004 Article 114 Official Journal of 10 July 2004)

Any plan to amend the contractual conditions for supplying an electronic communications service shall be made known to the consumer by the service provider at least one month before it becomes effective, along with information which enables the latter, until such time as he has expressly accepted the new terms and conditions, to cancel the contract without charge and without entitlement to compensation during the four months that follow the amendment's entry into force.

For fixed-term contracts which do not contain a clause which precisely determines the eventualities which can give rise to a contractual amendment or a new clause relating to price changes, the consumer may demand application of the initial conditions throughout the contractual term.

Any offer to supply an electronic communications service shall be accompanied by specific information on the provisions applicable to subsequent amendments to the contractual conditions.

Article L121-85

(inserted by Act No. 2004-669 of 9 July 2004 Article 114 Official Journal of 10 July 2004)

Breaches of the provisions of Article L. 121-83 and the first paragraph of Article L. 121-84 are sought and established as indicated in the first, third and fourth paragraphs of Article L. 450-1 and Articles L. 450-2, L. 450-3, L. 450-4, L. 450-7, L. 450-8, L. 470-1 and L. 470-5 of the Commercial Code.

SECTION XI

Service contracts relating to electronic communications

CHAPTER II

Illegal business practices

Articles L122-1 to
L122-10

SECTION I

Refusal and subordination of sale or services

Article L122-1

Article L122-1

It is prohibited to refuse to sell a product, or supply a service, to a consumer without a legitimate reason and to make the sale of a product subject to the purchase of a minimum quantity or to the accompanying purchase of another product or another serves as well as making the provision of a service subject to provision of another service or to the purchase of a product.

This provision applies to all the activities referred to in the last paragraph of article L. 113-2.

SECTION II

Unsolicited goods or services

Articles L122-3 to
L122-5

Article L122-3

(Order No. 2001-741 of 23 August 2001 Art. 14 Official Journal of 25 August 2001)

(Order No. 2005-648 of 6 June 2005 Art. 1 II Official Journal of 7 June 2005 effective 1 December 2005)

The provision of goods or services without a prior order from the consumer is forbidden if it is linked to a request for payment. No obligation may be imposed on a consumer who receives goods or services in breach of this prohibition.

The professional must return any sums he has wrongfully received without the consumer's express prior consent.

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Such sums bear interest at the legal rate calculated from the date of the unjustified payment, and interest at one and a half times the legal rate from the date of the repayment request made by the consumer.

Article L122-4

(Act No. 2001-1168 of 11 December 2001 Art. 13 4 Official Journal of 12 December 2001)

(Order No. 2005-648 of 6 June 2005 Art. 1 II Official Journal of 7 June 2005 effective 1 December 2005)

The provisions of Article L. 122-3 shall not impede receipt of interest, commissions or fees in respect of short-term credits or bank overdrafts provided for in the account agreement instituted by Article L. 312-1-1 of the Monetary and Financial Code which specifies the amount or method of calculation of such remuneration.

The same applies if an amendment to the initial conditions of a contract results from implementation of a revision clause containing expressly stipulated conditions which were agreed by the parties at the signing of the contract.

Article L122-5

(Order No. 2005-648 of 6 June 2005 Art. 1 II Official Journal of 7 June 2005 effective 1 December 2005)

A payment resulting from a legislative or regulatory obligation does not require an express prior commitment.

SECTION III

Pyramid selling of goods or services

Articles L122-6 to
L122-7

Article L122-6

(Act no. 95-96 of 1 February 1995 art. 13 Journal officiel of 2 February 1995)

The following are prohibited:

1° Sales made by the procedure known as "pyramid selling" or any other similar procedures consisting, in particular, of offering the public merchandise in the hope that they may obtain said merchandise free of charge or cheaper than their real value and making the sales subject to the placing of forms or tickets with third parties or the collection of memberships or registrations;

2° The act of proposing to a person that they collect memberships or register on a list in the hope of financial gain resulting from a geometric progression of the number of people recruited or registered.

In the case of sales networks constituted by chain recruitment of members or affiliates, it is prohibited to obtain, from a member or an affiliate, the payment of a sum corresponding to an entry fee or for the acquisition of teaching materials or services, training or demonstration or sale of any other similar material or service, where this payment leads to a payment or to the attribution of an advantage benefiting one or more network members or affiliates.

In addition, it is prohibited within these same networks, to obtain from a member or an affiliate, the acquisition of a stock of merchandise for resale, without a guarantee to take back the stock in the terms of purchase, with possible deduction of a sum not exceeding 10% of the corresponding price. This guarantee of return may, however, be limited to a period of one year after the purchase.

Article L122-7

(Act no. 92-1336 of 16 December 1992 art. 322 art. 335 Journal officiel of 23 December 1992 in force on 1 March 1994)

Without prejudice to the application, where applicable, of the penalties provided for in articles 313-1, 313-7 and 313-8 of the Penal code, any breach of this section is punishable by a fine of € 4,500 and imprisonment of one year.

The offender may, in addition, be ordered to repay to those of his/her customers who have not received satisfaction, the sums paid out by them, without having recourse against those who have obtained the merchandise.

SECTION IV

Abuse of weakness

Articles L122-8 to
L122-10

Article L122-8

(Act no. 92-1336 of 16 December 1992 art. 322 Journal officiel of 23 December 1992 in force on 1 March 1994)

Anyone who may have taken advantage of a person's weakness or ignorance in order to get them to subscribe, by means of home visits, to cash or credit obligations in whatever form these may take, shall be punished by five year imprisonment and a € 9,000 fine or just one of these penalties, where circumstances indicate that this person was not in a position to assess the impact of the undertakings given or to detect the ruses or tricks employed to convince him/her to subscribe to them or show that said person has been subjected to duress.

Article L122-9

The provisions of article L. 122-8 are applicable, under the same circumstances, to undertakings obtained:

1° either subsequent to canvassing by telephone or fax;

2° or subsequent to personalised soliciting, without said soliciting necessarily being by name, to visit a place of sale; taking place at home and accompanied by the offer of particular benefits;

3° or upon the occasion of meetings or excursions organised by the person committing the offence or to his advantage;

4° or when the transaction was carried out in places not intended for the marketing of the goods or services proposed or within the scope of fairs or shows;

5° or when the transaction was concluded in an emergency making it impossible for the victim of the offence to consult one or more qualified professionals, third parties or to the contract

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Article L122-10

The provisions of articles L. 122-8 and L. 122-9 apply to anyone who may have taken advantage of a person's weakness or ignorance to obtain, without giving anything in exchange, sums in cash or by bank transfer, bank or giro cheques, payment orders by payment or credit cards, or else securities, in the sense of article 529 of the civil code.

TITLE III

General contractual provisions

Articles L131-1 to L136-1

CHAPTER I

Deposits and advance payments

Articles L131-1 to L131-3

Article L131-1

If the item to be sold is movable property, any sum paid in advance in respect of the price, whatever the nature of this payment and the name given in the document, shall be interest bearing at the legal rate of interest, for civil matters, to run from the expiry of a period of three months after the payment until the realisation or return of the sums paid in advance, without prejudice to the obligation to deliver which remains intact.

For service provisions, the sums paid in advance shall bear interest at the legal rate upon expiry of a period of three months from the payment until performance of the service or the return of these sums, without prejudice to the obligation to perform the service.

Interest will be deducted from the balance to pay at the time of completion or will be added to the sums paid in advance in the event of repayment.

Article L131-2

The provisions of this chapter do not apply to special orders in accordance with estimates nor to sales of products made to order specially for the purchaser.

Article L131-3

It is not possible to avoid the provisions of this chapter by particular agreements.

CHAPTER II

Unfair terms

Articles L132-1 to L132-5

SECTION I

Consumer protection against unfair terms

Article L132-1

Article L132-1

(Act no. 95-96 of 1 February 1995 art. 1, annex to the Journal officiel of 2 February 1995)

(Order no. 2001-741 of 23 August 2001 art. 16 Journal officiel of 25 August 2001)

In contracts concluded between a business and a non-business or consumers, clauses which aim to create or result in the creation, to the detriment of the non-professional or the consumer, of a significant imbalance between the rights and obligations of the parties to the contract, are unfair.

Council of State decrees issued upon the advice of the committee set up as per article L. 132-2, may determine the types of clauses that must be regarded as unfair in the sense of the first paragraph.

An annex to this code includes an illustrative and non-exhaustive list of clauses that may be regarded as unfair if they satisfy the conditions posed in the first paragraph. In the event of dispute concerning a contract that includes one such clause, the applicant is not exempt from submitting proof of the unfair nature of this clause.

These provisions apply whatever the contract form or medium. This is the case, in particular, for purchase orders, invoices, performance bonds, delivery notes or slips, travel vouchers or tickets, containing stipulations which may, or may not, have been freely negotiated, or references to general terms fixed in advance.

Without prejudice to the rules of interpretation provided for in articles 1156 to 1161, 1163 and 1164 of the civil code, the unfair nature of a term is assessed by referring, when the contract is concluded, to all the circumstances surrounding its conclusion, as well as to all the other contractual clauses. It is also evaluated in respect of those contained in another contract where the conclusion or performance of these two contracts are legally dependent upon one another.

Unfair terms are deemed to be null and void.

Evaluation of the unfair nature of terms in the sense of the first paragraph does not involve either the definition of the main purpose of the contract nor the adequacy of the price of, or remuneration for, the goods being sold or the service being offered, provided that the terms are written in a clear and comprehensible manner.

The contract shall continue to be applicable in all its provisions other than those deemed to be unfair if it can continue to exist without said terms.

The provisions of this article are public policy.

Annex: terms referred to in the third paragraph of article L. 132-1.

1. Terms with the aim or effect:

a) of excluding or limiting the business's legal liability in the event of the death of a consumer or personal injury caused to the latter, resulting from an act or omission of this business;

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b) of inappropriately excluding or limiting the consumer's legal rights in respect of the business or another party in the event of total, or partial, failure to perform, or defective performance by the business of any one of the contractual obligations, including the possibility of setting off a debt owed to the business with a credit that it may have against said business;

c) of providing for a firm undertaking from the consumer, even though the performance of the business services is subject to a condition which is solely dependent on goodwill;

d) of enabling the business to withdraw sums paid by the consumer when the latter has withdrawn from the conclusion or performance of the contract, without providing for the right, for the consumer, to receive compensation of an equivalent amount from the business where it is the latter who withdraws;

e) from obliging the consumer who has failed to perform his/her obligations to pay compensation in a disproportionately high amount;

f) from authorising the business to cancel the contract in a discretionary manner if the same option is not given to the consumer, as well as enabling the professional to retain the sums paid in respect of service provisions not yet supplied by him, where it is the professional him who cancels the contract;

g) from authorising the business to terminate a contract of indeterminate duration without giving reasonable advance notice, without just cause;

h) from automatically extending a contract of indeterminate duration in the absence of expression to the contrary from the consumer, although an excessively remote date has been set as the deadline for the expression of this desire not to extend the contract on the part of the consumer;

i) from establishing irrefutably the consumer's adherence to clauses that the latter has not actually had the opportunity to become aware of prior to conclusion of the contract;

j) from authorising the business to unilaterally amend the terms of the contract without valid reason specified in the contract;

k) from authorising businesses to unilaterally amend, without valid reason, the characteristics of the product to be delivered or the service to be supplied;

l) from specifying that the price of the goods is to be determined at the time of delivery, or from according the seller of the goods or the supplier of the services the right to increase their prices without, in both cases, the consumer having a corresponding right enabling him/her to cancel the contract should the end price be too high in respect of the price agreed when the contract was concluded;

m) from according the business the right to determine whether the item delivered or the service supplied conforms to contractual stipulations or from according the latter the exclusive right to interpret any one of the clauses of the contract;

n) from restricting the business's obligation to respect the obligations undertaken by its authorised agents or from making its undertakings subject to adherence to a particular formality;

o) from obliging the consumer to fulfil his obligations even though the business may not have fulfilled his obligations;

p) from providing for the possibility of transfer, on the part of the business, of the contract, where this is likely to engender a reduction in guarantees for the consumer without the latter's agreement;

q) from cancelling or impeding the institution of legal proceedings or means of redress by the consumer, in particular, by obliging the consumer to exclusively refer the case to an arbitration panel not covered by legal provisions, by unduly limiting the means of giving evidence available to the consumer or by making the latter responsible for providing proof which, by virtue of applicable law, should normally lie with another party to the contract.

2. Scope of points g, j and l:

a) Point g does not pose an obstacle to clauses in which suppliers of financial services reserve the right to unilaterally terminate a contract for an indeterminate period without prior notice in the event of a just cause, provided that the obligation to immediately inform the other contracting party, or parties, of this fact lies with the business;

b) Point j does not pose an obstacle to clauses in which suppliers of financial services reserve the right to change the rate of interest owed by the consumer or owed to the latter, or the amount of any other charges appertaining to financial services, without prior notice in the event of just cause, provided that the obligation to inform the other contracting party, or parties, of this fact as soon as possible, lies with the business and provided that said party, or parties, are free to conclude ? the contract immediately.

In addition, point j does not pose an obstacle to clauses in which the business reserves the right to unilaterally change the terms of a contract for an indeterminate period provided that the duty to notify the consumer of this fact in sufficient time lies with the consumer and the consumer is free to cancel the contract;

c) Points g, j and l do not apply to:

- transactions concerning securities, financial instruments and other products and services whose price is linked to fluctuations in currency or in a stock market index or in a financial market rate beyond the business control;

- contracts for the sale or purchase of currency, travellers cheques or international money orders denominated in national currencies;

d) Point l does not pose an obstacle to price indexation clauses provided that these are legal and that the mode of price variation is described clearly.

SECTION II

La Commission des clauses abusives

Articles L132-2 to
L132-5

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Article L132-2

The Commission des clause abusives, under the auspices of the minister for consumer affairs, is aware of the standard agreements normally proposed by professionals to non-professional or consumer contracting parties. It is responsible for finding out whether or not these documents contain terms which could be of an abusive nature.

Article L132-3

Case may be referred to it either by the minister for consumer affairs, or by approved consumer protection associations, or by interested professionals. Cases may also be referred to it automatically.

Article L132-4

The commission recommends the deletion or amendment of clauses of an abusive nature. The minister for consumer affairs may, either automatically, or at the request of the commission, make these recommendations public although they may not contain any information likely to permit identification of individual situations.

Article L132-5

Every year the commission compiles a report on its work and may propose any legislative or regulatory changes that it deems desirable. This report is made public.

CHAPTER III

Contract interpretation and contents

Articles L133-1 to
L133-2

Article L133-1

(Act no. 95-96 of 1 February 1994 art. 2 Journal officiel of 2 February 1995)

With a view to providing the non-professional or consumer contractor with information, the decrees provided for by article L. 132-1 may regulate the presentation of written documents noting the contracts referred to in this same article.

Article L133-2

(inserted by Act no. 95-96 of 1 February 1995 art. 3 Journal officiel of 2 February 1995)

Contract terms proposed by professionals to consumers or non-professionals must be presented and written in a clear and comprehensible manner.

In the event of doubt, they are interpreted in the sense which is most favourable to the consumer or the non-professional. This paragraph does not, however, apply to procedures implemented on the basis of article L. 421-6.

CHAPTER IV

Provision of standard form contracts

Articles L134-1 to
L134-2

Article L134-1

Professional sellers or service providers must submit, to any interested party that makes a request, a copy of its standard agreements.

Article L134-2

(inserted by Act No. 2004-575 of 21 June 2004 Article 27 Official Journal of 22 June 2004)

When a contract is entered into via electronic mail and involves a sum equal to or greater than an amount determined by decree, the supplier shall retain the document which embodies it for a period determined by that same decree and shall provide access thereto to the other contracting party whenever the latter so requests.

CHAPTER V

Conflicting laws relating to unfair terms

Articles L135-1 to
L136-1

Article L135-1

(inserted by Act no. 95-96 of 1 February 1995 art. 3 Journal officiel of 2 February 1995)

Notwithstanding any stipulation to the contrary, the provisions of article L. 132-1 apply where the Act governing the contract is that of a State not belonging to the European union, where the consumer or the non-professional is domiciled in one of the Member states of the European union and where the contract was proposed, concluded or performed there.

Article L136-1

(inserted by Act No. 2005-67 of 28 January 2005 Article 1 Official Journal of 1 February 2005 effective 1 August 2005)

The service provider shall inform the consumer in writing, three months at the earliest, and one month at the latest, before expiry of the period during which renewal can be declined, of the option to refrain from renewing a contract with a tacit renewal clause that he has entered into.

When such information has not been sent to him pursuant to the provisions of the first paragraph, the consumer is free to terminate the contract at any time on or after the renewal date. In such circumstances, any advances made after the last renewal date or, in the case of open-ended contracts, after the date on which the initial fixed-term contract was converted, shall be reimbursed within thirty days of the cancellation date, after deduction of the sums corresponding to performance of the contract up to that date. Failing reimbursement as stipulated above, the sums due shall bear interest

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at the legal rate.

The provisions of the present article shall apply without prejudice to those which make certain contracts legally subject to special rules relating to consumer information.

NB: Act 2005-67 of 28 January 2005 Article 7:

I: The present provisions shall enter into force six months after the date of promulgation of the present Act.

II: The present provisions shall apply to contracts in force and to their renewal on the said date of promulgation.

TITLE IV

Agents' powers and jurisdictional proceedings

Articles L141-1 to
L141-3

SOLE CHAPTER

Special provisions relating to agents' powers and jurisdictional proceedings

Articles L141-1 to
L141-3

Article L141-1

(Act No. 98-566 of 8 July 1998 Art. 2 Official Journal of 9 July 1998)

(Order No. 2000-912 of 18 September 2000 Art. 4 I Official Journal of 21 September 2000)

(Act No. 2004-806 of 9 August 2004 Art. 41 II Official Journal of 11 August 2004)

(Order No. 2004-1173 of 4 November 2004 Art. 2 Official Journal of 5 November 2004)

(Order No. 2005-1086 of 1 September 2005 Art. 2 Official Journal of 2 September 2005)

(Order No. 2006-346 of 23 March 2006 Art. 35 Official Journal of 24 March 2006)

I. - Breaches of the provisions of the Consumer Code are detected and established as determined in Articles L. 450-1, L. 450-2, L. 450-3 L. 450-4, L. 450-7, L. 450-8, L. 470-1 and L. 470-5 of the Commercial Code pursuant to:

1 Section II "Distance Sales of Goods And Services" of Chapter I of Part II of Book I;

2 Section III "Canvassing" of Chapter I of Part II of Book I;

3 Section IX "Real-Property Time-Sharing Contracts" of Chapter I of Part II of Book I;

4 Section III "Pyramid Selling of Goods or Services" of Chapter II of Part II of Book I;

5 Section IV "Abuse of Weakness" of Chapter II of Part II of Book I;

6 Section VII "Sanctions" of Chapter I entitled "Consumer Credit" of Part I of Book III;

7 Section VII "Sanctions" of Chapter II entitled "Real-Property Loans" of Part I of Book III;

8 Subsection 2 "Usury Rate" of section I of Chapter III entitled "Common Provisions" of Part I of Book III;

9 Chapter II "Miscellaneous Provisions" of Part II of Book III;

10 Section 6: "Mortgage Loans Secured by a Revolving Mortgage" of Chapter III entitled: "Common Provisions" of Part I of Book III;

11 Section 7: "Sanctions" of Chapter IV entitled: "Lifetime Mortgages" of Part I of Book III.

II. - Breaches of the provisions of the Consumer Code are detected and established as determined in articles L. 450-1, L. 450-2, L. 450-3, L. 450-7 and L. 450-8, L. 470-1 and L. 470-5 of the Commercial Code pursuant to:

1 Article L. 113-3;

2 Section V "Sales or Services with Free Gifts" of Chapter I of Part II of Book I;

3 Section VI "Sweepstakes" of Chapter I of Part II of Book I;

4 Section I "Refusal and Subordination of a Contract of Sale or Service Contract" of Chapter II of Part II of Book I;

5 Section II "Sales without a Prior Order" of Chapter II of Part II of Book I and Article R. 122-1;

6 Section I "Consumer Protection against Unfair Clauses" of Chapter II of Part III of Book I;

7 Section XI "Electronic Communication Service Contracts" of Chapter I of Part II of Book I.

III. - Professional secrecy may not be raised against agents acting within the framework of the powers conferred on them by the present article.

IV. - Agents empowered to establish the breaches referred to in the present article may order a professional, having given him a reasonable time limit, to fulfil the obligations ensuing from Books I and III of the Consumer Code or to bring the improper or illicit conduct referred to in I and II of the present article to an end.

V. - The administrative authority tasked with matters relating to competition and consumption may request the civil courts or, where appropriate, the administrative courts, to order the deletion of any illicit or unfair clause in any contract or type of contract offered or intended for the consumer, under pain of a coercive fine if necessary. Having informed the Public Prosecutor thereof, it may also bring an action before the civil courts petitioning the judge to order any measure likely to put an end to the illicit conduct referred to in I and II of the present article, under pain of a coercive fine if necessary. The implementing regulations for such procedures are determined in a Conseil d'Etat decree.

Article L141-2

(inserted by Order No. 2005-1086 of 1 September 2005 Art. 1 II Official Journal of 2 September 2005)

For the breaches referred to in Books I and III of the present code, the administrative authority tasked with matters relating to competition and consumption is entitled, with the Public Prosecutor's consent and provided that criminal proceedings have not been instituted, to reach a compromise pursuant to procedures determined in a Conseil d'Etat decree.

The act through which the Public Prosecutor agrees a compromise proposal interrupts prescription of the criminal proceedings.

The criminal proceedings are extinguished when the person responsible for the breach has fulfilled the obligations

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ensuing for him from acceptance of the compromise proposal in the time allotted.

Article L141-3

(inserted by Order No. 2005-1086 of 1 September 2005 Art. 5 Official Journal of 2 September 2005)

I. - Under the terms and conditions of EC Regulation No. 2006/2004 of the European Parliament and Council of 27 October 2004, the provisions of Article 11 of the Code of Criminal Procedure or those relating to professional secrecy shall not impede communication, by the agents of the Directorate-General for Fair Trading, Consumer Affairs and Fraud Prevention, to the proper authorities of the European Union Member States, of information and documents held and gathered in the performance of their duties by agents authorised to detect and establish violations of provisions that come within the scope of the said regulation.

II. - Agents authorised to establish the breaches referred to in Article L. 141-1 and Article L. 121-1 of the Consumer Code may also cooperate with the proper authorities of the Member States of the Organisation for Economic Cooperation and Development (OECD) which are not members of the European Union in order to prevent, or put an end to, illicit cross-border commercial practices. Such cooperation consists of the establishment of contacts, the exchange of information not covered by professional secrecy or judicial secrecy and the handling of complaints from consumers in third countries.

BOOK II

Conformity and safety of products and services

Articles L211-1 to L225-1

TITLE I

Conformity

Articles L211-1 to L218-7

CHAPTER I

General provisions

Articles L211-1 to L211-18

SECTION I

Scope

Articles L211-1 to L211-3

Article L211-1

(Order No. 2005-136 of 17 February 2005 Article 1 Official Journal of 18 February 2005)

The provisions of the present chapter apply to contracts relating to the sale of tangible movable property. Contracts relating to the supply of movables to be manufactured or produced are deemed to be contracts of sale.

The provisions of the present chapter apply to water and gas when they are packaged in a delimited volume or a determined quantity.

NB: Order 2005-136 2005-02-17 Article 5: The provisions of the present order shall apply to contracts concluded subsequent to its entry into force.

Article L211-2

(Order No. 2005-136 of 17 February 2005 Article 1 Official Journal of 18 February 2005)

They do not apply to items sold either by authority of law or at public auctions.

Nor do they apply to electricity.

NB: Order 2005-136 2005-02-17 Article 5: The provisions of the present order shall apply to contracts concluded subsequent to its entry into force.

Article L211-3

(inserted by Order No. 2005-136 of 17 February 2005 Article 1 Official Journal of 18 February 2005)

The present chapter is applicable to the contractual relations between a seller acting in his professional or commercial capacity and a buyer acting in his capacity as a consumer.

For the purposes of the present chapter, the manufacturer of a tangible movable product is its producer, its importer within the European Community or any person presenting himself as its producer by affixing his name, trademark or other distinctive sign upon it.

NB: Order 2005-136 2005-02-17 Article 5: The provisions of the present order shall apply to contracts concluded subsequent to its entry into force.

SECTION II

Legal guarantee of conformity

Articles L211-4 to L211-14

Article L211-4

(inserted by Order No. 2005-136 of 17 February 2005 Article 1 Official Journal of 18 February 2005)

The seller is required to deliver a product which conforms to the contract and is held liable for any lack of conformity which exists upon delivery.

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He is also held liable for any lack of conformity caused by the packaging or the assembly instructions, or the installation if he assumed responsibility therefor or had it carried out under his responsibility.

NB: Order 2005-136 2005-02-17 Article 5: The provisions of the present order shall apply to contracts concluded subsequent to its entry into force.

Article L211-5

(inserted by Order No. 2005-136 of 17 February 2005 Article 1 Official Journal of 18 February 2005)

To conform to the contract, the product must:

1. Be suitable for the purpose usually associated with such a product and, if applicable:

- correspond to the description given by the seller and have the features that the seller presented to the buyer in the form of a sample or model;

- have the features that a buyer might reasonably expect it to have considering the public statements made by the seller, the producer or his representative, including advertising and labelling;

2. Or have the features defined by mutual agreement between the parties or be suitable for any special requirement of the buyer which was made known to the seller and which the latter agreed to.

NB: Order 2005-136 2005-02-17 Article 5: The provisions of the present order shall apply to contracts concluded subsequent to its entry into force.

Article L211-6

(inserted by Order No. 2005-136 of 17 February 2005 Article 1 Official Journal of 18 February 2005)

The seller is not bound by the public statements of the producer or his representative if it is established that he was unaware of them and could not rightfully be expected to have been aware of them.

NB: Order 2005-136 2005-02-17 Article 5: The provisions of the present order shall apply to contracts concluded subsequent to its entry into force.

Article L211-7

(inserted by Order No. 2005-136 of 17 February 2005 Article 1 Official Journal of 18 February 2005)

In the absence of proof to the contrary, any lack of conformity appearing within six months of delivery of the product is presumed to have existed at the time of delivery.

The seller may refute that presumption if it is incompatible with the nature of the product or the non-conformity invoked.

NB: Order 2005-136 2005-02-17 Article 5: The provisions of the present order shall apply to contracts concluded subsequent to its entry into force.

Article L211-8

(inserted by Order No. 2005-136 of 17 February 2005 Article 1 Official Journal of 18 February 2005)

The buyer is entitled to demand that the product conform to the contract. He may nevertheless not contest its conformity by invoking a defect that he was aware of, or could not have been unaware of, when he entered into the contract. The same shall apply when the defect originates from materials he has supplied himself.

NB: Order 2005-136 2005-02-17 Article 5: The provisions of the present order shall apply to contracts concluded subsequent to its entry into force.

Article L211-9

(inserted by Order No. 2005-136 of 17 February 2005 Article 1 Official Journal of 18 February 2005)

In the event of lack of conformity, the buyer shall choose between repair and replacement of the product.

The seller may nevertheless elect not to proceed in accordance with the buyer's choice if that choice gives rise to a manifestly disproportionate cost compared with the other option given the value of the product or the seriousness of the defect. He is then required to proceed with the option not chosen by the buyer, unless this proves impossible.

NB: Order 2005-136 2005-02-17 Article 5: The provisions of the present order shall apply to contracts concluded subsequent to its entry into force.

Article L211-10

(inserted by Order No. 2005-136 of 17 February 2005 Article 1 Official Journal of 18 February 2005)

If neither repair nor replacement of the product is possible, the buyer may return the product and obtain reimbursement of the price or keep the product and obtain reimbursement of a portion of the price.

He has the same option:

1. If the solution requested, proposed or agreed pursuant to Article L. 211-9 cannot be implemented within one month of the buyer making his claim;

2. Or if that solution cannot be implemented without major inconvenience for the buyer given the nature of the product and his intended use.

The sale shall not be cancelled, however, if the lack of conformity is minor.

NB: Order 2005-136 2005-02-17 Article 5: The provisions of the present order shall apply to contracts concluded subsequent to its entry into force.

Article L211-11

(inserted by Order No. 2005-136 of 17 February 2005 Article 1 Official Journal of 18 February 2005)

The provisions of Articles L. 211-9 and L. 211-10 shall be applied at no cost to the buyer.

Those same provisions shall not impede the awarding of damages.

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NB: Order 2005-136 2005-02-17 Article 5: The provisions of the present order shall apply to contracts concluded subsequent to its entry into force.

Article L211-12

(inserted by Order No. 2005-136 of 17 February 2005 Article 1 Official Journal of 18 February 2005)

Action resulting from lack of conformity lapses two years after delivery of the product.

NB: Order 2005-136 2005-02-17 Article 5: The provisions of the present order shall apply to contracts concluded subsequent to its entry into force.

Article L211-13

(inserted by Order No. 2005-136 of 17 February 2005 Article 1 Official Journal of 18 February 2005)

The provisions of the present section do not deprive the buyer of the right to bring an action on account of latent defects as provided for in Articles 1641 to 1649 of the Civil Code or any other action of a contractual or extracontractual nature to which he is entitled under the law.

NB: Order 2005-136 2005-02-17 Article 5: The provisions of the present order shall apply to contracts concluded subsequent to its entry into force.

Article L211-14

(inserted by Order No. 2005-136 of 17 February 2005 Article 1 Official Journal of 18 February 2005)

An action for indemnity may be brought by the final seller against the successive sellers or intermediaries and the producer of tangible movable property, pursuant to the principles of the Civil Code.

NB: Order 2005-136 2005-02-17 Article 5: The provisions of the present order shall apply to contracts concluded subsequent to its entry into force.

SECTION III

Commercial guarantee

Articles L211-15 to
L211-16

Article L211-15

(inserted by Order No. 2005-136 of 17 February 2005 Article 1 Official Journal of 18 February 2005)

The buyer shall receive a written commercial guarantee.

The said guarantee shall set out its terms and conditions, the elements required for its implementation, its term, its geographical scope and the guarantor's name and address.

It shall state that, notwithstanding the guarantee thus granted, the seller shall remain bound by the contract in regard to any lack of conformity of the product and any latent defect, as provided for in Articles 1641 to 1649 of the Civil Code. It shall fully and clearly reproduce Articles L. 211-4, L. 211-5 and L. 211-12 of the present code and Article 1641 and the first paragraph of Article 1648 of the Civil Code.

The guarantee shall remain valid if these provisions are not complied with, and the buyer shall be entitled to avail himself thereof.

NB: Order 2005-136 2005-02-17 Article 5: The provisions of the present order shall apply to contracts concluded subsequent to its entry into force.

Article L211-16

(inserted by Order No. 2005-136 of 17 February 2005 Article 1 Official Journal of 18 February 2005)

When the buyer asks the seller to carry out repairs covered by his contractual guarantee, the period of any resultant shutdown of seven days or longer shall be added to the unexpired term of the guarantee. The said period shall run from the time when the buyer requests assistance or the time when the product in question is taken out of service pending repair, should this be subsequent to the request for assistance.

NB: Order 2005-136 2005-02-17 Article 5: The provisions of the present order shall apply to contracts concluded subsequent to its entry into force.

SECTION IV

Common provisions

Articles L211-17 to
L211-18

Article L211-17

(inserted by Order No. 2005-136 of 17 February 2005 Article 1 Official Journal of 18 February 2005)

Any agreement between the seller and the buyer which was entered into prior to the latter making a claim and which directly or indirectly nullifies or limits the rights ensuing from the present chapter is deemed not to exist.

NB: Order 2005-136 2005-02-17 Article 5: The provisions of the present order shall apply to contracts concluded subsequent to its entry into force.

Article L211-18

(inserted by Order No. 2005-136 of 17 February 2005 Article 1 Official Journal of 18 February 2005)

Regardless of the law applicable to the contract, a buyer having his habitual residence in a European community Member State cannot be deprived of the protection afforded him by the provisions introduced by that State pursuant to Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999, which have mandatory force:

- if the contract was concluded in the buyer's State of habitual residence;

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- if the contract was preceded in that State by a special offer or advertising and acts carried out by the buyer which were necessary for the conclusion of the said contract;
- or if the contract was concluded in a State which the buyer had travelled to or visited in response to a proposal made directly or indirectly by the seller to encourage him to enter into such a contract.

NB: Order 2005-136 2005-02-17 Article 5: The provisions of the present order shall apply to contracts concluded subsequent to its entry into force.

CHAPTER II

General obligation of conformity

Article L212-1

Article L212-1

(Order No. 2004-670 of 9 July 2004 Article 6 Official Journal of 10 July 2004)

From their initial market launch, products must meet the regulations in force relating to the health and safety of persons, fair trading and consumer protection.

The person responsible for a product's initial market launch is therefore required to ensure that the product complies with the regulations in force.

When so requested by a regulator overseeing the application of the present Book, he is required to provide evidence of the checks and inspections carried out.

CHAPTER III

Fraud and falsification

Articles L213-1 to
L213-6

SECTION I

False description

Articles L213-1 to
L213-2

Article L213-1

(Act no. 92-1336 of 16 December 1992 art. 322 Journal Officiel of 23 December 1992 in force on 1 March 1994)

Anyone, whether or not they are party to the contract, who may have deceived or attempted to deceive the contractor, by any procedural means whatsoever, even if this is through the intermediary of a third party, shall be punished by two years imprisonment and a € 37,500 fine:

1° either in respect of the nature, species, origin, material qualities, composition or content in terms of useful principles of any merchandise;

2° or on the quantity of items delivered or on their identity by delivery of merchandise other than the determined item to which the contract relates;

3° or on the fitness for use, the risks inherent in use of the product, the checks carried out, the operating procedures or precautions to be taken.

Article L213-2

The penalties provided for in article L.213-1 are doubled:

1° if the offences provided for in said article result in use of the merchandise being made dangerous to human or animal welfare;

2° if the offence or attempted offence provided for in article L. 213-1 was committed:

a) either with the aid of weights, measures or other false or inaccurate instruments;

b) or with the aid of manoeuvres or procedures likely to falsify operations of analysis, determination, weighing or measuring or likely to fraudulently modify the composition, weight or volume of the merchandise, even prior to these operations;

c) or, finally, with the aid of false information, likely to result in belief in a previous and accurate operation.

SECTION II

Adulteration of food and drugs

Articles L213-3 to
L213-4

Article L213-3

(Act no. 92-1336 of 16 December 1992 art. 322 Journal officiel of 23 December 1992 in force on 1 March 1994)

The following are punishable by the penalties given in article L. 213-1:

1° Those who adulterate foodstuffs for human or animal consumption, medicines, drinks and agricultural or natural products intended for sale;

2° Those who display, place on sale or sell foodstuffs for human or animal consumption, drinks and agricultural or natural products that they know to be adulterated or corrupt or toxic;

3° Those who display, place on sale or sell adulterated medicines;

4° Those who display, place on sale or sell, knowing their destination, products, objects or apparatus for use in adulterating foodstuffs for human or animal consumption, drinks or agricultural or natural products and those who have caused their used by means of any brochures, circulars, prospectuses, posters, advertisements or instructions whatsoever.

If the falsified or corrupted substance, or adulterated medicine is harmful to human and animal health, imprisonment

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will be increased to four years and the fine to € 75,000.

The penalties shall apply even in the event of the harmful adulteration being known to the purchaser or consumer.
The provisions of this article do not apply to fresh and fermented or adulterated fruit and vegetables.

Article L213-4

(Act no. 92-1336 of 16 December 1992 art. 322 Journal officiel of 23 December 1992 in force)

Punishable by a € 4,500 fine and three months imprisonment or by just one of these penalties are those who, without legitimate reasons, are found to be holders, in any manufacturing, production, packaging, storage, warehouse or sales site, in vehicles used for transporting merchandise, as well as in places where animals whose meat or products are intended for human or animal consumption are housed or slaughtered:

1° Either false weights or measures or other inaccurate apparatus used for weighing and measuring merchandise;

2° Or foodstuffs for human or animal consumption, drinks, agricultural or natural produce that they know to have been adulterated, corrupted or to be toxic;

3° Or adulterated medicines;

4° Or products, objects or apparatus for use in adulterating foodstuffs for human or animal consumption, drinks or agricultural or natural produce.

If the adulterated or corrupted food substance or the adulterated medicine is harmful to human or animal health, imprisonment will be two years and the fine will be € 37,500.

The provisions of this article do not apply for fresh, fermented or adulterated fruit and vegetables.

All vendors or holders of products intended for the preparation or storage of drinks not bearing a label stating their components and the proportion of those components, where use of said components is limited by current legislation and regulations.

SECTION III

Repeat offences

Articles L213-5 to

L213-6

Article L213-5

(Act no. 96-314 of 12 April 1996 art. 60b Journal officiel of 13 April 1996)

Anyone who, having been sentenced to correctional penalties in application of chapters II to VI of this part or texts listed hereinafter, within five years of the date of this sentence becoming final, commits a new offence that comes under the application of chapters II to VI of this part or the texts listed hereinafter, shall be considered to be in a state of legal recidivism:

articles L. 141, L. 142 and L. 144, chapters I and IV of part I, chapters II and III of part II and chapters I and VIII of part III of volume V of the French public health code;

articles L. 231-6 and L. 231-7 of chapter I of part III and article L. 263-2 of chapter III of part VI of volume II of the French labour code;

the Act of 14 August 1889 on wine;

the Act of 11 July 1891 on fraud prevention in the sale of wine;

the Act of 24 July 1894 relating to frauds committed in the sale of wine;

the Act of 6 April 1897 concerning the manufacture, distribution of artificially produced wines;

the Act of 4 August 1903 regulating trade in copper products and fungicides;

the Act of 11 July 1906 relating to the protection of tins of sardines, vegetables and prunes against foreign fraud, the provisions of which were rendered applicable to all foreign tinned fish entering France by the Act of 28 June 1913;

the Act of 4 August 1929 regulating wine sweetening;

the Act of 1 January 1930 on wine;

the Act of 26 March 1930 on the prevention of false information relating to the origin of merchandise;

the Act of 30 December 1931 for the prevention of fraud in the trade of oil of turpentine and products made from resinous vegetables;

the Act of 29 June 1934 designed to guarantee fair trade in fruit and vegetables and to prevent the sale of maggoty fruits;

the amended Act of 3 July 1934 designed to regulate the manufacture of pasta;

the Act of 2 July 1935 designed to organise and restructure the dairy and resinous product markets;

the Act of 25 June 1936 designed to legally define and protect leather and to prevent fraud in the sale and leather and products crafted from leather;

the Act of 21 April 1939 designed to prevent fraud in the sale of shell and ivory objects;

the Act of 3 February 1940 designed to regulate trade in products for animal consumption;

amended Act no. 525 of 2 November 1943 relating to the organisation of controls on pesticides for agricultural use;

Act no. 60-808 of 5 August 1960 on agricultural guidance;

amended Act no. 64-1360 of 31 December 1964 on trademarks, manufacturer's brands and service marks;

Act no. 71-383 of 22 May 1971 relating to the improvement of wood species;

Act no. 73-1097 of 12 December 1973 on designations of origin relating to viticulture;

Act no. 79-595 of 13 July 1979 relating to the organisation of controls on fertilisers and growing supports;

Act no. 80-502 of 4 July 1980 on agricultural guidance (paragraphs III and IV of article 14).

Article L213-6

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(inserted by Act no. 2001-504 of 12 June 2001 art. 3 I Journal Officiel of 13 June 2001)

Legal entities may be declared criminally liable under the conditions provided for by article 121-2 of the French penal code for offences defined in articles L. 213-1 to L. 213-4.

Penalties incurred by legal entities are:

1° Fines, in accordance with the procedures provided for by article 131-38 of the French penal code;

2° The penalties mentioned in points 2 to 9 of article 131-39 of the French penal code.

The ban mentioned in point 2 of article 131-39 of the French penal code relates to the activity during, or on the occasion, of the performance of which the offence was committed.

CHAPTER IV

Enforcement powers

Articles L214-1 to

L214-3

Article L214-1

(Act No. 98-535 of 1 July 1998 Article 11 II 1 Official Journal of 2 July 1998 effective 31 December 1998 at the latest)

(Act No. 2001-420 of 15 May 2001 Article 57 Official Journal of 16 May 2001)

(Act No. 2004-806 of 9 August 2004 Article 31 Official Journal of 11 August 2004)

Council of State decrees shall determine the measures to be taken to enforce Chapters II to VI of the present Part, particularly in regard to:

1. The manufacture and importation of goods other than those referred to in Articles 258, 259 and 262 of the Rural Code, and the selling, offering for sale, exhibiting, holding and free distribution of any goods referred to in Chapters II to VI;

2. The manner of presentation, inscriptions of any kind on the goods themselves and on packaging, invoices, commercial or promotional documents, relating, inter alia, to: the production method, the nature, the essential qualities, the composition, including the nutritional composition of food products, the content in terms of useful principles, type, origin, identity, quantity, fitness for use, instructions for use, and the special optional or compulsory markings placed on French goods exported abroad;

3. The definition, composition and designation of all kinds of goods, lawful processes they may be subject to, characteristics that render them unfit for consumption;

4. The definition and conditions of use of advertising terms and expressions, with the aim of avoiding confusion;

5. Hygiene in establishments where foodstuffs for human or animal consumption other than those referred to in articles 258, 259 and 262 of the Rural Code are prepared, stored and sold, and the health and safety conditions of the persons working in such premises;

6. The conditions in which the microbiological and hygienic characteristics of goods intended for human or animal consumption other than those referred to in Articles 258, 259 and 262 of the Rural Code are determined;

7. The manner in which the indications referred to in the last paragraph of Article L. 213-4 must be drawn to purchasers' attention on labels, notices, advertisements and promotional documents.

The decrees referred to in this article are issued on the advice of the Agence française de sécurité sanitaire des aliments insofar as they relate to products falling within its jurisdiction or include provisions intended to prevent health or nutritional risks. The said advice is published.

Article L214-1-1

(inserted by Act no. 99-574 of 9 July 1999 art. 100 I Journal officiel of 10 July 1999)

A Council of State decree fixes the list of products or foodstuffs for which traceability must be guaranteed. It specifies the obligations of producers and distributors who are obliged to compile and update registered information and product, or product batch, identification procedures. These procedures enable the origin of these products and batches to be known as well as the conditions under which they were produced or distributed.

The administrative body specifies, for each product or foodstuff, the production and marketing procedures for which traceability must be guaranteed, as well as the means to be implemented according to size of company.

Article L214-2

(Act no. 99-574 of 9 July 1999 art. 100 II Journal officiel of 10 July 1999)

Breaches of Council of state decrees, adopted by virtue of articles L. 214-1, L. 214-1-1, L. 215-1, last paragraph, and L. 215-4 which are not to be confused with any fraud or falsification provided for by articles L. 213-1 to L. 213-4 and L. 214-1 (point 7), shall be punished as petty offence (third class).

Anyone who has placed on sale, or sold, without waiting for the results of an official investigation which is under way, any merchandise whatsoever which is definitely acknowledged as being fraudulent or false subsequent to the legal inquiry following this investigation, without prejudice to correctional proceedings instituted against the author of the fraud or the falsification.

Article L214-3

Where a European economic community regulation contains provisions which come under the field of application of chapters II to VI, a Council of state decree ascertains whether these provisions, as well as those of community regulations that may amend them or that may be adopted for their application, constitute the implementing measures provided for in articles L. 214-1, L. 215-1, last paragraph and L. 214-4.

CHAPTER V

CONSUMER CODE

Powers of investigation

Articles L215-1 to
L215-17

SECTION I

Authorised authorities

Articles L215-1 to
L215-2

Article L215-1

(Act No. 97-1051 of 18 November 1997 Article 38 Official Journal of 19 November 1997)

(Act No. 98-535 of 1 July 1998 Article 26 I Official Journal of 2 July 1998)

(Act No. 99-574 of 9 July 1999 Article 101 VIII Official Journal of 10 July 1999)

(Order No. 2004-670 of 9 July 2004 Article 1 I, Article 6 Official Journal of 10 July 2004)

I.- The following persons may, in the performance of their duties, investigate and establish violations of the present Book:

1. Public servants of the Directorate-General for Fair Trading, Consumer Affairs and Fraud Prevention, the Directorate-General for Customs and the General Tax Directorate;

2. Labour inspectors;

3. Veterinary inspectors, agricultural engineers, specialist technicians of the Ministry of Agriculture, health officials, health technicians, engineers and technicians tasked with plant protection;

4. Medical inspectors of public health and pharmaceutical inspectors of public health;

5. Public servants of the French Marine Exploitation Institute;

6. Public servants of the Ministry of Industry's Sub-Directorate of Metrology and those of the Regional Directorates of Industry, Research and the Environment;

7. Public servants authorised and commissioned by the Minister of Agriculture;

8. Public servants authorised and commissioned pursuant to Article 65 of the Finance Act of 27 February 1912, amended by Article 3 of the decree law of 14 June 1938;

9. Officials of the Maritime Affairs Administration, maritime affairs inspectors, specialist technicians of the Maritime Navigation Safety Department, officers of the Maritime Affairs Technical and Administration Corps, maritime affairs inspectors, mariners' trustees, on-board marine affairs support and supervisory personnel, technical inspectors from the salt-water fishing establishments.

Council of state decrees shall determine the powers conferred on the authorities authorised to investigate and establish violations of the present Book with the object of gathering items of information from the various government departments and transport companies.

10. The public servants referred to in Article L. 1312-1 of the Public Health Code;

11. The public servants referred to in Article L. 514-13 of the Code for the Environment;

12. The public servants referred to in Article L. 40 of the Post and Telecommunications Code.

II. - Moreover, law enforcement officers acting pursuant to the provisions of the Code of Civil Procedure are authorised to investigate and establish the violations referred to in I.

Article L215-1-1

(inserted by Act no. 2001-420 of 15 May 2001 art. 81 II Journal officiel of 16 May 2001)

Agents from the Directorate-general for competition, consumer protection and fraud prevention may exercise the powers of inquiry that they hold by virtue of volume II of this code throughout the territory of France.

Article L215-2

(Act No. 94-114 of 10 February 1994 Article 11 Official Journal of 11 February 1994)

(Order No. 2004-670 of 9 July 2004 Article 1 II, Article 6 Official Journal of 10 July 2004)

In the places indicated in the first paragraph of Article L. 215-3 and on the public highway, the authorities authorised to investigate and establish violations of the present Book shall do so as stipulated herein for violations of the regulatory provisions introduced pursuant to Articles 258, 259, 262, 275-1, 275-2 and 275-4 of the Rural Code which determine the health and qualitative standards applicable to animal foodstuffs and foodstuffs of animal origin offered for sale.

SECTION II

Investigation and report

Articles L215-3 to
L215-4

Article L215-3

(Order No. 2004-670 of 9 July 2004 Article 1 III, Article 6 Official Journal of 10 July 2004)

To investigate and establish violations of the present Book, public servants may operate on the public highway, may enter business premises and premises in which a service is being rendered, between 8.00 a.m. and 8.00 p.m., and may check the loading of vehicles used for those same purposes, and likewise their preservation facilities.

They may also enter those same premises outside those hours if they are open to the public or if production, manufacturing, processing, packaging, transport or marketing activities are taking place therein.

When such premises are also used as dwellings, such inspections may be carried out only between 8.00 a.m. and 8.00 p.m., and with authorisation from the juge des libertés et de la détention of the Tribunal de grande instance in whose jurisdiction the premises are located if the occupant objects thereto.

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The public servants may demand sight of, or seize, documents of any kind, regardless of who is holding them, which are relevant to the performance of their duties, as well as access to whatever facilities they may require to carry out their inspections.

They may also consult any document relevant to the performance of their duties at the premises of government departments, State-controlled institutions and organisations and local authorities, as well as statutory companies and concessions of the regions, departments and communes.

Article L215-3-1

(inserted by Order No. 2004-670 of 9 July 2004 Article 1 IV Official Journal of 10 July 2004)

The public servants referred to in Article L. 215-1 may freely exchange the information and documents held or gathered in the performance of their respective duties pertaining to product conformity or safety.

Without prejudice to the provisions of Article 50 of the aforementioned (EC) regulation of 28 January 2002 which relate to the early warning system, such information and documents may be sent to the Commission of the European Communities or the authorities of the other Member States of the European Union which are authorised to check products' conformity with the general safety obligation or application of the regulations in the area of food products or animal foodstuffs as part of their market surveillance function.

Article L215-4

(Order No. 2004-670 of 9 July 2004 Article 1 V Official Journal of 10 July 2004)

Council of state decrees shall determine the measures to be taken in regard to:

1. The formalities that must be complied with in the premises referred to in the first paragraph of Article L. 215-3 for taking samples and effecting seizures, and also for inter partes appraisal of suspect goods;
2. The choice of the analytical methods or tests applied to establish the products' properties, composition, constituent elements and content in terms of useful principles, or to establish their adulteration.

SECTION III

Emergency measures

Articles L215-5 to
L215-8

Article L215-5

(Order No. 2004-670 of 9 July 2004 Article 1 VI Official Journal of 10 July 2004)

On the public highway and in the premises referred to in the first paragraph of Article L. 215-3, seizures shall be effected without court approval only in the event of flagrante delicto or adulteration, or when they relate to:

1. Products recognised as being adulterated, contaminated or toxic;
2. Products recognised as being unfit for consumption, with the exception of the foodstuffs referred to in Articles 258, 259 and 262 of the Rural Code whose unfitness for consumption can be established only on the basis of abnormal organoleptic characteristics or lesional pathology indicators;
3. Products, objects or apparatus used to effect adulterations in the cases referred to in Articles L. 213-3 and L. 213-4;
4. Products, objects or apparatus recognised as being non-compliant with the applicable laws and regulations and as putting the health or safety of consumers at risk.

Seizures may be executed on the basis of findings made in situ or analyses or tests carried out on samples in a laboratory.

The public servants draw up a seizure report. The products seized shall be left in the custody of their keeper or, failing this, shall be kept at premises designated by the public servants. The said report shall be sent to the procureur de la République within 24 hours.

The public servant may destroy, sterilise or denature the products referred to in 1. Such acts are recorded and explained in the seizure report.

Failure to comply with the seizure procedure shall be punished by three years' imprisonment and a fine of 375,000 euros, or only one of these two penalties. The court may also order the measures provided for in Article L. 216-3.

The procedure the tax authorities use to investigate and prosecute facts which constitute both a tax offence and a violation of the provisions of Chapters II to VI and of the law of 29 June 1907 aimed at preventing the watering down of wines and the excessive use of sweeteners remains unchanged.

Article L215-6

Seizures can only be made without an order from a juge d'instruction in the event of persons being caught in the act of falsification, or should the products be recognised as being adulterated or toxic, subsequent to investigations carried out on-site or subsequent to the analysis of a sample in a laboratory. In the case of products recognised as being adulterated or toxic, seizure is mandatory.

In this last case, the agent may proceed with their destruction, sterilisation or denaturation. Operations are related and proven in the reports.

Article L215-7

(Order No. 2004-670 of 9 July 2004 Article 1 VIII, Article 6 Official Journal of 10 July 2004)

In all premises referred to in the first paragraph of Article L. 215-3, and on the public highway, the authorities authorised to investigate and establish violations of the present Book may consign the following items pending the results of the necessary inspections:

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1. Products likely to be adulterated, contaminated or toxic;
2. Products likely to be unfit for consumption, with the exception of the foodstuffs referred to in Articles 258, 259 and 262 of the Rural Code whose unfitness for consumption can be established only on the basis of abnormal organoleptic characteristics or lesional pathology indicators;

3. Products, objects or apparatus recognised as being non-compliant with the applicable laws and regulations and as putting the health or safety of consumers at risk.

The products, objects or apparatus consigned shall remain in the custody of their keeper.

The authorised authorities draw up a report which refers to the products consigned. The said report is sent to the procureur de la République within twenty-four hours.

The consignment may exceed one month's duration only with the consent of the procureur de la République.

The authorised authorities or the procureur de la République may order the release of the consignment at any time.

Failure to comply with the consignment measure shall be punished as provided for in Article L. 213-1.

Article L215-8

The qualified authorities may request authorisation from the president du tribunal de grande instance or from the magistrat du siege appointed to this end, to detain in all the places listed in article L. 213-4 and on public thoroughfares, whilst awaiting the necessary checks, merchandise suspected of not conforming to the provisions of chapters II to VI and to the texts adopted for their application, where keeping said merchandise on the market could have serious and immediate implications for fair trade or could seriously damage the interests of consumers.

This detention can only be implemented with authorisation from the president du tribunal de grande instance under whose jurisdiction the places where the litigious merchandise is being held lie.

This judge is referred cases at the request of the authorities mentioned in the first paragraph. He/she makes a ruling within twenty four hours.

President du tribunal de grande instance checks that there are grounds for the detention application brought before it. This application includes all the items of information needed to justify the measure.

The detention measure cannot exceed fifteen days. In the event of particular difficulties linked to examination of the merchandise in question, the president du tribunal de grande instance may renew the measure for an identical period by a reasoned order.

Detained merchandise is left in the care of their holder.

The president du tribunal de grande instance may order the lifting of the detention measure at any time. Lifting is automatic wherever the authorised authorities have ascertained the conformity of the detained merchandise or the bringing of the latter into conformity subsequent to the undertaking of the person responsible for first placing said merchandise on the market or of their holder.

SECTION IV

Analysis

Articles L215-9 to
L215-17

Article L215-9

(Order No. 2004-670 of 9 July 2004 Article 1 IX Official Journal of 10 July 2004)

All tests and analyses carried out in connection with the investigation and prosecution of violations of the present Book shall be inter partes and the price of samples whose non-compliance with the regulations is not established shall be reimbursed at their value as of the day when they were taken.

Article L215-10

(Order No. 2004-670 of 9 July 2004 Article 1 X Official Journal of 10 July 2004)

If, having received either statements or reports from the public servants referred to in Article L. 215-1, or the laboratory report, and following any preliminary investigation, the procureur de la République considers that action should be taken or an inquiry should be opened, he shall refer the case to the court or to the juge d'instruction, as applicable.

If expert appraisal is necessary, it shall be ordered and executed as provided for in Articles 156 to 169 of the Code of Criminal Procedure, subject to the reservations hereunder.

Article L215-11

Should the allegation of fraud or falsification result in an analysis being carried out in a laboratory, the alleged author of the fraud or falsification is notified, by the procureur de la République, that he may have access to the laboratory report and he has three clear days in which to submit his observations and to advise whether or not he requires the analysis agreed by both parties provided for by article L. 215-9.

Article L215-12

Where an analysis has been requested or where it has been decided upon by the jurisdiction d'instruction or jurisdiction de jugement, two experts are designated. One is appointed by the jurisdiction, the other is chosen by the interested party and appointed by the jurisdiction in accordance with the conditions provided for by article 157 of the French code of criminal procedure.

Under exceptional circumstances, the interested party may choose an expert who does not appear on the lists provided for in the first paragraph of the aforementioned article 157. Said choice is subject to approval from the jurisdiction.

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The manager of the laboratory that performed the analysis may be appointed in accordance with the conditions fixed in the first and second paragraphs, even when he does not appear on the lists provided for in article 157, first paragraph of the French code of criminal procedure.

The Court gives the interested party a deadline by which the expert must be designated, the interested party, nevertheless, being entitled to explicitly renounce this appointment and rely on the findings of the expert appointed by the jurisdiction.

If the interested party has not renounced this right and has not designated an expert within the deadline given, said expert is automatically appointed by the Court.

Article 215-13

The expert chosen by the interested party is appointed by the jurisdiction under the same terms and receives the same assignment as the expert chosen by it. These experts have the same obligations, the same rights, the same responsibility and receive the same payment, in accordance with the conditions provided for in the French code of criminal procedure.

The experts must employ the method, or methods, used by the laboratory and carry out the same analyses. They may, however, employ other additional methods.

Article L215-14

The Court hands the second sample taken over to the experts in accordance with the provisions of article 163 of the French code of criminal procedure. If special storage measures have been taken, the jurisdiction will specify procedures for withdrawing samples.

It also hands over to the experts the sample held by the person at whose premises the sample has been taken, the latter having been formally notified in advance to supply said sample within eight days, intact. If the interested party does not submit said sample intact by the aforementioned deadline, reference must no longer be made to this sample, at any time/

Article L215-15

(Order No. 2004-670 of 9 July 2004 Article 1 XI Official Journal of 10 July 2004)

When a product may deteriorate rapidly, or when the object or product, given its value, nature or scarcity, cannot reasonably be sampled three times, the procureur de la République or the court shall appoint experts immediately, including the expert representing the interested party, and shall make every effort to ensure that they meet as a matter of urgency. The experts shall convene at the behest of most diligent among them and they shall conclude on the findings thus reached.

Article L215-16

In derogation of article 167 of the French code of criminal procedure, if the experts cannot agree, or if they agree to invalidate the findings of the administration's laboratory report, the jurisdiction, prior to making a ruling, informs said laboratory of the contents of the experts report and sets a deadline for said laboratory to make any observations, unless the relevant laboratory manager has, him taken part in the expert survey in the capacity of expert.

Article L215-17

In respect of bacteriological testing or checks on biological purity, apart from cases where the interested party has declared its wish to rely on a single expert, designated by the juge d'instruction, the latter appoints two experts to carry out the expert survey on the sample taken.

The first of these experts is selected from the managers of competent laboratories.

The second expert, appointed by the juge d'instruction is the expert or his deputy, selected by the interested party in the relevant discipline from the lists provided for by article 157 of the French code of criminal procedure.

The two experts act together, in the laboratory to which the sample has been sent, in examining this sample.

The juge d'instruction makes all necessary arrangements to ensure that the sampling and the analysis which follows immediately are carried out by the department for the prevention of fraud by the date fixed by it. Default on the part of one of the experts does not prevent the examination from being completed, with the effects attached to the procédure contradictoire.

CHAPTER VI

Common provisions

Articles L216-1 to
L216-10

Article L216-1

(Order No. 2004-670 of 9 July 2004 Article 6 Official Journal of 10 July 2004)

The present Book is applicable to the provision of services.

Article L216-2

Merchandise, objects or apparatus still belonging to the seller or the possessor, the sale, use or holding of which constitutes an offence, may be confiscated. Weights and other false or inaccurate weighing, measuring or quantification instruments, must be confiscated and destroyed.

Should the confiscated merchandise, objects or apparatus be useable, the court may make them available to the public authorities for allocation to establishments of general interest.

If they are unusable or harmful, these merchandise, objects or apparatus shall be destroyed at the expense of the

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convicted party.

In the event of non-suit or acquittal, should the merchandise, objects or apparatus have been identified as being dangerous for humans or animals, the judge orders the seizing authority to have them destroyed or to use them for a purpose for which they are fit.

Article L216-3

(Act no. 92-1336 of 16 December 1992 art. 322, art. 329 Journal Officiel of 23 December 1992 in force on 1 March 1994)

The court may order, in all cases, that the detention ruling be published, in full, or in extracts, in the journals that it designates and displayed in the places that it states, in particular, on the doors of the convicted party's domicile, shops, factories and workshops, all at the expense of the convicted party without, however, the cost of this publication exceeding the maximum amount of fine incurred.

Where display has been ordered, the court will fix the dimensions of the poster and the typographical characters that must be used in its printing.

In this case, and in all other cases where the courts are authorised to order their judgement to be displayed by way of a fraud prevention penalty, they must fix the time for which this judgement must be displayed, not to exceed seven days.

In the event of total, or partial, removal, concealment or defamation of the displays ordered by the judgement, the provisions of the judgement relating to the display shall be applied, in full, once again.

Should the removal, concealment or defamation have been carried out intentionally by the convicted party, at his/her instigation or under his/her orders, this shall result in the latter being sentenced to a fine of € 3,750.

Repeated intentional removal, concealment or defamation of the displays by the convicted party, at his/her instigation or under his/her orders, shall be punishable by imprisonment of one month and a € 7,500.

Where the judgement has been ordered to be displayed on the door of the convicted party's stores, the enforcement of the judgement cannot be prevented by sale of the business subsequent to the first decision ordering the display.

Article L216-4

(Act no. 92-1336 of 16 December 1992 art. 323 Journal officiel of 23 December 1992 in force on 1 March 1994)

Any proceedings instituted by virtue of chapters II to VI must be continued and terminated by virtue of the same texts.

In the event of extenuating circumstances, the court may not order the display and imprisonment may not be applied.

Article L216-5

(Order No. 2004-670 of 9 July 2004 Article 2 I Official Journal of 10 July 2004)

Persons found guilty of violations of the present Book and its implementing regulations shall, when so requested by the administrative authority, pay the sampling, carriage, analysis and testing costs incurred investigating and establishing the said violations.

The present article's implementing regulations are determined by decree.

Article L216-6

In the event of proceedings for fraud or attempted fraud in respect of the origin of merchandise, foodstuffs or agricultural and natural products, the magistrat instructeur or the courts may order the production of registers and documents from the various administrations, in particular, that of indirect contributions and transport operators.

Article L216-7

(Order No. 2004-670 of 9 July 2004 Article 6 4 Official Journal of 10 July 2004)

The juge d'instruction or court to which the proceedings are referred may order that trading in goods which have given rise to proceedings for violation of the provisions of the present Book and their implementing regulations be suspended.

The measure is enforceable notwithstanding appeal. It may be lifted by the court which ordered it or to which the case is referred. The measure becomes ineffective in the event of dismissal or acquittal.

Decisions ruling on applications for reinstatement may be appealed against before the indictment chamber or before the court of appeal, depending on whether they were handed down by a juge d'instruction or by the court to which the proceedings were referred.

The indictment chamber or the court of appeal rules within one month of the date of the decision under appeal.

If the indictment chamber or the court of appeal fails to rule within the time allotted, and within forty days of the decision being handed down at the latest, the measures ordered shall automatically cease.

Article L216-8

The court which makes the conviction for fraud and falsification that is dangerous or harmful to human and animal welfare in application of articles L. 213-1, L. 213-2, L. 213-3, L. 213-4 and L. 214-1 (point 7), in addition to the display and publication provided for in article L. 216-3 may order the convicted part to pay costs in respect of:

1° The dissemination of one or more messages, in accordance with the conditions, and subject to the penalties, provided for in article L. 121-4, informing the public of this decision;

2° The withdrawal of products to which the offence relates and, under the same conditions, a ban on service provisions;

3° The confiscation of all, or part, of a product, of the sale of products or services to which the offence relates.

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Article L216-9

The penalties appearing in chapters II to VI and their provisions in respect of displays and breaches of the Council of state decrees issued for their enforcement are applicable to special laws on the prevention of fraud within the fertiliser, wine, cider and perry trade as well as that of curative serums and butter and margarine manufacture. They are substituted for the penalties and provisions of article 423 of the French penal code and the Act of 27 March 1851 in all cases where subsequent laws refer back to the texts of said laws, in particular in:

L. 217-1 of this code;

7 of the Act of 14 August 1889 on wines;

2 of the Act of 11 July 1891 relating to frauds committed in the sale of wines;

1 of the Act of 24 July 1894 relating to frauds committed in the sale of wines;

3 of the Act of 6 April 1897 concerning wines, ciders and perrys;

Act no. 79-595 of 13 July 1979 relating to the organisation of monitoring of fertilising substances and growing supports.

The penalty of display is rendered applicable to the offences provided for and punished by article 7 of the Act of 28 January 1903 and by articles 2 and 3 of the Act of 18 July 1904.

Article L216-10

(inserted by Order No. 2004-670 of 9 July 2004 Article 2 II Official Journal of 10 July 2004)

The provisions of Article 11 of the Code of Criminal Procedure or those relating to professional secrecy shall not impede the disclosure of information with a view to preventing a serious or immediate risk to the health or safety of consumers.

CHAPTER VII

Special provisions

Articles L217-1 to
L217-10

Article L217-1

Anyone who has, either affixed, or displayed by addition, deletion or by any alteration whatsoever, on manufactured objects, the name of a manufacturer other than that of its author, or the trade name of a plant other than that where the said objects were manufactured, or finally, the name of place other than that where the said objects were manufactured, shall be punished by the penalties provided for in article L. 216-9, without prejudice to compensation, where appropriate.

Any vendor, commission agent or retailer shall be liable to the effects of the proceedings where the latter has knowingly displayed for sale or brought into circulation objects marked with forged or altered names.

Article L217-2

(Act n° 2003-239 of 18 March 2003, article 71, Official journal of 19 March 2003)

Any person who has fraudulently deleted, masked, altered or modified in any way the names, signatures, monograms, letters, figures, serial numbers, emblems and signs of any kind affixed or included on or in the goods and serving to identify it physically or electronically shall be punished with the penalties provided for in article L. 213-1. Accomplices of the main author of the offence shall be punished by the same penalties.

Article L217-3

Those who have knowingly displayed, put on sale or sold merchandise altered in this way or who are found to be storing said merchandise on their premises shall be punished by the penalties covered by article L. 213-4.

Article L217-4

The court may, in addition, order the publication and display of the judgement in accordance with the provisions of article L. 216-3.

Article L217-6

Anyone who, on natural or manufactured products, stored or transported with a view to being sold or put on sale in France, or on packaging, boxes, bales, bands, labels etc., has affixed, or knowingly used a trademark or manufacturer's brand, a name a sign or any indication whatsoever likely to lead to the belief, if they are foreign, that they were manufactured in France or were of French origin and, in any event, that they had a different origin from real French or foreign one, shall be punished by the penalties provided for by article L. 213-1, without prejudice to compensation, where appropriate.

This provision shall not, however, apply when the product bears, in clearly displayed letters, an indication of the real origin, unless the false indication of origin constitutes a regional designation protected by section I of chapter V of part 1 of volume 1.

With regard to French products, the company name, the name and address of the vendor do not necessarily constitute an indication of origin.

Article L217-7

Those who, by means of addition, excision or any alteration whatsoever of the initial wording on the product, by advertisements, brochures, circulars, prospectuses or posters, by the production of invoices or forged certificates of origin, by an oral affirmation or by any other means, may have led the consumer to believe that foreign products were of French origin or, for all products, may have led the consumer to believe that they were of a different origin to their real French or foreign one, shall be punished by the penalties provided for by article L. 213-1.

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Article L217-8

All associations or union of associations formed in accordance with the Act of 21 March 1884, to defend the interests of industry and trade in respect of all products and merchandise whatsoever, may exercise throughout the Republic, the rights invested in the plaintiff in respect of the offences provided for in this chapter.

Article L217-10

(Act No. 93-949 of 26 July 1993 Article 7 II Official Journal of 27 July 1993 effective 1 March 1994)

(Order No. 2004-670 of 9 July 2004 Article 3 Official Journal of 10 July 2004)

Whoever impedes performance of the duties of the officers of the Directorate-General for Fair Trading, Consumer Affairs and Fraud Prevention shall be liable to the penalties imposed by Articles L. 213-1 and L. 216-3 of the present code, without prejudice to the penalties imposed in the event of obstruction by Articles 433-6 to 433-10 of the Penal Code.

The provisions of Article L. 216-4 are applicable to the offences referred to in this Article.

CHAPTER VIII

Prevention in respect of human and animal foodstuffs

Articles L218-1 to
L218-7

SECTION I

General provisions

Articles L218-1 to
L218-5

Article L218-1

(Order No. 2001-741 of 23 August 2001 Article 17 Official Journal of 25 August 2001)

(Order No. 2004-670 of 9 July 2004 Article 4 Official Journal of 10 July 2004)

The public servants referred to in Article L. 215-1 may enter premises used for business purposes and premises in which services are rendered, in the presence of the occupant of the premises or his representative, to take samples and obtain from the occupant, who is obliged to provide them, full details of the products or services to enable their characteristics to be determined or to determine whether or not a product or service is dangerous.

The public servants referred to in I of Article L. 215-1 may enter such premises between 8.00 a.m. and 8.00 p.m. and may do so outside those hours if they are open to the public or if production, manufacturing, processing, packaging, transport or marketing activities are taking place therein.

When such premises are also used as dwellings, such inspections may be carried out only between 8.00 a.m. and 8.00 p.m., and with authorisation from the juge des libertés et de la détention if the occupant objects thereto.

Article L218-2

(Order No. 2001-741 of 23 August 2001 Article 17 Official Journal of 25 August 2001)

(Order No. 2004-670 of 9 July 2004 Article 4 Official Journal of 10 July 2004)

The measures provided for in the present sub-section are implemented by the public servants referred to in Article L. 215-1 or by the Préfet or, in Paris, by the Préfet de police, as provided for in the laws which empower them.

Article L218-3

(Order No. 2001-741 of 23 August 2001 Article 17 Official Journal of 25 August 2001)

(Order No. 2004-670 of 9 July 2004 Article 4 Official Journal of 10 July 2004)

When, on account of a violation of the implementing regulations of the present Book's provisions or those of a European Community regulation, a firm's operational conditions are such that the products manufactured, held or put on the market constitute, or could constitute, a danger to public health or consumer safety, the public servants referred to in Article L. 215-1 may order any remedial measures, including reinforcement of the self-checking procedures, staff training actions, alteration works and cleaning operations. If need be, the Préfet or, in Paris, the Préfet de police, may order the total or partial closure of the firm or the cessation of one or more of its activities.

Article L218-4

(Order No. 2001-741 of 23 August 2001 Article 17 Official Journal of 25 August 2001)

(Order No. 2004-670 of 9 July 2004 Article 4 Official Journal of 10 July 2004)

If it is established that a batch of products constitutes, or could constitute, a danger to public health or consumer safety considering its common production or marketing conditions, the Préfet or, in Paris, the Préfet de police, may order one or more of the following measures: suspension of sales, withdrawal, recall, destruction.

The operator may nevertheless prove that some of the products in the batch do not constitute a danger to public health or consumer safety and may therefore be offered for sale again. The costs thus incurred shall be borne by the operator.

The Préfet's order specifies the manner in which the costs resulting from the prescribed measures, including transport, storage and destruction costs, shall be borne by the operator.

Any operator who has bought or sold one or more items from the batch and is aware of the decision to suspend, withdraw or recall is required to inform the person who supplied the products and the persons to whom he sold them.

Article L218-5

(Order No. 2001-741 of 23 August 2001 Article 17 Official Journal of 25 August 2001)

(Order No. 2004-670 of 9 July 2004 Article 4 Official Journal of 10 July 2004)

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When the public servants referred to in Article L. 215-1 establish that a batch does not conform to the applicable regulations, those officers may order that it be brought into compliance within a time limit set by them. If achievement of compliance is impossible, the Préfet, or in Paris, the Préfet de police, may order that the goods be used for other purposes, be returned to their country of origin or be destroyed within a time limit set by him.

The cost of implementing such measures shall be borne by the operator.

SECTION II

Establishments processing products using ionisation

Article L218-6

Article L218-6

(Order No. 2001-741 of 23 August 2001 Article 17 Official Journal of 25 August 2001)

(Order No. 2004-670 of 9 July 2004 Article 4 Official Journal of 10 July 2004)

Establishments which process foodstuffs intended for human or animal consumption by means of ionisation, save for certain foodstuffs determined by a Conseil d'Etat decree, shall require approval from the administrative authority.

They must meet conditions set by order of the Ministers for Consumer Affairs, Agriculture and Industry. Such orders also establish the terms under which approval is granted, suspended and withdrawn.

SECTION III

Criminal provisions

Article L218-7

Article L218-7

(Order No. 2001-741 of 23 August 2001 Article 17 Official Journal of 25 August 2001)

(Order No. 2004-670 of 9 July 2004 Article 4 Official Journal of 10 July 2004)

Whoever processes foodstuffs by means of ionisation without the approval referred to in Article L. 218-6 shall incur a term of one year's imprisonment and a fine of 15,000 euros. For that same offence, legal entities may be declared criminally liable as provided for in Article 121-2 of the Penal Code and incur a fine pursuant to Article 131-38 of that same code.

Whoever fails to implement the measures ordered pursuant to the provisions of the present chapter shall incur a term of two years' imprisonment and a fine of 15,000 euros.

Offences punished pursuant to this Article are established by the public servants referred to in Article L. 215-1 as provided for in Chapter V of the present Part.

TITLE II

Safety

Articles L221-1 to
L225-1

CHAPTER I

Prevention

Articles L221-1 to
L221-11

Article L221-1

Products and services must, under normal conditions of use or under other circumstances that may reasonably be foreseen by the professional, offer the safety that can legitimately be expected and must not be a danger to public health.

Article L221-1-1

(inserted by Order No. 2004-670 of 9 July 2004 Article 5 I Official Journal of 10 July 2004)

The provisions of the present chapter do not apply to antiques and second-hand goods which require repairs or restoration prior to their use if the supplier informs the purchaser of the need for such repairs or restoration.

Article L221-1-2

(inserted by Order No. 2004-670 of 9 July 2004 Article 5 I Official Journal of 10 July 2004)

I. - The person responsible for marketing the product shall provide the consumer with sufficient information to enable him to evaluate the risks inherent in a product during its normal or reasonably foreseeable useful life and to guard against them, when such risks are not immediately apparent to the consumer without adequate forewarning.

II. - The person responsible for marketing shall adopt measures which, in view of the characteristics of the products he supplies, enable him to:

- a) Keep abreast of the risks which the products he markets may present;
- b) Implement the actions necessary to contain those risks, including withdrawal from the market, the issuing of adequate and effective warnings to consumers and recalling products sold from consumers.

Such measures may consist, inter alia, of sample testing or indication on the product or its packaging of instructions for use, the identity and address of the person responsible for marketing, and the product or batch reference. Such indications may be made compulsory by order of the Minister for Consumer Affairs and the other minister(s) concerned.

Article L221-1-3

(inserted by Order No. 2004-670 of 9 July 2004 Article 5 I Official Journal of 10 July 2004)

When a professional knows that products intended for consumers which he has put onto the market do not meet the requirements of Article L. 221-1, he shall immediately inform the relevant administrative authorities thereof and indicate

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the actions he is implementing to guard against risks to consumers.

The informational requirements are stipulated by order of the Minister for Consumer Affairs and the other ministers concerned. The professional cannot avoid his obligation by pleading ignorance of risks which he could not reasonably be unaware of.

Article L221-2

Products not satisfying the general safety requirement provided for in article L. 221-1 are prohibited or regulated in accordance with the conditions fixed below.

Article L221-3

(Order No. 2004-670 of 9 July 2004 Article 5 II Official Journal of 10 July 2004)

Council of State decrees, issued after the opinion of the commission referred to in Article L. 224-1 was sought:

1. Determine, as necessary, by product or product category, the conditions under which the manufacture, importation, exportation, offering for sale, selling, free distribution, holding, labelling, packaging and circulation of such products or the ways in which they are used are prohibited or regulated;

2. Determine the health and hygiene conditions which persons who participate in the manufacture, processing, transport, storage and selling of the products, or who provide services, must observe;

3. May order that such products be withdrawn from the market or recalled for modification, full or partial reimbursement or exchange, and stipulate obligations relating to consumer information. They may also order the destruction of such products when this is the only means of eliminating the danger;

4. Stipulate the conditions under which the costs associated with the safety measures to be taken by virtue of the regulations thus enacted shall be borne by the manufacturers, importers, distributors or service providers.

Article L221-4

Services not satisfying the general safety obligation provided for in article L. 221-1 are prohibited or regulation in accordance with the conditions posed by article L. 221-3.

Article L221-5

(Order No. 2004-670 of 9 July 2004 Article 5 III Official Journal of 10 July 2004)

In the event of grave or immediate danger, the Minister for Consumer Affairs and the other minister(s) concerned may, via a joint order and for a period not exceeding one year, suspend the manufacture, importation, exportation and availability of a product, and its general withdrawal or destruction if there is no other means of eliminating the danger, regardless of whether it is provided free of charge or in return for payment. They are also empowered to order the distribution of warnings or precautions for use, and recall of the product for exchange or modification or full or partial reimbursement.

In the same circumstances, they may also suspend provision of a service.

Such products and services may be relaunched when they are found to be compliant with the applicable regulations.

The Minister for Consumer Affairs and, where applicable, the other minister(s) concerned, shall hear the professionals concerned without delay and not later than fifteen days after a decision to suspend has been taken. They shall also hear the approved national consumer associations.

The said orders shall stipulate the conditions under which the costs associated with the safety measures to be taken pursuant to the provisions of the present article shall be borne by the manufacturers, importers, distributors or service providers.

The said orders may be renewed via the same procedure for further periods each not exceeding one year.

Article L221-6

(Act No. 98-535 of 1 July 1998 Article 11 3 Official Journal of 2 July 1998 effective 31 July 1998 at the latest)

(Order No. 2004-670 of 9 July 2004 Article 5 IV Official Journal of 10 July 2004)

The public servants who carried out the inspections shall send the results of their investigations to the departmental government representative, together with their proposals regarding the measures to be taken. The latter shall, as soon as possible and not later than fifteen days thereafter, send the file and his reasoned opinion to the minister concerned and to the Minister for Consumer Affairs.

In the event of grave or immediate danger, the departmental government representative shall take appropriate emergency measures. He shall refer the matter at once to the minister concerned and to the Minister for Consumer Affairs, who shall make a ruling, via a joint order, within fifteen days. He may suspend provision of a service pending the ministerial decision.

For products which come within the scope of the Agence française de sécurité sanitaire des aliments, the results of the investigations and the proposals referred to in the first paragraph shall be sent to that agency's Director General on the same basis.

Article L221-7

(Order No. 2004-670 of 9 July 2004 Article 5 V Official Journal of 10 July 2004)

The Minister for Consumer Affairs or the other minister(s) concerned may send warnings to the manufacturers, importers, distributors or service providers and ask them to bring the products or services they offer to the public into compliance with the safety rules and then submit them for inspection, within a given time limit and at their own expense, to an organisation offering guarantees of independence, competence and impartiality which is included in a list compiled by ministerial order or, failing that, which is designated by the other minister(s) concerned.

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When, for a product or service already on the market, sufficient indices of a danger already exist or when the characteristics of a new product or service warrant such a precaution, they may instruct the professionals concerned to submit the products or services they offer to the public for inspection, within a given time limit and at their own expense, to an organisation offering guarantees of independence, competence and impartiality which is designated by the minister(s).

When a product or service has not been submitted to an inspection prescribed pursuant to the present article, it shall be deemed not to meet the requirements of Article L. 221-1 unless proof to the contrary is produced.

Article L221-8

The measures provided for in this article cannot be taken for products and services subject to special legislative provisions or to community regulations relating to consumer health and safety protection, apart from, in an emergency, those provided for by articles L. 221-5 and L. 221-6.

Article L221-9

The measures decided upon by virtue of articles L. 221-2 to L. 221-8 must be in proportion to the danger presented by the products and services. These may aim to warn of, or put an end to, the danger with a view to thereby guaranteeing the safety that can legitimately be expected in accordance with France's international commitments.

Article L221-10

(inserted by Act no. 98-535 of 1 July 1998 art. 11II 2 Journal Officiel of 2 July 1998 in force at the latest on 31 December 1998)

Decrees issued in application of article L. 221-3 are adopted upon the advice of the Agence française de sécurité sanitaire des produits de santé or the Agence française de sécurité sanitaire des aliments where they relate to products under their jurisdiction. These opinions are made public.

Orders issued in application of article L. 221-5 are adopted according to the same procedures, apart from in duly substantiated emergencies where they are notified, without delay, to the competent agency.

Article L221-11

(inserted by Order No. 2004-670 of 9 July 2004 Article 5 VI Official Journal of 10 July 2004)

The effects of decisions of the European Commission which contain provisions that come within the scope of the present Part and were issued pursuant to Article 53 of (EC) Regulation No. 178/2002 of 28 January 2002, as amended, are treated as implementing measures of Article L. 221-5.

CHAPTER IV

"La commission de la sécurité des consommateurs"

Articles L224-1 to
L224-6

Article L224-1

(Order No. 2004-637 of 1 July 2004 Article 1 Official Journal of 2 July 2004)

The Commission for Consumer Safety is composed of a chairman appointed by Cabinet Decree and members of the administrative and judicial courts. It also includes members of professional bodies and national consumer associations, and experts. The said persons and experts are designated by the Minister for Consumer Affairs after consultation with the ministers concerned and are chosen on account of their competence in regard to risk prevention.

A government representative designated by the Minister for Consumer Affairs sits on the commission. He may call a second meeting within four days of a commission meeting taking place.

Article L224-2

The commission is responsible for publishing advice and proposing any measures likely to improve risk prevention in terms of product and service safety.

It researches and draw up a list of information from any source on the dangers presented by products and services. To this end, it is informed, without delay, of any decision taken in application of articles L. 221-5, L. 221-7 and L. 223-1.

It may bring any information that it deems necessary to the attention of the public.

Article L224-3

Any natural or legal person may refer a case to the commission. If it believes that the events raised are not supported by sufficient documentary evidence, it may conclude by reasoned decision, that there is no point in continuing without further proof. It notifies the person responsible for the referral of its decision.

The commission may act under its own motion.

The competent judicial authorities may, at any stage of the proceedings, ask for the opinion of the commission for consumer safety. This opinion is only made public after a decision of non-suit has been taken or judgement has been given on the merits of the case.

Referral before the commission remains confidential until the commission has ruled on the merits of the case or on non-suit, unless the latter applies, by reasoned decision, the measures provided for in the third paragraph of article L. 224-2.

Article L224-4

(Act no. 92-1336 of 16 December 1992 art. 333, art. 372 Journal Officiel of 23 December 1992 in force on 1 March 1994)

The commission may ask to be sent information or may consult all the documents that it believes to be necessary in

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order to complete its assignment, on site, without being subject to the provisions of articles 226-13 and 226-14 of the French penal code.

The chairman may, by reasoned decision, proceed with, or have commission members or representatives proceed with the summoning or hearing of any person likely to supply it with information concerning the matters that have been referred to it. Any person summonsed is entitled to be assisted by the counsel of their choice.

Prior to giving an opinion, the commission hears the case of the persons concerned, apart from in an emergency. It consults, if it deems this to be necessary, the relevant scientific and technical organisation, or organisations, referred to in the last paragraph of article L. 221-7.

Where, in the performance of its mission, the commission is obliged to acquaint itself with information covered by trade secrecy, it appoints a reporter from within its midst. The latter asks to be sent all relevant documents and makes the commission aware of elements relating to the dangerous nature of the products or services.

Article L224-5

Each year the commission compiles a report on its activity. This report is presented the President of the Republic and to Parliament. It is published in the Journal Officiel. The opinions of the commission are annexed to this report as well as the repercussions of these opinions.

Article L224-6

(Act no. 92-1336 of 16 December 1992 art. 333 Journal officiel of 23 December 1992 in force on 1 March 1994)

Commission members and representatives are subject to professional secrecy in respect of facts, documents and information of which they may become aware by virtue of their duties, in accordance with the conditions and subject to the penalties provided for by article 226-13 and 226-14 of the French penal code in the event of disclosure of information covered by trade secrecy.

CHAPTER V

Other provisions

Article L225-1

Article L225-1

Decrees shall state, when necessary, procedures for application of this part of the code.

BOOK III Endebtmnt

Articles L311-1 to L341-6

TITLE I

Credit

Articles L311-1 to L313-16

CHAPTER I

Consumer credit

Articles L311-1 to
L311-37

SECTION I

Area of application

Articles L311-1 to
L311-3

Article L311-1

In of this chapter :

* Creditor means any person who grants the loans, contracts or credits referred to in article L. 311-2;

* Debtor means the other party to the same transactions.

Article L311-2

The provisions of this chapter apply to all credit transactions as well as to any surety, granted on a regular basis by natural or legal persons, whether this is free of charge or for a fee.

For the application of this chapter, hire purchase and rent to buy/lease purchase, as well as sales or provisions of services, payment for which is in stages, is deferred or is in instalments, are categorised as credit transactions.

Article L311-3

The following are outside the scope of this chapter:

1° Loans, credit contracts and transactions concluded in an authentic (notarial) form;

2° Those which re granted for a total duration of three months or less, as well as those for an amount that is higher than a sum to be fixed by decree;

3° Those that are intended to finance the requirements of a professional activity, as well as loans to public bodies;

4° Credit transactions relating to immovable property, in particular, property leasing transactions and those related to

a)the acquisition of ownership or possession of a property;

b) the subscription or purchase of company stocks or shares giving title to attribution of ownership or possession of a property;

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c) to property construction, repair, improvement or maintenance costs, where the sum of these costs is in excess of an amount fixed by decree.

The provisions of this article do not exclude loans, credit contracts and transactions concluded in authentic form and loans, credit contracts and transactions for an amount exceeding the ceiling fixed in application of this article within the scope of article L. 311-5.

SECTION II Advertising

Articles L311-4 to
L311-5

Article L311-4

(Act No. 98-657 of 29 July 1998 Article 84 Official Journal of 31 July 1998)

(Act No. 2003-706 of 1 August 2003 Article 87 I 1 Official Journal of 2 August 2003)

All advertising originating, received or seen in France which, regardless of the medium used, relates to a consumer credit transaction referred to in Article L. 311-2, shall be fair and informative. To which end, it shall:

1. State the identity of the lender, the nature, purpose and term of the proposed transaction, the total cost and, where applicable, the annual percentage rate applicable, to the exclusion of any other rate, and likewise the fixed charges;

2. State the amount, in euros, of the repayments to be made on the due dates or, if this is not possible, the means of determining it. The said amount shall include the cost of the premiums when the transaction is conditional upon insurance and, where applicable, the amount of the fixed charges;

3. Indicate the number of instalments for fixed-term transactions.

In all written advertising, regardless of the medium used, the information relating to the nature of the transaction, its term, the annual percentage rate, where applicable, and, where a promotional rate is offered, the period during which the said rate is applicable, the "fixed" or "revisable" nature of the annual percentage rate and the amount of the instalments shall be indicated in a character size at least as large as that used to indicate any other information relating to the particulars of the transaction and shall feature in the main body of the advertising text.

It is prohibited, in all advertising, regardless of the medium used, to state that a loan may be granted without documentary proof of the borrower's financial position, or to suggest that the loan gives rise to increased resources or makes an automatic financial reserve available, without any identifiable financial particulars.

The prior offer of credit shall be separate from any advertising medium or document. (1)

NB (1): Article 87 II Act No. 2003-706: These provisions are applicable to advertising originating, received or seen in France and to credit agreements entered into or renewed six months after the promulgation of Act No. 2003-706 of 1 August 2003.

Article L311-5

(Act No. 2005-67 of 28 January 2005 Article 5 I Official Journal of 1 February 2005)

Any advertising relating to the transactions referred to in Article L. 311-2 which offers a grace period on rental payments or credit instalments longer than three months is prohibited away from the point of sale.

SECTION III Free credit

Articles L311-6 to
L311-7-1

Article L311-6

(Act No. 2005-67 of 28 January 2005 Article 5 II Official Journal of 1 February 2005)

Any advertising containing the words "free credit" or offering an equivalent advantage shall indicate the amount of the discount granted for cash payment and name the party meeting the cost of the free credit granted to the consumer.

Article L311-7

Where a financing transaction involves total, or partial, meeting of the costs in the sense of articles L. 311-4 to L. 311-6, the vendor cannot ask the credit purchaser or the lessee for a sum of money in excess of the lowest price actually paid for the purchase of a similar item or service in cash in the same retail establishment, during the course of the thirty days prior to the start of the advertising or the offer. The vendor must, in addition, offer a price for cash payment that is less than the sum proposed for credit purchase or rental and that is calculated in accordance with procedures fixed by decree.

Article L311-7-1

(inserted by Act No. 2005-67 of 28 January 2005 Article 5 III Official Journal of 1 February 2005)

Any credit transaction for pecuniary interest offered concomitantly with a free or promotional credit transaction shall be concluded under the terms of a prior and separate offer of credit pursuant to the provisions of Articles L. 311-8 and L. 311-10 et seq.

SECTION IV The credit contract

Articles L311-8 to
L311-19

Article L311-8

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The credit transactions referred to in article L. 311-2 are concluded under the terms of a prior offer, submitted in duplicate to the borrower and, if necessary, in a single copy to the guarantors. Submission of the offer obliges the lender to maintain the terms indicated therein for a minimum period of fifteen days from issue.

Article L311-9

(Act No. 2001-1168 of 11 December 2001 Article 14 I Official Journal of 12 December 2001 effective 12 June 2002)

(Act No. 2003-706 of 1 August 2003 Article 87 I 2, 3 Official Journal of 2 August 2003)

(Act No. 2005-67 of 28 January 2005 Article 4 I Official Journal of 1 February 2005 effective 1 August 2005)

In the case of a line of credit which, whether linked to the use of a credit card or otherwise, offers its beneficiary the option of drawing down portions of the credit limit granted to him on the dates he chooses, the prior offer shall be compulsory for the initial agreement and for any increase in the credit limit.

The said offer shall state that the term of the agreement is limited to one year and is renewable and that the lender shall indicate the terms of such renewal three months before its expiry date. It shall also determine the terms and conditions under which the debtor may clear the outstanding balance, in instalments unless he elects otherwise, should he wish to terminate his line of credit.

The borrower shall be entitled to oppose any proposed amendments upon renewal of the agreement, until at least twenty days before the date on which they become effective, by means of a reply coupon appended to the written information sent by the lender. A decree shall stipulate the format of that coupon and the wording it shall contain. The borrower may also request that his credit limit be reduced at any time, that his right to use it be suspended or that his agreement be cancelled. In the latter case, he shall repay the amount of credit already used, pursuant to the terms of the agreement.

In the event of new rates or repayment terms proposed for renewal of the agreement being refused, the borrower shall be required to repay the amount of the credit already used under the terms which preceded the proposed amendments, but shall not be entitled to make any further use of the line of credit.

If no use is made of the credit agreement or any means of payment associated therewith for three consecutive years, the lender shall, prior to the end of the third year, send proposed conditions for its renewal to the borrower with a document appended thereto. The said document shall indicate the identity of the parties, the nature of the agreement, the amount of credit available, the annual percentage rate and the amount of the instalments per due date and per fraction of credit used. If the borrower does not return the said document, signed and dated, twenty days at the very latest before the agreement's expiry date, it shall be automatically terminated on that date.

The words "credit card" shall appear in legible characters on the reverse of the card.

NB: Act 2005-67 of 28 January 2005 Article 7:

I: The present provisions shall enter into force six months after the date of promulgation of the present Act.

II: The present provisions shall apply to contracts in force and to their renewal on the said date of promulgation.

Article L311-9-1

(Act No. 2003-706 of 1 August 2003 Article 87 I 4 Official Journal of 2 August 2003)

(Act No. 2005-67 of 28 January 2005 Article 4 II Official Journal of 1 February 2005 effective 1 August 2005)

In the case of the credit transaction referred to in Article L. 311-9, the lender is required to send the borrower, monthly and reasonably in advance of the date of payment, an updated performance statement of the credit agreement which makes a clear reference to the previous agreement and which specifies:

- the closure date of the statement and the payment date;
- the fraction of the capital available;
- the amount due, including the portion corresponding to interest;
- the rate for the period and the annual percentage rate;
- where applicable, the insurance cost;
- the total sums due;
- the amount of the repayments already made since the last renewal, highlighting the amounts paid in respect of both the capital borrowed and the interest and miscellaneous costs associated with the credit transaction;
- the borrower's option to request a reduction of his credit limit, suspension of his right to use it or cancellation his agreement at any time;
- the fact that the borrower may pay some or all of the balance outstanding in cash at any time without merely restricting himself to the amount of the last instalment.

NB: Act 2005-67 of 28 January 2005 Article 7:

I: The present provisions shall enter into force six months after the date of promulgation of the present Act.

II: The present provisions shall apply to contracts in force and to their renewal on the said date of promulgation.

Article L311-10

The prior offer:

1° States the identity of the parties and, where appropriate, the guarantors;

2° States the amount of credit and, if necessary, the proportions in which it is periodically available, the nature, purpose and procedures of the agreement, including, where appropriate, the insurance terms as well as a breakdown of the total cost of the credit and, if necessary, its annual percentage rate of charge as well as the total fixed payments required in addition to interest by breaking down those corresponding to administration costs and those corresponding to costs by due date;

3° Refers to the provisions of articles L. 311-15 to L. 311-17 and L. 311-32 and, where appropriate, articles L.

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311-20 to L. 311-31, L. 313-13 and reproduces those of article L. 311-37;

4° Indicates, as required, the goods or service provisions financed.

Article L311-11

For fixed term transactions, the prior offer also states, for each due date, the cost of insurance and fixed payments that may be requested as well as the intervals between repayments or, where this is impossible, the means of determining said intervals.

Article L311-12

(Act No. 2003-706 of 1 August 2003 Article 87 I 5 Official Journal of 2 August 2003)

When the prior offer is linked to an insurance proposal, a notice concerning the general conditions of the insurance which concern the borrower shall be sent to him, including the name and address of the insurer, the term, the risks covered and those which are excluded. If the financing is conditional upon the insurance, the prior offer shall state that the borrower may take out an equivalent policy with the insurer of his choice. If the insurance is optional, the prior offer shall indicate the terms and conditions under which the borrower may refrain from taking it out. (1)

NB (1): Article 87 II Act No. 2003-706: These provisions are applicable to advertising originating, received or seen in France and to credit agreements entered into or renewed six months after the promulgation of Act No. 2003-706 of 1 August 2003.

Article L311-14

No vendor or service provider may, for the same goods or service provisions, require the same client to sign one or more prior offers, referred to in articles L. 311-8 to L. 311-13 and L. 311-15 to L. 311-17, for a total capital amount in excess of the value payable on credit for the goods purchased or the services supplied.

This provision does not apply to prior offers for the opening of permanent lines of credit defined in article L. 311-9.

Article L311-15

Where the prior offer does not include any clause in accordance with which the lender reserves the right to approve the person of the borrower, the agreement becomes complete as soon as the prior offer is accepted by the borrower. The borrower may, however, within seven days of his/her acceptance of the offer, go back on his/her agreement. To enable this withdrawal option to be exercised, a detachable form is attached to the prior offer. The fact that the borrower has exercised his/her right to withdraw shall not result in registration of a file.

Article L311-16

Where the prior offer stipulates that the lender reserves the right to approve the person of the borrower, the contract accepted by the borrower only becomes complete on the dual condition that, within the same seven day deadline, said borrower has not exercised the right to withdraw referred to in article L. 311-15 and that the lender has informed the borrower of its decision to grant the loan. The approval of the person of the borrower is deemed to have been refused if, upon expiry of this deadline, the interested party has not been notified of the decision to grant the loan. Approval of the person of the borrower brought to the attention of the interested party subsequent to expiry of this deadline still remains valid, however, if the latter still intends to take advantage of the offer of credit.

Article L311-17

Until the transaction has been finally concluded, no payment, in any form and for any reason whatsoever may be made by the lender to the borrower or on the latter's behalf, nor by the borrower to the lender. During this same period, the borrower can no longer, by virtue of the transaction in question, make any deposit to the benefit of the lender or on the latter's behalf. If an authorisation to make a deduction from his/her bank or giro account is signed by the borrower, its validity and its effective date are subject to those of the credit agreement.

Article L311-18

Where a loan document, drafted in application of articles L. 311-8 to L. 311-13 is liable for size stamp duty, only the copy retained by the lender is subject to this duty.

Article L311-19

Deadlines, fixed in this chapter, that would normally expire on a Saturday, Sunday or on a bank holiday or a non-working day, are extended to the next working day.

SECTION V

Connected credit

Articles L311-20 to
L311-28

Article L311-20

Where the prior offer states the goods or service provisions being financed, the borrower's obligations do not take effect until delivery is taken of the goods or the service is supplied. In the event of an ongoing sale or service contract involving a series of operations, these take effect from the start of the delivery or supply and cease in the event of interruption of said delivery or supply. The vendor or the service provider must retain a copy of the prior offer submitted to the borrower and must present it to monitoring agents, at their request.

Article L311-21

In the event of dispute in respect of performance of the main contract, the court may, until the dispute is settled, suspend performance of the credit agreement. The latter is automatically cancelled or annulled when the contract in

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view of which concluded is itself legally cancelled or annulled.

The provisions of the previous paragraph shall not apply unless the lender is a litigant party or unless proceedings have been instituted against it by the vendor or the borrower.

Article L311-22

If the main contract is legally cancelled or annulled by the vendor, the latter may, at the lender's request, be ordered to guarantee the repayment of the loan to the borrower, without prejudice to compensation in respect of the lender and the borrow.

Article L311-23

Every time that the price is paid, in whole or in part, with the aid of credit, and subject to the sanctions provided for in article L. 311-34, the sale or service contract must state this. No commitment may be validly contracted by the purchaser in respect of the vendor if the latter has not accepted the lender's prior offer. Where this condition has not been fulfilled, the vendor may not receive any payment, in any form whatsoever, or any deposit.

Article L311-24

As long as the lender has not given notification that the credit has been granted and as long as the borrower can exercise the right to withdraw, the vendor is not obliged to fulfil its obligation to deliver or supply. Where, however, by means of an express written request, dated and signed by the purchaser's own hand, the latter requests immediate delivery or supply of the goods or services, the withdrawal deadline open to the borrower by articles L. 311-15 to L. 311-17 expires on the date of delivery or supply, without exceeding seven days or being less than three days. The vendor is responsible, at its own expense and risk, for any premature delivery or supply.

Article L311-25

The sale or service contract is automatically cancelled, without compensation:

1° if the lender has not, within the seven day deadline provided for in articles L. 311-15 to L. 311-17, informed the vendor that the credit has been awarded;

2° if the borrower has, within the designated deadlines, exercised the right to withdraw.

In both cases, the vendor or the service provider must, upon simple request, then repay any sum that the purchaser may have paid as an advance on the price. As of the eighth day following the request for repayment, this sum shall be interest bearing at the legal rate plus one half.

The contract is only cancelled if, prior to the expiry of the seven day deadline provided for hereinabove, the purchase pays in cash.

Article L311-25-1

(inserted by Order no. 2001-741 of 23 August 2001 art. 15 Journal officiel of 25 August 2001)

Where payment of the price of the goods or services is totally, or partly, financed by credit granted by the supplier or by a third party on the basis of an agreement between this third party and the supplier, the consumer's decision to exercise the right to withdraw involves automatic cancellation of the credit agreement intended to provide the financing, without costs or compensation, with the possible exception of costs incurred for the opening of the credit file.

Article L311-26

The prior commitment to pay in cash in the event of refusal of the loan automatically becomes null and void.

Article L311-27

The vendor or the service provider may not receive, from the purchaser, any payment in any form whatsoever, nor any deposit, on top of the part of the price that the purchaser has agreed to pay in cash, provided that the contract relating to the credit transaction has not been finally concluded.

If a bank or giro bank direct debit instruction is signed by the purchaser, its validity and effective date are subject to those of the sale contract.

In the event of payment of part of the price in cash, the vendor or service provider must give the purchaser a receipt to include the reproduction, in full, of all the provisions of article L. 311-25.

Article L311-28

In the event of door-to-door selling or canvassing there is a seven day cooling off period whatever the delivery or supply date of the goods or services. No cash payment may be made prior to the expiry of this deadline.

SECTION VI

Early settlement repayment and debtor default

Articles L311-29 to
L311-32

Subsection 1

Early settlement

Article L311-29

Article L311-29

The borrower may always, on his own initiative, repay in advance, without compensation, in part or in full, the credit that he has been granted. The lender may, however, refuse partial premature payment of an amount less than that fixed by decree.

The first paragraph does not apply to lease contracts, unless said contracts specify that the deed of ownership is finally to be transferred to the lessee.

Article L311-30

In the event of default by the borrower, the lender may ask for immediate repayment of the capital outstanding, plus interest accrued due but not paid. Until the actual settlement date, the outstanding sums are liable to interest on arrears at the same rate as the loan. In addition, the lender may ask the defaulting borrower for compensation which, depending on the length of contract still left to run and without prejudice to the application of articles 1152 and 1231 of the French civil code, shall be fixed in accordance with a scale fixed by decree.

Article L311-31

In the event of default in the performance, by the borrower, of a lease contract accompanied by an undertaking to sell or by a hire purchase contract, the lender is entitled to ask, in addition return of the goods and payment of the outstanding rental, for compensation which, depending on the length of contract still left to run and without prejudice to article 1152 of the French civil code, shall be fixed according to a scale fixed by decree.

Article L311-32

The borrower cannot be made liable for any compensation or cost other than those mentioned in articles L. 311-29 to L. 311-31 in the event of premature repayment, or default provided for by these articles.

The lender may, however, claim from the borrower, in the event of the latter's default, the repayment of taxable costs incurred by it due to this default, to the exclusion of any lump-sum reimbursement for recovery costs.

SECTION VII
PenaltiesArticles L311-33 to
L311-36**Article L311-33**

The lender who grants credit without submitting a prior offer satisfying the conditions fixed by articles L. 311-8 to L. 311-13 to the borrower, loses the right to interest and the borrower is only obliged to repay the capital in accordance with the schedule laid down. Sums received in interest, which produce interest at the legal rate as of the date of their payment, shall be returned by the lender or charged against the capital outstanding.

Article L311-34

(Act no. 92-1336 of 16 December 1992 art. 326 Journal officiel of 23 December 1992 in force on 1 March 1994)

The lender who fails to adhere to the formalities required by articles L. 311-8 to L. 311-13 and to provide a detachable for in the offer of credit, in application of article L. 311-15, shall be punished with € 1,500 fine.

The same penalty applies to the advertiser on whose behalf the advertising that does not conform to the provisions of articles L. 311-4 to L. 311-6 is disseminated. If the offender is a legal entity, the responsibility lies with its directors. Complicity is punishable under the terms of common law.

The court may also order the publication of the judgement and the rectification of the advertising at the expense of the convicted party or just one of these penalties.

The penalties provided for in the first paragraph of this article also apply to the vendor who contravenes the provisions of article L. 311-7.

Article L311-35

(Act no. 92-1336 of 16 December 1992 art. 326 Journal officiel of 23 December 1992 in force on 1 March 1994)

The following are punishable with a € 30,000 fine:

1° The lender or vendor who, in breach of the provisions of article L. 311-17 and article L. 311-27, claims or receives from the borrower or the purchaser a payment in whatever form this may be;

2° Those who have bank or giro direct debits forms signed containing clauses contrary to the provisions of the articles referred to above;

3° Those who have signed, or approved or endorsed by the borrower or the purchaser, letters of exchange or promissory notes;

4° Those who unreasonably persist in failing to pay the sums referred to the paragraph before last of article L. 311-25;

5° Those who, in breach of the provision of article L. 311-15, register, or have registered, on a file, the name of persons making use of the option to withdraw;

6° Those who have several prior offers signed by the same customer for a total capital amount in excess of the value payable on credit for the goods purchased or the services supplied.

Article L311-36

Breaches of the provisions of the decrees referred to in the second paragraph of article 1 of decree no. 55-585 of 20 May 1955 relating to credit sales will be punished with the penalties provided for by article L. 311-35 and will be established and proceedings instituted in accordance with the conditions fixed by articles 45, first paragraph, 46 and 47 of order no. 86-1243 relating to free prices and competition.

SECTION VIII

Article L311-37

(Act no. 95-125 of 8 February 1995 art. 27 Journal officiel of 9 February 1995 in force on 1 August 1995)

The tribunal d'instance provides for litigation resulting from the application of this chapter. Proceedings brought before it must be instituted within two years of the event from which they arise, upon pain of loss of rights, including where these are the result of contracts concluded prior to 1 July 1989.

Where methods of payment for unpaid instalments have been the subject of restructuring or rescheduling, the starting point for the foreclosure deadline is the first irregular incident occurring after the first restructuring or rescheduling concluded between the interested parties or after the adoption of the contractual recovery plan provided for in article L. 331-6 or following a decision made by the juge de l'exécution on the measures mentioned in article L. 331-7.

CHAPTER II

Credit for land purchase

Articles L312-1 to
L312-36

SECTION I

Area of application

Articles L312-1 to
L312-3**Article L312-1**

In the sense of this chapter the following shall be considered as:

- a) Buyer, any person who buys, contracts to or orders by means of the loans mentioned in article L. 312-2;
- b) Seller, the other party to these same transactions.

Article L312-2

The provisions of this chapter apply to loans which, whatever their rating or function, are granted on a regular basis by any natural or legal person with a view to financing the following transactions:

1° For properties for use as a dwelling or for professional use as a dwelling:

- a) Their acquisition under ownership or possession;
- b) Subscription or purchase of company stocks or share giving title to their allocation under ownership or possession;

c) Costs relating to their construction, repair, improvement or maintenance where the amount of these costs is in excess of that fixed in performance of the last paragraph of article L. 311-3;

2° The purchase of land intended for the construction of the properties mentioned in point 1. hereinabove.

Article L312-3

The following are beyond the scope of this chapter:

- 1° Loans granted to legal entities under public law;
- 2° Those intended, in whatever form this may be, to finance a professional activity, in particular, that of natural and legal persons who, even if this is secondary to another activity, or by virtue of their company object, regularly procure, in whatever form this may be, properties or parts of properties, whether built or not, whether finished or not, whether apartments or individual houses, under ownership or possession;
- 3° Deferred credit transactions governed by Act no. 52-332 of 24 March 1952 relating to deferred credit obligations where they are not associated with premature credit.

SECTION II

Advertising

Articles L312-4 to
L312-6**Article L312-4**

(Act No. 2003-706 of 1 August 2003 Article 87 I 6 Official Journal of 2 August 2003)

All advertising originating, received or seen in France which, regardless of the medium used, relates to a loan referred to in Article L. 312-2, shall:

1. Indicate the identity of the lender and the nature and object of the loan;
2. If it contains one or more elements expressed in figures, indicate the term of the proposed facility, the total cost, and the annual percentage rate applied to the loan, to the exclusion of any other rate. (1)

All compulsory references shall be presented in a manner which is perfectly legible and understandable to the consumer.

NB (1): Article 87 II (1 paragraph) Act No. 2003-706: These provisions are applicable to advertising originating, received or seen in France and to credit agreements entered into or renewed six months after the promulgation of Act No. 2003-706 of 1 August 2003.

Article L312-5

Any publicity document or any information document submitted to the borrower and relating to one of the operations referred to in article L. 312-2 must mention that the borrower has a ten day cooling off period, that the sale is subject to the loan being obtained and that if the latter is not obtained, the vendor must repay the borrower the sums paid.

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Article L312-6

Any advertising categorising monthly repayments as rental payments or referring, for the calculation of instalments, to social security benefits which are not guaranteed throughout the life of the contract.

SECTION III

The credit contract

Articles L312-7 to
L312-14-1

Article L312-7

For the loans mentioned in article L. 312-2, the lender is obliged to formulate, in writing, an offer sent, free of charge, by post, to the prospective borrower as well as to the guarantors declared by the borrower where these are natural persons.

Article L312-8

(Act no. 96-314 of 12 April 1996 art. 87 II Journal officiel of 13 April 1996)

The offer defined in the previous article:

1. Mentions the identity of the parties, and possibly the guarantors declared;
2. Specifies the nature, purpose and procedures of the loan, in particular, those relating to the dates and terms under which the funds are to be made available;
 - 2a. Includes a depreciation schedule detailing, for each due date, the payment breakdown between capital and interest. This provision does not, however, concern variable rate loan offers;
3. Indicates, in addition to the amount of credit likely to be granted and, where appropriate, that of the parts of the credit periodically available, its total cost, its rates defined in accordance with article L. 313-1 as well as, where appropriate, indexation procedures;
4. Lists, by giving an evaluation of their cost, the stipulations, insurances and valuable or personal securities required, that conditions the conclusion of the loan;
5. States the conditions required for any transfer of the loan to a third person;
6. Refers to the provisions of article L. 312-10.

Any amendment to the terms under which the loan is obtained, in particular, the amount or the credit rate, give rise to the submission of a new prior offer to the borrower.

This obligation is not, however, applicable to loans with a variable rate of interest, since a notice presenting the terms and procedures of rate variation has been submitted to the borrower with the prior offer.

Article L312-9

Where the lender offers the borrower or asks the latter to take part in a group insurance policy that has been taken out with a view to guaranteeing, in the event of the occurrence of one of the risks defined by said policy, either the total or partial reimbursement of the outstanding loan amount, or payment of all, or part, of the instalments for said loan, the following provisions are applied compulsorily:

- 1° Annexed to the loan contract is a notice listing the risks covered and specifying all the procedures for bringing the insurance into play;
- 2° Any amendment subsequently made to the definition of the risks covered or to the procedures for bringing the insurance into play cannot be applied to the borrower since they have not been agreed by him/her;
- 3° Where the insurer has made its cover subject to the approval of the person of the insured party and this approval is not given, the loan contract is automatically cancelled at the borrower's request, without cost or penalty of any kind. This request must be made within one month of notification that approval has been refused.

Article L312-10

Sending of the offer obliges the lender to maintain the stated terms for a minimum of thirty days from receipt of the offer by the borrower.

The offer is subject to acceptance from the borrower and declared guarantor, as natural persons.

The borrower and guarantors can only accept the offer ten days or later after receiving it.

Acceptance must be given by letter, the postmark being taken as proof of posting date.

Article L312-11

Until acceptance of the offer by the borrower, no payment, in whatever form this may take, may be made, by virtue of the transaction in question, by the lender to the borrower or on the latter's behalf, nor by the borrower to the lender. Until this acceptance, the borrower may not, by the same token, make any deposit, sign or endorse any bill of exchange, nor sign any cheque. If a bank or giro account direct debit form has been signed by the borrower, its validity and effective date are subject to that of the credit agreement.

Article L312-12

The offer is always accepted under the condition subsequent of failure to conclude, within four months of its acceptance, the agreement for which the loan is requested.

The parties may agree on a longer deadline than that defined in the previous paragraph.

Article L312-13

Where the borrower informs its lenders that it is using several loans for the same transaction, each loan is concluded subject to the condition subsequent of the granting of each of the other loans. This provision only applies to

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loans for an amount in excess of 10% of the total credit.

Article L312-14

Where the contract in view of which the loan has been requested is not concluded within the deadline fixed in application of article L. 312-12, the borrower is obliged to repay, in full, the sums that the lender may have already paid to him/her, or that may have been paid on his/her behalf as well as any related interest. The lender may only retain or request study costs for which the maximum amount is fixed according to a scale determined by decree.

The amount of these costs, as well as the conditions under which they are received, must appear separately in the offer.

Article L312-14-1

(inserted by Act no. 99-532 of 25 July 1999 art. 115 Journal officiel of 29 June 1999)

In the event of the loan being renegotiated, amendments to the original loan are made only in the form of an additional clause. This additional clause comprises, on the one hand, a depreciation schedule detailing, for each due date, the capital outstanding in the event of early repayment and, on the other hand, the overall rate of charge as well as the cost of credit calculated solely on the basis of instalments and future costs. For variable rate loans, the additional clause includes the overall rate of charge as well as the credit cost calculated solely on the basis and future cost up until the rate review date, as well as the terms and procedures for rate variation. The borrower has a cooling off period of ten days from receiving the information mentioned below.

N.B. Act 99-532 1999-06-25 art. 115 II:

Subject to the legal decisions taken in respect of the thing being judged, loan renegotiations prior to publication of this Act are deemed to conform to the ninth paragraph of article L. 312-8 of the French consumer code, provided that they are favourable to the borrower, i.e. that they result either in a lowering of interest rates on the loan or in a drop in the amount of the loan instalments, or by a reduction in the duration of the loan.

SECTION IV

The main contract

Articles L312-15 to
L312-20

Article L312-15

The written document, including the unilateral commitment to sell aiming to record one of the transactions mentioned in article L. 312-2, must say whether the price will be paid, directly or indirectly, even in part, with or without the aid or one or more loans governed by sections 1 to 3 of this chapter.

Article L312-16

Where the document mentioned in article L. 312-15 indicates that the price is paid, directly or indirectly, even in part, with the aid of one or more loans governed by sections 1 to 3 and section V of this chapter, this document is concluded under the conditions subsequent to obtaining one or more loans which assume the financing. The period of validity of this condition subsequent cannot be less than a month from the date on which the document is signed or, if this is a simple contract, subject, otherwise it is void, to the formality of registration, as of the date of registration.

Where the condition precedent provided for in the first paragraph of this article is not fulfilled, any sum paid in advance by the acquirer to the other party or on behalf of the latter is immediately repayable, in full, without deduction or compensation, on whatever grounds this may be. As of the fifteenth day after the request for reimbursement, this sum produces interest at the legal rate plus one half.

Article L312-17

Where the document mentioned in article L. 312-15 indicates that the price is to be paid without the aid or one or more loans, this document must bear, in the hand of the acquirer, a statement to the effect that the latter acknowledges having been informed that in the event of a loan being taken out, this chapter cannot be applied.

In the absence of the information laid down by article L. 312-15 or if the statement required by the first paragraph of this article is missing or is not in the hand of the acquirer and if a loan is, nevertheless, applied for, the contract is deemed to have been concluded under the condition precedent provided for in article L. 312-16.

Article L312-18

For the expenses designated in c of point 1 of article L. 312-2, and in the absence of a contract signed by both parties, the condition precedent provided for in article L. 312-16 can only result in a notification given by the owner, in writing, prior to any commencement of the performance of the works, indicating his/her intention to pay the price, directly or indirectly, even in part, with the aid of one or more loans.

Article L312-19

Where it is declared in the document recording the loan that the latter is intended to finance structures or construction works by means of agency contract, construction, project management or works contract, the court may, in the event of dispute or accidents affecting the performance of contracts and until the settlement of the litigation, suspend performance of the loan contract without prejudice to any right that the lender may have to compensation. These provisions only apply if the lender is a party litigant or if proceeding have been instituted against it by one of the parties.

Article L312-20

The provisions of this section do not apply to sales subsequent to a call for tenders.

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SECTION V

Early settlement and debt default

Articles L312-21 to
L312-23

Subsection 1

Early settlement

Article L312-21

Article L312-21

The borrower may always, on his/her own initiative, repay early, in part or in full, the loans governed by sections 1 to 3 of this chapter. The loan contract may prohibit repayments equal to or less than 10% of the original amount of the loan, unless this is the remaining balance.

If the loan agreement includes a clause specifying that, in the event of early repayment, the lender is entitled to ask for compensation for interest not yet payable, this may not, without prejudice to the application of article 1152 of the French civil code, exceed an amount which, depending on the length of the contract still left to run, is fixed according to a scale determined by decree.

For contracts concluded as of the date on which Act no. 99-532 of 25 July relating to savings and financial security came into force, no compensation is owed by the borrower in the event of early repayment where the repayment is motivated by the sale of the property subsequent to a change in the borrower's place of professional activity or that of his/her spouse, by the death or compulsory termination of the professional activity of these persons.

Subsection 2

Debt default

Article L312-22

Article L312-22

In the event of default by the borrower and where the lender does not request the immediate repayment of the outstanding capital, the latter may increase, within limits fixed by decree, the rate of interest that the borrower has to pay until the normal course of the contractual payments is resumed. Where the lender reaches the point of asking for the contract to be cancelled, he may request immediate repayment of the outstanding capital, as well as payment of interest accrued. Until the actual date of payment, the sums outstanding produce interest on arrears at the same rate as that of the loan. In addition, the lender may ask for compensation from the defaulting borrower which, without prejudice to the application of articles 1152 and 1231 of the French civil code, may not exceed an amount which, depending on the length of the contract still left to run, is fixed according to a scale determined by decree.

Subsección 3

Common provisions

Article L312-23

Article L312-23

The borrower may not be made liable for any compensation or cost other than those mentioned in articles L. 312-21 and L. 312-22 in the event of early repayment or default provided for by these articles.

The lender may, however, claim from the borrower, in the event of default by the latter, the repayment, subject to evidence, of any lump-sum reimbursement of collection costs.

SECTION VI

Lease purchase and lease with promise to sell

Articles L312-24 to
L312-31

Article L312-24

Subject to the provisions of points 1 and 2 of article L. 312-3, the hire-purchase or lease agreements accompanied by a commitment to sell relating to the properties mentioned in point 1 of article L. 312-2 are subject to this chapter, in accordance with the conditions fixed in this section.

Article L312-25

Any advertising implemented, received or perceived in France, whatever its medium, relating to one of the contracts governed by this section, must specify the identity of the lessor, the nature and purpose of the contract.

If this advertising includes one or more calculated components, it must mentioned the duration of the lease as well as the annual and total cost of the transaction.

Article L312-26

For contracts governed by this section, the lessor is obliged to formulate, in writing, an offer sent, free of charge, by post to the prospective lessee.

This offer states the identity of the parties. It specifies the nature and purpose of the contract as well as its procedures, in particular, with regard to the dates and terms under which the good are provided, the amount of the initial payments and that of the rental payments as well as any indexation procedures.

It refers, in addition, to the provisions of article L. 312-27.

For rental contracts accompanied by a commitment to sell, it also fixes:

1° The conditions under which the option may be taken up and its cost divided between, on the one hand, the proportion of initial payments and rental payments taken into consideration for payment of the price and, on the other hand, the residual value of the goods, considering the impact of the revision clauses that may be provided for by the

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contract;

2° The conditions and cost of non-realisation of the sale.

Article L312-27

Sending of the offer obliges the lessor to maintain the stated terms for a minimum of thirty days from receipt of the offer by the lessee.

The offer is subject to acceptance from the lessor who can only accept the offer ten days after receiving it.

Acceptance must be given by letter, the postmark being taken as proof of posting date.

Article L312-28

Until acceptance of the offer, the lender cannot make any deposit, sign or endorse any bill of exchange, sign any cheque or bank or giro account direct debit form to the lessor's advantage or on the latter's behalf.

Article L312-29

In the event of default by the lessee in the performance of a contract governed by this section, the lessor is entitled to ask, in addition to settlement of outstanding rental payments, for compensation which, without prejudice to the application of article 1152 of the French civil code, may not exceed an amount which is dependent upon the length of the contract still to run and fixed according to a scale determined by decree.

In the event of hire-purchase, the lessor may only ask for the goods to be returned subsequent to repayment of that part of the sums paid corresponding to the capital value of these goods.

The lessee cannot be made liable for any compensation or cost other than those mentioned below. The lessor may, however, claim back from the lessor, in the event of default by the latter, repayment, subject to evidential proof, of taxable expenses which may have been incurred by the lessor by said default, with the exclusion of any lump-sum repayment of collection costs.

Article L312-30

In the event of lease accompanied by a commitment to sell, the document recording the taking up of the option is concluded under the condition precedent provided for in article L. 312-16.

Where this condition is not met, the lessor is obliged to return all the sums paid by the lessor with the exception of rental payments and costs relating to the making good of the property.

As of the fifteenth day following the request for repayment this sum produces interest at the legal rate plus one half.

Article L312-31

The provisions of article L. 313-12 apply to contracts subject to the provisions of this section.

SECTION VI

Penalties

Articles L312-32 to
L312-35

Article L312-32

(Act no. 92-1336 of 16 December 1992 art. 322 Journal officiel of 23 December 1992 in force on 1 March 1994)

The advertiser on whose behalf advertising which does not conform to the provisions of articles L. 312-4 to L. 312-6 or of article L. 312-25 is disseminated, will be punished by a fine of € 30,000.

The provisions of articles L. 121-2 to L. 121-7 apply to offences relating to advertising falling within the scope of this chapter.

Article L312-33

(Act no. 92-1336 of 16 December 1992 art. 322 Journal officiel of 23 December 1992 in force on 1 March 1994)

Creditors or lessors who do not comply with any one of the obligations provided for by articles L. 312-7 and L. 312-8, L. 312-14, second paragraph, or article L. 312-26, will be punished by a fine of € 3,750.

Lenders who have the borrower or the stated guarantors sign, or receives acceptance of the offer from them, without this being dated or bearing a false date likely to lead to the belief that it was given subsequent to the ten day expiry date provided for by article L. 312-10, will be punished with a fine of € 30,000.

The same penalty will apply to the lessor who has the lessee sign or who received in its part acceptance of the offer without this being dated or bearing a false date likely to lead to the belief that it was given subsequent to the ten day expiry date provided for by article L. 312-27.

In the cases provided for in the previous paragraphs, the lender or the lessor may, in addition, lose the right to interest, in full or in the proportion fixed by the judge.

Article L312-34

(Act no. 92-1336 of 16 December 1992 art. 322 Journal officiel of 23 December 1992 in force on 1 March 1994)

The lender or the lessor who, in breach of the provisions of article L. 312-11 or article L. 312-28, agrees to receive from the borrower or the lessee, or on behalf of one of the latter, a payment or a deposit, a cheque or a signed bill of exchange, endorsed or guaranteed to its advantage, or uses a bank or giro account direct debit authorisation, shall be punished with a € 30,000 fine.

Article L312-35

(Act no. 92-1336 of 16 December 1992 art. 322 Journal officiel of 23 December 1992 in force on 1 March 1994)

The lender, in breach of the provisions of the first paragraph of article L. 312-14, or the vendor, in breach of the

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provisions of article L. 312-16, or the lessee, in breach of the provisions of the last paragraph of article L. 312-30, who does not repay the sums referred to in these articles, will be punished by a € 30,000 fine.

The same penalty will be applicable to those who claim from the borrower or from the lessee or deduct from their account sums in excess of those that they are authorised to claim or to deduct in application of the provisions of article L. 312-23 or the two last paragraphs of article L. 312-29.

SECTION VIII

Procedure

Article L312-36

Article L312-36

The tribunal d'instance makes provisions for proceedings arising from the application of articles L. 312-31 and L. 313-12.

CHAPTER III

Common provisions

Articles L313-1 to
L313-16

SECTION I

Interest rate

Articles L313-1 to
L313-6

Subsection 1

The annual percentage rate

Articles L313-1 to
L313-3

Article L313-1

Under all circumstances, costs, commissions or repayments of any kind, whether direct or indirect, including those paid or owing to intermediaries acting in any capacity whatsoever in the granting of the loan, even if these costs, commissions or payments correspond to real disbursements, are added to the interest, for the determination of the loan's annualised percentage rate, as well as for that of the reference effective rate.

For the application of articles L. 312-4 to L. 312-8, however, the charges relating to the guarantees by which the credits may be accompanied as well as legal officer's fees, are not included in the annualised percentage rate defined hereinabove, where their amount cannot be given accurately upon final conclusion of the contract.

In addition, for loans which are the subject of scheduled depreciation, the annualised percentage rate must be calculated by taking into consideration the depreciation methods used for the loan.

The Council of state decree will determine the conditions governing the application of this article.

Article L313-2

(Act no. 92-1336 of 16 December 1992 art. 322 Journal officiel of 23 December 1992 in force on 1 March 1994)

The annualised percentage rate determined as stated in article L. 313-1 must be mentioned in all written documents constituting a loan contract governed by this section of the code.

Any breach of the provisions of this article will be punished by a € 4,500 fine.

Article L313-3

(Act No. 2003-721 of 1 August 2003 Art. 32 I Official Journal of 5 August 2003)

(Act No. 2005-882 of 2 August 2005 Art. 7 I Official Journal of 3 August 2005)

(Order No. 2006-346 of 23 March 2006 Art. 38 I Official Journal of 24 March 2006)

Any contractual loan granted at an annual percentage rate which, at the time of its granting, is more than one third higher than the average percentage rate applied by the credit institutions during the previous quarter for loans of the same type presenting a similar risk factor, as defined by the administrative authority after consulting the Conseil national du crédit, constitutes a usurious loan.

Loans granted in connection with hire-purchase agreements are, for application of the present section, treated as contractual loans and considered to be usurious in the same way as cash loans having the same object.

The procedures for calculating and publishing the average percentage rates referred to in the first paragraph are determined by the regulations.

The provisions of the present article and those of Articles L. 313-4 to L. 313-6 are not applicable to loans granted to a natural person acting in his professional capacity or a legal entity carrying on an industrial, commercial, craft-sector, agricultural or non-commercial professional activity.

Subsection 2

The usury rate

Articles L313-4 to
L313-6

Article L313-4

Where a contractual loan is usurious, the excessive levies in respect of articles L. 313-1 to L. 313-3 are automatically charged on normal interest payable and secondarily on the loan capital.

If the loan capital and interest is paid off, the sums levied unreasonably must be repaid with legal interest from the day on which they are paid.

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Article L313-5

(Act no. 92-1336 of 16 December 1992 art. 322 Journal officiel of 23 December 1992 in force on 1 March 1994)

Anyone who grants another a usurious loan or knowingly contributes for any reason and in any way, whether directly or indirectly, to the obtaining or granting of a usurious loan or a loan that may become usurious in the sense of article L. 313-3 due to his/her contribution is punishable by a two year imprisonment a € 45,000 fine or only one of these two penalties.

The court may, in addition, order:

1° The publication, in full, or in extracts, of its decision, at the expense of the convicted party, in the journals designated by it, as well as the posting of this decision in accordance with the terms provided for in article 131-35 of the French penal code;

2° The closure, whether temporary or final, of the company in which one or more persons responsible for administration or management is convicted in application of the first paragraph of this article, possibly accompanied by the appointment of any administrator or liquidator.

In the event of closure, the court fixes the period during which the offender or the company must continue to pay its employees wages, benefits and payments of any kind to which the latter has been entitled until this time. This periods must not exceed three months.

Recommendation of prosecution with regard to the offence referred to in the first paragraph hereinabove runs from the date on which the last collection was made, whether this was of interest or of capital.

Article L313-6

At any stage of the preliminary hearing or the inquiry or judgement proceedings, the competent legal authorities may, should they deem it to be necessary, refer the case to an advisory panel constituted by means of an order and which will give an opinion both on the average effective rate referred to in the first paragraph of article L. 313-3 and on the annualised percentage rate used in the domain under consideration.

SECTION II

Guarantees

Articles L313-7 to
L313-10

Article L313-7

The natural person who undertakes by virtue of a private contract to stand surety for one of the transactions coming under chapters I or II of this part of the code must, under penalty of its undertaking being rendered invalid, precede its signature with the following handwritten statement, and only this statement:

“in standing surety for X....., up to the sum of covering payment of the principal, interest and, where appropriate, penalties or interest on arrears and for the duration of I undertake to repay the lender the sums owing on my income and property if X..... fails to satisfy the obligation himself”.

Article L313-8

Where the creditor asks for a joint and several guarantee for one of the transactions to which chapters I or II of this part of the code relate, the natural person who is standing surety must, under penalty of its undertaking being rendered invalid, precede its signature with the following handwritten statement:

“In renouncing the benefit of execution defined in article 2021 of the French civil code and obliging me, jointly and severally, with X....., I undertake to repay the creditor without being able to ask that the latter first institute proceedings against X...”.

Article L313-9

Any natural person who stands surety upon the occasion of a credit transaction to which chapters I or II of this part of the code relate, must be informed by the lending institution of the main debtor's default as soon as the first incident of payment characterised as being liable for registration in the file instituted by article L. 333-4. Should the lending institution fail to conform to this obligation, the surety cannot be extended to payment of penalties or interest on arrears payable between the date of this first incident and that on which notification was given.

Article L313-10

A credit institution may not take advantage of a guarantee agreement for a credit transaction to which chapters I or II of this part of the code relate, concluded by a natural person whose undertaking was, at the time of conclusion, manifestly disproportionate to his/her property and income, unless the net worth of this guarantee, when called for, is such as to enable the latter to meet his obligation.

SECTION III

Payment of seller

Article L313-11

Article L313-11

No vendor, whether or not it receives a wage from a banking or credit organisation, may, under any circumstances, be paid a fee that is dependent on the rate of credit that it has arranged to contract with the purchaser of moveable or immoveable property.

SECTION IV

Time order

Article L313-12

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Article L313-12

The performance of the debtor's obligation may, in particular, in the event of termination of employment, be suspended by order of the juge d'instance in accordance with the conditions provided for in articles 1244-1 to 1244-3 of the French civil code. The order may decide that, during the period of grace, the sums owing will not produce any interest at all.

The judge may, in addition, determine in his/her order, the payment terms for the sums payable at the end of the period of suspension, without the final payment exceeding by more than two years the term originally planned for repayment of the loan. The judge may, however, defer judgement on these payment terms until the end of the period of suspension.

SECTION V

Bills of exchange and promissory notes

Article L313-13

Article L313-13

The provisions of article 114 of the French commercial code apply to bills of exchange and promissory notes signed or endorsed by borrowers, even if these are major, upon the occasion of credit transactions governed by this part of the code with the exception of sections 2, 4, 6 and 7 of chapter II and sections 1, 3 and 4 to 8 of this chapter.

SECTION VII

Regulatory powers

Article L313-15

Article L313-15

The implementing provisions of this part of the code, with the exception of section 1 of this chapter, are fixed by Council of state decree. The specimen offer referred to in articles L. 312-7, L. 312-8 and L. 312-26 may, however, where necessary, be fixed by the banking regulatory committee.

SECTION VIII

Public policy provision

Article L313-16

Article L313-16

The provisions of chapters I and II and of sections 2 to 8 of chapter III of this part of the code are public policy.

TITLE II

Brokers and the settlement of debts

Articles L321-1 to
L322-3

CHAPTER I

Void agreements

Article L321-1

Article L321-1

(Act no. 98-657 of 29 July 1998 art. 85 Journal officiel of 31 July 1998)

Any agreement by virtue of which an intermediary is responsible or puts him/herself forward, for a fee:

1° Either to investigate the position of a debtor with a view to establishing a repayment schedule;

2° Or to research on a debtor's behalf, the obtaining of extensions for debt repayment or debt remission;

3° Or to intervene, on the debtor's behalf, in whatever form this may be, for the requirements of the absolute insolvency/excessive indebtedness procedure;

shall automatically be deemed null and void.

CHAPTER II

Other provisions

Articles L322-1 to
L322-3

Article L322-1

(Act no. 92-1336 of 16 December 1992 art. 322 Journal officiel of 23 December 1992 in force on 1 March 1994)

Any intermediary who may have received a sum of money on the occasion of one of the transactions mentioned in article L. 321-1 will be punished by imprisonment of one year and a fine of € 30,000 or only one of these two penalties.

In addition, the court may order, at the expense of the convicted party, the publication, in full, or in extracts, of the judgement in journals fixed by him/her, without the cost of this publication exceeding the full amount of the fine incurred.

Article L322-2

The provisions of this part of the code do not apply:

1° to members of the legal, and legally regulated, professions;

2° to natural or legal persons involved in the transactions referred to in article L. 321-1 within the scope of their conciliation duties as instituted by Act 84-148 of 1 March 1984 relating to the prevention and out-of-court settlement of corporate disputes;

3° to natural or legal persons designated in application of articles 141 and 143 of Act no. 95-08 of 25 January 1985 relating to reorganisation and compulsory liquidation of companies involved in the transactions referred to in article L. 321-1;

4° to natural persons mentioned in the second paragraph of article 2 of Act no. 85-99 of 25 January 1985 relating to

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receivers, authorised agents/liquidators and experts in company diagnostics, within the scope of the duties that they have been assigned by legal decision.

The do not pose an obstacle to the legislative and regulatory provisions provided for by legal representation.

Article L322-3

The provisions of articles L. 321-1, L. 322-1 and L. 322-2 apply to contracts in progress on 1 January 1986. On this date, active files must be submitted, in full, to debtors by intermediaries responsible for them.

TITLE III

Handling situations of overindebtedness

Articles L331-1 to L330-1

Article L330-1

(inserted by Act No. 2003-710 of 1 August 2003 Article 35 I Official Journal of 2 August 2003)

The overindebtedness of natural persons is characterised by the manifest impossibility of a well-intentioned debtor meeting either all of his personal debts due now and in the future or fulfilling an undertaking he has given to guarantee or jointly and severally settle the debt of an individual contractor or a company when he was not a de facto or de jure executive thereof.

When the debtor's resources or realisable assets so permit, remedial measures may be prescribed before the commission for personal overindebtedness as provided for in Articles L. 331-6, L. 331-7 and L. 331-7-1.

When the debtor finds himself in an irremediably compromised situation characterised by a manifest impossibility to implement the remedial measures referred to in the second paragraph, he may request the initiation of a personal re-establishment procedure as provided for in the present Part.

The juge de l'exécution hears and determines proceedings relating to situations of overindebtedness brought before the commission for personal overindebtedness, as well as personal re-establishment procedures.

CHAPTER I

Proceedings before the "Commission de surendettement des particuliers"

Articles L331-1 to L331-11

Article L331-1

(Act No. 95-125 of 8 February 1995 Article 29, Article 30 Official Journal of 9 February 1995 effective 1 August 1995)

(Act No. 98-657 of 29 July 1998 Article 86 Official Journal of 31 July 1998)

(Act No. 2003-710 of 1 August 2003 Article 35 II Official Journal of 2 August 2003)

At least one commission for personal overindebtedness is hereby established in each department.

It shall include the departmental government representative, as chairman, the trésorier-payeur général, as vice-chairman, and the director of fiscal services, each of whom may arrange to be represented by a single representative, as determined by decree. The commission shall also include the local representative of the Bank of France, which provides the secretariat, and two individuals chosen by the departmental government representative, one proposed by the French Association of Credit Institutions and Investment Companies, and the other by family or consumer associations.

A deputy for each of these individuals shall be appointed in the same way.

A person experienced in the field of social and family economics and a person qualified and experienced in law shall participate in the preparation of the case and attend the meetings of the commission for overindebtedness in an advisory capacity.

Article L331-2

(Act No. 95-125 of 8 February 1995 Art. 29, Art. 30 Official Journal of 9 February 1995 effective 1 August 1995)

(Act No. 98-657 of 29 July 1998 Art. 87 Official Journal of 31 July 1998)

(Act No. 2003-710 of 1 August 2003 Art. 35 III Official Journal of 2 August 2003)

(Act No. 2003-721 of 1 August 2003 Art. 11 I Official Journal of 5 August 2003)

(Act No. 2005-32 of 18 January 2005 Art. 124 Official Journal of 19 January 2005)

The commission's role is to address the situation of overindebtedness of natural persons as defined in the first paragraph of Article L. 330-1, and as provided for in the present chapter, consistent with the undertaking it has given to guarantee or jointly and severally settle the debt of an individual contractor or a company subject to the party in question not having been a de facto or de jure executive thereof.

The amount of the repayments resulting from application of Article L. 331-6 or L. 331-7 is determined, as stipulated by decree, by reference to the distrainable portion of the salary as provided for in Article L. 145-2 of the Labour Code, to enable a portion of the income needed for the household's day-to-day expenditure to be retained as a priority. The said portion of the income, which shall not be below the minimum income for social integration to which the household would be entitled, covers accommodation, food and schooling expenses, subject to a ceiling, as prescribed by decree. It is determined by the commission on advice from the person having experience in the field of social and family economics designated in the last paragraph of Article L. 331-1 and referred to in the contractual recovery plan described in Article L. 331-6 or in the recommendations set forth in Articles L. 331-7 and L. 331-7-1.

Article L331-3

(Act No. 95-125 of 8 February 1995 Article 29, Article 30 Official Journal of 9 February 1995 effective 1 August 1995)

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(Act No. 98-657 of 29 July 1998 Article 89 and Article 100 Official Journal of 31 July 1998)

(Act No. 2003-710 of 1 August 2003 Article 35 IV Official Journal of 2 August 2003)

The proceedings are brought before the commission at the debtor's behest. The commission has six months with effect from commencing the examination of the case in which to decide how it should be handled.

The commission shall check that the applicant is in the situation described in Article L. 331-2. In the event of a direct debit mandate being rejected subsequent to notification of the decision of admissibility, the creditors shall not receive any fees or commissions in relation thereto.

The commission shall draw up the debtor's statement of indebtedness. The latter is required to declare all his assets and liabilities to it. When the commission notes that repayment of one or more of the principal debtor's debts is guaranteed by a surety, it shall inform the surety of the institution of proceedings. The surety may make his observations known to the commission in writing.

The debtor, informed of this right through notification of the decision of admissibility, is heard by the commission at his request. The commission may also hear any person whose testimony it considers relevant, provided that such persons do not seek payment therefor.

The commission may arrange publication of a call-up of creditors.

After being informed by the commission of the statement of liabilities declared by the debtor, the creditors shall have a period of thirty days in which to produce, should they disagree with the said statement, the proof of their debts in terms of principal, interest and incidental expenses. Failing this, the debt shall be taken into account by the commission on the basis of the elements provided by the debtor only. Credit institutions and Treasury Accountants may be informed by facsimile or by electronic mail, as determined by decree.

The creditors are then required to indicate whether the debts involved have given rise to a surety and, if so, whether it has been actioned.

Notwithstanding any provision to the contrary, the commission may obtain details from public authorities, credit institutions, social security and welfare bodies, and departments tasked with centralising banking risks and instances of non-payment, of any data likely to facilitate the creation of an exact picture of the debtor's situation, its possible outcome and any out-of-court arrangements in progress.

The territorial authorities and social security bodies shall conduct social inquiries at its behest.

If the examination of the application reveals that the debtor is irremediably compromised as described in the third paragraph of Article L. 330-1, the commission, having summoned the debtor and obtained his agreement thereto, shall refer the case to the juge de l'exécution in order that a personal re-establishment procedure might be instituted. Should the debtor fail to respond when summoned, this shall be deemed to be a refusal of such referral. In the event of such refusal by the debtor, the commission shall proceed pursuant to Articles L. 331-6, L. 331-7 and L. 331-7-1.

The juge de l'exécution is competent to hear and determine appeals brought against the commission's decisions relating to admissibility and the handling of the case.

Article L331-4

(Act no. 95-125 of 8 February 1995 art. 29, art. 30 Journal Officiel of 9 February 1995 in force on 1 August 1995)

(Act no. 98-657 of 29 July 1998 art. 90 Journal officiel of 31 July 1998)

The commission informs the debtor of the statement of liabilities that it has compiled. Debtors wishing to contest this statement have twenty days in which to ask the commission for a referral before the juge de l'exécution, for the purposes of checking the validity of the debt certificates and the amount of the sums claimed, by indicating the disputed debts and the grounds on which the application is being made. The commission is obliged to grant this application. At the end of the twenty day period, the commission may, in the event of difficulties, refer the case to the juge de l'exécution for the same ends.

Article L331-5

(Act no. 95-125 of 8 February 1995 art. 29, art. 30 Journal Officiel of 9 February 1995 in force on 1 August 1995)

(Act no. 98-46 of 23 January 1998 art. 5 Journal officiel of 24 January 1998)

The commission may refer the case to the juge de l'exécution for the purposes of suspending the enforcement proceedings instituted against the debtor and relating to debts other than those relating to alimony. Subsequent, however, to the publication of a final demand and notice for the purposes of foreclosure, the foreclosing judge alone is competent to pronounce the suspension of this procedure. In emergencies, the judge's referral may intervene on the initiative of the chair of the commission, the latter's deputy, the local representative of the Banque de France or the debtor. The commission is then informed of the this referral.

The latter is acquired, without exceeding one year, until approval of the contractual recovery plan provided for in article L. 331-6 or, should the conciliation fail, until expiry of the deadline fixed by Council of state decree provided for by article L. 333-8, used by the debtor to ask the commission to make recommendations in application of articles L. 331-7 and L. 331-71-1 (1st paragraph). In the event of a request being made within this deadline, it is acquired until the judge renders the measures recommended, in application of article L. 332-1, enforceable, or if the case has been referred in application of article 332-2, until the judge has made a ruling. Where the debtor makes use of the right conferred by article L. 331-7, the length of the temporary suspension is extended, until the judge renders the measures recommended, in application of article L. 332-1, enforceable, or if the case has been referred in application of article 332-2, until the judge has made a ruling.

Where, in the event of foreclosure, the date of the court order has been fixed, the commission may, for serious and duly justified reasons, refer the case to the judge for the purposes of having the adjudication cancelled, in accordance with the conditions provided for by article 703 of the old French civil code.

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Unless authorised by the judge, the decision pronouncing the temporary suspension of the enforcement proceedings bans the debtor from performing any act likely to increase his/her insolvency, from paying, in whole or in part, a debt other than alimony incurred prior to this decision, from paying off guarantors who would settle debts incurred prior to the decision, from making any arrangement other than the normal management of the estate. It also prohibits the acceptance of any guarantee or surety.

Article L331-6

(Act No. 95-125 of 8 February 1995 Article 29, Article 30 Official Journal of 9 February 1995 effective 1 August 1995)
(Act No. 2003-710 of 1 August 2003 Article 35 VII Official Journal of 2 August 2003)

The commission's role is to reconcile the parties with a view to drawing up a contractual recovery plan approved by the debtor and his main creditors.

The plan may include measures to defer or reschedule debt payments, to cancel debts, to reduce or eliminate interest rates, or to consolidate, create or substitute guarantees.

The plan may make such measures conditional upon certain actions being taken by the debtor to facilitate or guarantee payment of the debt. It may also make them conditional upon the debtor refraining from actions which would aggravate his insolvency.

The plan shall contain its implementing provisions. Its total term, including revisions and renewals, shall not exceed ten years. The measures stipulated in the plan may exceed this time limit when they cover the repayment of loans contracted to purchase a real property which constitutes the debtor's principal residence and which the plan allows him to retain.

Article L331-7

(Act No. 95-125 of 8 February 1995 Article 29, Article 30 Official Journal of 9 February 1995 effective 1 August 1995)
(Act No. 98-46 of 23 January 1998 Article 6 Official Journal of 24 January 1998)
(Act No. 98-657 of 29 July 1998 Article 92 Official Journal of 31 July 1998)
(Act No. 2003-710 of 1 August 2003 Article 35 VIII Official Journal of 2 August 2003)

Should its conciliation mission fail, the commission may, at the debtor's request and after giving the parties an opportunity to make their observations, recommend some or all of the following measures:

1. Rescheduled repayment of all the debts, including, where appropriate, deferred payment of some of them, with such deferral or rescheduling not exceeding ten years or one half of the unexpired portion of the repayment period of the current borrowings; in the event of default, the deferral or rescheduling may be spread over one half of the unexpired term that remained prior to the default;

2. Application of payments primarily to the capital;

3. Allowing the sums corresponding to instalments due or rescheduled to bear interest at a reduced rate which may be lower than the legal interest rate, based on a special and reasoned proposal, if the debtor's situation so requires. Regardless of the term of the recovery plan, the rate shall not exceed the legal rate.

4. In the event of the compulsory sale of the debtor's principal residence encumbered by a mortgage in favour of the credit institution which provided the funds for its purchase: reduction, based on a special and reasoned proposal, of the proportion of the mortgage which remains due to the credit institution after the sale and after application of the proceeds of the sale to the principal amount outstanding, in a proportion such that payment thereof, combined with rescheduling calculated as indicated above, is compatible with the debtor's income and expenditure. The same provision shall apply in the event of a sale by private treaty on terms and conditions determined by mutual agreement between the debtor and the credit institution in order to avoid foreclosure. In any event, the benefit of the present provisions cannot be invoked more than two months after a demand is made for payment of the proportion of the mortgage still owing, unless the matter has been referred to the commission during that period. Under pain of being declared null and void, the demand for payment shall reproduce the terms of the present paragraph.

The commission may recommend that these measures be made conditional upon certain actions being taken by the debtor to facilitate or guarantee payment of the debt. It may also make them conditional upon the debtor refraining from actions which would aggravate his insolvency.

In applying the present article, the commission takes account of the knowledge of the debtor's indebtedness that each of the creditors might have had when the various agreements were entered into. It may also check whether sufficient professional seriousness was applied in granting the facility.

The total term of the recommendations shall not exceed ten years. They may nevertheless exceed that time limit when they relate to the repayment of loans contracted to purchase a real property used as a principal residence which the commission's recommendations permit retention of. Tax debts are rescheduled in the same way as other debts.

The debtor's application made pursuant to the first paragraph interrupts the limitation period and the time limits for action

Article L331-7-1

(Act No. 98-657 of 29 July 1998 Article 93 I Official Journal of 31 July 1998)
(Act No. 2003-710 of 1 August 2003 Article 35 IX Official Journal of 2 August 2003)

If the commission establishes, but does not consider irremediable, the debtor's insolvency characterised by a lack of resources or distrainable property sufficient to permit discharge of some or all of his debts and rendering inapplicable the measures provided for in article L. 331-7, it may recommend suspension of the payability of debts other than alimony for a period not exceeding two years. Unless the commission proposes otherwise, suspension of the debt shall result in suspension of payment of the interest due thereon. During the said period, only sums due in respect of capital

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repayment may automatically bear interest at a rate not exceeding the legal rate.

When the period referred to in the first paragraph has elapsed, the commission shall re-examine the debtor's situation. If the situation so permits, it shall recommend some or all of the measures provided for in article L. 331-7. If the debtor remains insolvent, it shall recommend a partial write-off of the debts based on a special and reasoned proposal. Debts which have been settled on the debtor's behalf by a surety or joint debtor shall not be eligible for writing off. Tax debts may be totally or partially cleared in the same way as other debts. No further writing off of debts similar to those which gave rise to cancellation may take place for eight years.

Article L331-7-2

(inserted by Act No. 2003-710 of 1 August 2003 Article 35 X Official Journal of 2 August 2003)

If, during performance of a contractual plan or recommendations, it appears that the debtor's situation is becoming irretrievably compromised within the meaning of the third paragraph of Article L. 330-1, the debtor may submit the case to the commission to obtain the benefit of a personal re-establishment procedure. Having established the debtor's good faith, the commission shall refer the case to the juge de l'exécution for initiation of the procedure. The plan or the recommendations whose performance has been interrupted shall be null and void.

Article L331-8

(Act no. 95-125 of 8 February 1995 art. 29, art. 30 Journal officiel of 9 February 1995 in force on 1 August 1995)

(Act no. 98-657 of 29 July 1998 art. 93 II Journal officiel of 31 July 1998)

The measures recommended in application of article L. 331-7 or article L. 331-7-1 and rendered enforceable by application of article L. 332-1 or article L. 332-2 cannot be applied to creditors whose existence may not have been made known by the debtor and who have not been notified by the commission.

Article L331-9

(Act no. 95-125 of 8 February 1995 art. 29, art. 30 Journal officiel of 9 February 1995 in force on 1 August 1995)

(Act no. 98-657 of 29 July 1998 art. 93 II Journal officiel of 31 July 1998)

Creditors to whom the measures recommended in application of article L. 331-7 or the first paragraph of article L. 331-7-1 and rendered enforceable in application of article L. 332-1 or article L. 332-2 are applicable cannot exercise implementation proceedings against the debtor's property for the entire period in which these measures are in force.

Article L331-10

(Act no. 95-125 of 8 February 1995 art. 29, art. 30 Journal officiel of 9 February 1995 in force on 1 August 1995)

The parties may be assisted before the commission by any person of their choice.

Article L331-11

(Act no. 95-125 of 8 February 1995 art. 29, art. 30 Journal officiel of 9 February 1995 in force on 1 August 1995)

Commission members, as well as any person taking part in its debt work, are obliged to refrain from disclosing to third parties the information made known to them within the scope of the procedure instituted by this chapter, under the penalty of sanctions provided for by article 226-13 of the French penal code.

CHAPTER II

Supervision by the judge of the measures recommended by the "Commission de surendettement" Articles L332-1 to L333-1-1

Article L332-1

(Act No. 95-125 of 8 February 1995 Article 29, Article 31 Official Journal of 9 February 1995 effective 1 August 1995)

(Act No. 98-657 of 29 July 1998 Article 93 IV Official Journal of 31 July 1998)

(Act No. 2003-710 of 1 August 2003 Article 35 V Official Journal of 2 August 2003)

If no challenge as described in article L. 332-2 has been referred to him, the juge de l'exécution shall render enforceable the measures recommended by the commission pursuant to Article L. 331-7 and the first paragraph of Article L. 331-7-1, having verified their lawfulness, as well as the measures recommended by the commission pursuant to the third paragraph of Article L. 331-7-1, having verified their lawfulness and their merits.

Article L332-2

(Act No. 95-125 of 8 February 1995 Article 29, Article 31 Official Journal of 9 February 1995 effective 1 August 1995)

(Act No. 98-657 of 29 July 1998 Article 93 V Official Journal of 31 July 1998)

(Act No. 2003-710 of 1 August 2003 Article 35 V Official Journal of 2 August 2003)

A party may challenge the measures recommended by the commission pursuant to Article L. 331-7 or Article L. 331-7-1 before the juge de l'exécution within fifteen days of being notified thereof.

If a party so requests, the judge may make an immediately enforceable order to execute one or more of the measures referred to in the first paragraph before giving a ruling.

He may arrange publication of a call-up of creditors.

He may, even without consultation, verify the validity and amount of the debt instruments and ensure that the debtor is indeed in the situation indicated in Article L. 331-2.

He may also order any investigatory measure which he considers appropriate. The costs associated therewith shall be met by the State.

Notwithstanding any provision to the contrary, the judge may obtain any information which enables him to assess the debtor's situation and its likely outcome.

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Article L332-3

(Act No. 95-125 of 8 February 1995 Article 29, Article 31 Official Journal of 9 February 1995 effective 1 August 1995)

(Act No. 98-657 of 29 July 1998 Article 95 Official Journal of 31 July 1998)

(Act No. 2003-710 of 1 August 2003 Article 35 V Official Journal of 2 August 2003)

A judge to whom a challenge as described in Article L. 332-2 is referred shall initiate some or all of the measures described in Article L. 331-7 or Article L. 331-7-1. In all cases, the portion of the income to be applied to the household's day-to-day expenses shall be determined as indicated in the second paragraph of Article L. 331-2 and shall be indicated in the decision.

Article L332-4

(Act No. 95-125 of 8 February 1995 Article 31 Official Journal of 9 February 1995 effective 1 August 1995)

(Act No. 98-657 of 29 July 1998 Article 96 Official Journal of 31 July 1998)

(Act No. 2003-710 of 1 August 2003 Article 35 V Official Journal of 2 August 2003)

The writing-off of a debt pursuant to Article L. 332-1 or Article L. 332-2 is deemed to remedy an instance of non-payment within the meaning of Article 65-3 of the decree of 30 October 1935 unifying the law relating to cheques and payment cards.

Article L332-5

(Act No. 95-125 of 8 February 1995 Article 31 Official Journal of 9 February 1995 effective 1 August 1995)

(inserted by Act No. 2003-710 of 1 August 2003 Article 35 VI Official Journal of 2 August 2003)

When appeals are brought before the juge de l'exécution to challenge the commission's decisions relating to the handling of a case or pursuant to Articles L. 331-4 and L. 332-2, he may, with the debtor's agreement, decide to institute a personal re-establishment procedure.

If, when nine months have elapsed since a case was brought before it, the commission has not decided how it should be handled, the debtor may apply to the judge for a personal re-establishment procedure to be instituted. During the three months following expiry of the period referred to in the first paragraph of Article L. 331-3, the interest rate applicable to all current borrowings contracted by the debtor shall be the legal interest rate, barring any contrary decision of the commission made during that period or any contrary ruling of the judge made upon its expiry.

Article L332-6

(Act No. 95-125 of 8 February 1995 Article 31 Official Journal of 9 February 1995 effective 1 August 1995)

(inserted by Act No. 2003-710 of 1 August 2003 Article 35 VI Official Journal of 2 August 2003)

The juge de l'exécution shall summon the debtor and the known creditors to an initial hearing of the personal re-establishment procedure within one month. He may invite a social worker to attend the said hearing. The judge, having heard the debtor, if he appears, and having assessed the irremediably compromised nature of his situation and his good faith, shall render a judgement declaring the procedure open.

The judgement entails suspension of any enforcement proceedings brought against the debtor in respect of debts other than alimony. In the event of a foreclosure order being published prior to initiation of the procedure, the judge authorising such seizure shall have sole competence for pronouncing the procedure's suspension. The suspension shall be maintained until the closing judgement is given.

The juge de l'exécution may appoint an administrator from a list compiled as determined in a Conseil d'Etat decree, conduct a means test and order social monitoring of the debtor.

Article L332-7

(Act No. 95-125 of 8 February 1995 Article 31 Official Journal of 9 February 1995 effective 1 August 1995)

(inserted by Act No. 2003-710 of 1 August 2003 Article 35 VI Official Journal of 2 August 2003)

The administrator or, failing that, the judge, shall implement the publication measures and compile a list of the creditors who prove their debts as stipulated in a Conseil d'Etat decree; debts which are not proved within a time limit determined by the said decree shall be extinguished unless the judge gives leave to appeal out of time. The administrator shall draw up a balance sheet of the debtor's financial position and social situation, verify the debts and value the assets and liabilities items. With effect from the judgement declaring the procedure open, the debtor shall not alienate his property without the administrator's consent or, if no representative is appointed, without the judge's consent.

Article L332-8

(inserted by Act No. 2003-710 of 1 August 2003 Article 35 VI Official Journal of 2 August 2003)

The judge shall rule on any challenge to the debts and pronounce the judicial liquidation of the debtor's personal assets, which do not include the items of furniture required for daily living or the non-professional items essential to his business activity. He shall rule, where applicable, on the basis of the report that the administrator submits within four months of being appointed.

The judge shall designate a liquidator, who may be the administrator. The judgement ordering liquidation shall automatically entail removal of the debtor's right to administer or alienate his property. All rights and actions pertaining to his personal assets shall be exercised by the liquidator throughout the liquidation period.

The liquidator has a period of twelve months in which to sell the debtor's property by private agreement or, failing that, to organise a forced sale under the terms and conditions applicable to civil execution procedures.

In the event of a forced sale, if a foreclosure procedure instituted before the opening judgement was rendered is suspended by the latter's effects, the acts of the foreclosing creditor shall be deemed to be performed on behalf of the

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liquidator who is selling the immovable property. The foreclosure procedure may resume at the stage it was at when interrupted by the opening judgement.

The liquidator shall distribute the proceeds from the sale of the assets to pay off the creditors in accordance with the ranking of their sureties.

The liquidator shall report to the judge on his assignment as determined in a Conseil d'Etat decree.

Article L332-9

(inserted by Act No. 2003-710 of 1 August 2003 Article 35 VI Official Journal of 2 August 2003)

When the assets realised are sufficient to pay off the creditors, the judge shall declare the procedure closed. When the assets realised are insufficient to pay off the creditors or when the debtor possesses nothing other than the furniture items required for daily living and the non-professional items essential to his business activity, the judge shall declare it closed on account of insufficient assets.

Closure entails the writing off of all the debtor's non-commercial debts, with the exception of any which were settled on the debtor's behalf by a surety or joint debtor.

The judge may order social monitoring of the debtor.

Article L332-10

(inserted by Act No. 2003-710 of 1 August 2003 Article 35 VI Official Journal of 2 August 2003)

By way of exception, if he considers that judicial liquidation may be avoided, the judge shall establish a plan containing the measures referred to in Article L. 331-7 and based, where applicable, on a proposal from the administrator.

The judgement establishing the plan renders it binding on everyone. The term of the plan shall be determined by the judge. It shall not exceed ten years. In the event of non-fulfilment of the plan, the judge shall pronounce its cancellation.

Article L332-11

(inserted by Act No. 2003-710 of 1 August 2003 Article 35 VI Official Journal of 2 August 2003)

Persons who have benefited from a personal re-establishment procedure are registered to that effect in the register referred to in Article L. 333-4 for a period of eight years.

Article L332-12

(inserted by Act No. 2003-710 of 1 August 2003 Article 35 VI Official Journal of 2 August 2003)

The judge may refer the case back to the commission at any time if he considers that the debtor's situation is not irremediably compromised.

Article L333-1-1

(inserted by Act No. 2005-32 of 18 January 2005 Art. 125 Official Journal of 19 January 2005)

In proceedings opened pursuant to the present Part, lessors' debts are given preference over the debts of credit institutions and the loans referred to in Articles L. 311-1 et seq.

CHAPTER III

Common provisions

Articles L333-1 to
L333-8

Article L333-1

(Act No. 2003-710 of 1 August 2003 Article 35 XI Official Journal of 2 August 2003)

Unless the creditor agrees otherwise, the following are excluded from any remission, rescheduling or writing off:

1. Alimony debts;
2. Financial damages allocated to victims in connection with a criminal conviction.

Fines imposed in connection with a criminal conviction are excluded from any remission, rescheduling or writing off.

Article L333-1-1

(inserted by Act No. 2005-32 of 18 January 2005 Article 125 Official Journal of 19 January 2005)

In proceedings instituted pursuant to the present Part, lessors' debts are given preference over the debts of credit institutions and the loans referred to in Articles L. 311-1 et seq.

Article L333-2

(Act No. 95-125 of 8 February 1995 Article 29, Article 32 Official Journal of 9 February 1995 effective 1 August 1995)

(Act No. 98-657 of 29 July 1998 Article 93 VI Official Journal of 31 July 1998)

(Act No. 2003-710 of 1 August 2003 Article 35 XII Official Journal of 2 August 2003)

The following are deprived of the benefit of the provisions of the present Part:

1. Whoever has knowingly made false declarations or submitted inaccurate documents;
2. Whoever has concealed, or attempted to conceal, some or all of his property;
3. Whoever, without the consent of his creditors, the commission or the judge, has aggravated his indebtedness by taking out further loans or has taken steps to dispose of assets while an overindebtedness procedure or personal re-establishment procedure was in progress or during performance of the plan or the measures referred to in Article L. 331-7 or Article L. 331-7-1.

Article L333-3

The provisions of this part of the code do not apply when the debtor is covered by the procedures instituted by Act

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no. 84-148 of 1 March 1984 relating to the prevention and out-of-court settlement of corporate difficulties, no. 88-1202 of 30 December 1988 relating to the adaptation of the agricultural concern to its economic and social environment and no. 85-98 of 25 January 1985 relating to compulsory administration and liquidation of companies.

These same provisions do not pose an obstacle to the application of articles 22, 23 and 24 of the Act of 1 June 1924 introducing French commercial laws into the departments of Haut-Rhin, Bas-Rhin and Moselle.

N.B. – article covered by the public economic policy of social protection by opinion of the Cour de Cassation no. 09420028P of 16 December 1994.

Article L333-3-1

(inserted by Act no. 95-125 of 8 February 1995 art. 28 Journal officiel of 9 February 1995 in force on 1 August 1995)

The provisions of this part of the code also apply to debtors with French nationality who domiciled outside of France and who in a position of overindebtedness and have contracted non-professional debts with creditors set up in France.

To this end, the debtor may refer the case to the debt/overindebtedness commission in the place where one of its creditors is established.

Article L333-4

(Act No. 98-657 of 29 July 1998 Art. 97 I Official Journal of 31 July 1998)

(Act No. 2003-710 of 1 August 2003 Art. 35 XIII, Art. 36 Official Journal of 2 August 2003)

(Act No. 2004-801 of 6 August 2004 Art. 18 IX Official Journal of 7 August 2004)

(Act No. 2005-32 of 18 January 2005 Art. 126 Official Journal of 19 January 2005)

(Act No. 2005-516 of 20 May 2005 Art. 16 IV Official Journal of 21 May 2005)

A national register of information relating to instances of deliberate non-payment of loans granted to natural persons for non-professional purposes is hereby established. The said register shall be administered by the Bank of France. It is subject to the provisions of Act No. 78-17 of 6 January 1978 relating to information technology, computer records and freedom.

The credit institutions referred to in Act No. 84-46 of 24 January 1984 relating to the activities and supervision of credit institutions are required to report all such instances of non-payment to the Bank of France. The cost of making such reports shall not be charged to the natural persons concerned.

As soon as a debtor makes an application, pursuant to the first paragraph of Article L. 331-3, to the commission established in Article L. 331-1, the latter shall inform the Bank of France thereof so that an entry may be made in the register established by the first paragraph of the present article. The clerk's office of the juge de l'exécution shall do likewise when the said judge acknowledges the situation referred to in Article L. 331-2 in an application made by the party concerned pursuant to the second paragraph of Article L. 331-3 or when the debtor has benefited from a write-off of his debts under a personal re-establishment procedure pursuant to Article L. 332-9.

The register shall record the measures set out in the contractual recovery plan referred to in Article L. 331-6. The commission shall inform the Bank of France of those measures. The entry is maintained throughout the contractual plan's entire term, which shall not exceed ten years.

The register shall also record the measures taken by virtue of Articles L. 331-7 and L. 331-7-1, which the clerk's office of the juge de l'exécution reports to the Bank of France. For measures described in Article L. 331-7 and the first paragraph of Article L. 331-7-1, the entry shall be maintained throughout the entire period during which those measures are applied, which shall not exceed ten years. For measures described in the third paragraph of Article L. 331-7-1, the entry shall be maintained for ten years.

The Bank of France alone is authorised to centralise the information referred to in the previous paragraph.

Only professional bodies and central bodies representing institutions referred to in the second paragraph are authorised to keep registers relating to instances of non-payment.

The Bank of France is released from professional secrecy in regard to the transmission of personal information contained in the register to credit institutions and the aforementioned financial services.

The Bank of France and the credit institutions are prohibited from providing copies of information contained in the register to anyone, in any form whatsoever, including the person concerned when he exercises his right of access pursuant to the aforementioned Article 39 of Act No. 78-17 of 6 January 1978, under pain of the penalties provided for in Articles 43 and 44 of that same Act.

NB: Act 2005-516 2005-05-20 Art. 16 V:

1 - Until their maturity date, investments made pursuant to the provisions of Article 15 of the aforementioned Act No. 90-568 of 2 July 1990 in its wording in force until the date of publication of the present act remain governed by those provisions.

2 - The provisions of I to IV become effective on the date of the transfer referred to in 1 of II.

Article L333-5

(Act No. 2003-706 of 1 August 2003 Article 46 II Official Journal of 2 August 2003)

An order of the minister, issued on the advice of the National Committee for Information Technology and Liberties and the Financial Sector Consultative Committee, determines, inter alia, the means of collecting, recording, storing and consulting such information.

Article L333-6

(Act no. 98-657 of 29 July 1998 art. 97 I Journal officiel of 31 July 1998)

In overseas departments, the Institut d'émission des départements d'outre-mer exercises, in liaison with the Banque de France, the powers invested in its by this chapter.

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* N.B. – article covered by the public economic policy of social protection by opinion of the Cour de Cassation no. 09420028P of 16 December 1994*.

Article L333-7

(Act no. 95-125 of 8 February 1995 art. 29, art. 33 Journal officiel of 9 February 1995 in force on 1 August 1995)

The provisions of articles L. 333-1, L. 333-2 to L. 333-6 and L. 333-8 apply to contracts in force on 2 January 1990.

The other provisions of this part of the code are immediately applicable to procedures implemented on the date on which said provisions, as defined in II of article 33 of Act no. 95-125 of 8 February 1995 relating to the organisation of jurisdictions and the French civil, penal and administrative procedures, come into force.

Article L333-8

Council of state decrees determine the conditions governing the application of this part of the code.

* N.B. – article covered by the public economic policy of social protection by opinion of the Cour de Cassation no. 09420028P of 16 December 1994*.

CHAPTER IV

Provisions applicable in the Overseas Departments and territories

Articles L334-1 to
L334-10

SECTION I

Provisions applicable in Mayotte

Articles L334-1 to
L334-3

Article L334-1

(inserted by Order No. 2004-824 of 19 August 2004 Article 1 Official Journal of 21 August 2004)

A commission for personal overindebtedness is hereby established in Mayotte. The said commission shall be chaired by the government representative in Mayotte, with the trésorier-payeur général of Mayotte acting as vice-chairman, both of whom may arrange to be represented by a single representative, as determined by decree. The commission shall also include the local representative of the Bank of France, which provides the secretariat, a representative of the tax office appointed by the chairman of the General Council, as well as two individuals chosen by the government representative in Mayotte, one proposed by the French Association of Credit Institutions and Investment Companies, and the other by family or consumer associations, or, failing that, appointed on account of his competence in the field of consumer affairs or family matters.

A deputy for each of these individuals is appointed in the same way.

A person qualified and experienced in law and a person experienced in the field of social and family economics shall participate in the preparation of the case and attend the meetings of the commission for overindebtedness in an advisory capacity.

Article L334-2

(inserted by Order No. 2004-824 of 19 August 2004 Article 1 Official Journal of 21 August 2004)

Articles L. 330-1 and L. 331-2 to L. 333-6, with the exception of the penultimate sentence of Articles L. 331-7 and L. 331-7-1, are applicable in Mayotte, subject to the following reservations:

a) In Article L. 331-2, the reference to the minimum income for social integration is replaced with a reference to an amount determined by the Préfet;

b) In Article L. 333-6, the words: "In the overseas departments" are replaced with the words: "In Mayotte".

For application of these provisions:

a) The references to the legislative provisions of the Labour Code and the Code of Civil Procedure are replaced with references to the locally applicable provisions having the same object;

b) The words: "juge de l'exécution" are replaced with the words: "chairman of the Court of first Instance or the judges delegated by him".

Article L334-3

(inserted by Order No. 2004-824 of 19 August 2004 Article 1 Official Journal of 21 August 2004)

A Council of State decree determines the present section's implementing provisions.

SECTION II

Provisions applicable in New Caledonia

Articles L334-4 to
L334-6

Article L334-4

(inserted by Order No. 2004-824 of 19 August 2004 Article 1 Official Journal of 21 August 2004)

A commission for personal overindebtedness is hereby established in New Caledonia. The said commission shall be chaired by the High Commissioner of the Republic, with the trésorier-payeur général of New Caledonia acting as vice-chairman. These persons may arrange to be represented by a single representative, as determined by decree. The commission also includes a representative of the overseas issuing institution, which provides the secretariat, a representative of the tax office appointed by the chairman of the Government of New Caledonia, as well as two individuals chosen by the High Commissioner, one proposed by the French Association of Credit Institutions and Investment Companies, and the other by family or consumer associations, or, failing that, appointed on account of his

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competence in the field of consumer affairs or family matters.

A deputy for these individuals is appointed in the same way.

A person qualified and experienced in law and a person experienced in the field of social and family economics shall participate in the preparation of the case and attend the meetings of the commission for overindebtedness in an advisory capacity.

Article L334-5

(inserted by Order No. 2004-824 of 19 August 2004 Article 1 Official Journal of 21 August 2004)

Articles L. 330-1 and L. 331-2 to L. 333-5, with the exception of the penultimate sentence of Articles L. 331-7 and L. 331-7-1 and the last sentence of Article L. 332-9, are applicable in New Caledonia, subject to the following reservations:

a) In Article L. 331-2, the reference to the minimum income for social integration is replaced with a reference to an amount determined by the government representative;

b) The eighth and ninth paragraphs of Article L. 331-3 are replaced with the following provisions:

Notwithstanding any provision to the contrary, the commission may obtain from public authorities, credit institutions, and departments tasked with centralising banking risks and instances of non-payment, details of any data likely to facilitate the creation of an exact picture of the debtor's situation, its possible outcome and any out-of-court arrangements in progress. It may likewise obtain such details from social security and welfare bodies, subject to their consent.

The territorial authorities and social security bodies may conduct social inquiries at its behest;

c) The time limits indicated in the sixth paragraph of Article L. 331-3 and in Articles L. 331-4 and L. 332-2 are determined by the relevant local authorities;

d) In the last paragraph of Article L. 332-6, the words: "shown on a list compiled as determined in a Conseil d'Etat decree" are deleted.

For application of these provisions:

a) The references to the legislative provisions of the Labour Code and the Code of Civil Procedure are replaced with references to the locally applicable provisions having the same object;

b) The words: "juge de l'exécution" are replaced wherever they appear by the words: "presiding judge of the Court of first Instance or the judges delegated by him".

Article L334-6

(inserted by Order No. 2004-824 of 19 August 2004 Article 1 Official Journal of 21 August 2004)

A Council of State decree determines the present section's implementing provisions.

SECTION III

Provisions applicable in French Polynesia

Article L334-7

Article L334-7

(inserted by Order No. 2004-824 of 19 August 2004 Article 1 Official Journal of 21 August 2004)

I. - In French Polynesia, the credit institutions and departments and institutions referred to in Article L. 518-1 of the Monetary and Financial Code shall report all instances of non-payment on loans granted to natural persons for non-professional purposes to the Bank of France. The said declarations shall give rise to entries in the national register of personal loan repayment defaults referred to in Article L. 333-4.

The Bank of France alone is authorised to centralise instances of non-payment.

Only the professional bodies or centralising bodies representing the institutions referred to in the first paragraph of the present article are authorised to keep registers of instances of non-payment.

The Bank of France is released from professional secrecy in regard to the transmission of information held in the register of instances of non-payment to the credit institutions, departments and institutions referred to in Article L. 518-1 of the Monetary and Financial Code.

II. - The Bank of France, the credit institutions and the departments and institutions referred to in Article L. 518-1 of the Monetary and Financial Code are prohibited from providing copies of information contained in the register referred to in the first paragraph of I of the present article to anyone, in any form whatsoever, including the person concerned when he exercises his right of access pursuant to Article 35 of Act No. 78-17 of 6 January 1978 on information technology, computer records and freedom, under pain of the penalties provided for in Articles 43 and 44 of that same Act.

III. - The provisions of Article L. 333-5 are applicable in French Polynesia.

SECTION IV

Provisions applicable in the Wallis and Futuna Islands

Articles L334-8 to

L334-10

Article L334-8

(inserted by Order No. 2004-824 of 19 August 2004 Article 1 Official Journal of 21 August 2004)

A commission for personal overindebtedness is hereby established in the Wallis and Futuna Islands. The said commission shall be chaired by the senior administrator of the Wallis and Futuna Islands, with the paymaster of the Wallis and Futuna Islands acting as vice-chairman, both of whom may arrange to be represented by a single representative, as determined by decree. The commission shall also include the representative of the overseas issuing institution, which provides the secretariat, a representative of the tax office appointed by the chairman of the Territorial Assembly of the Wallis and Futuna Islands, as well as two individuals chosen by the senior administrator, one proposed

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by the French Association of Credit Institutions and Investment Companies, and the other by family or consumer associations, or, failing that, appointed on account of his competence in the field of consumer affairs or family matters.

A deputy for these individuals is appointed in the same way. A person qualified and experienced in law and a person experienced in the field of social and family economics participate in the preparation of the case and attend the meetings of the commission for overindebtedness in an advisory capacity.

Article L334-9

(inserted by Order No. 2004-824 of 19 August 2004 Article 1 Official Journal of 21 August 2004)

Articles L. 330-1 and L. 331-2 to L. 333-5, with the exception of the penultimate sentence of Articles L. 331-7 and L. 331-7-1, are applicable in the Wallis and Futuna Islands, subject to replacement of the reference to the minimum income for social integration in Article L. 331-2 with a reference to an amount determined by the senior administrator.

For application of these provisions:

- a) The references to the legislative provisions of the Labour Code and the Code of Civil Procedure are replaced with references to the locally applicable provisions having the same object;
- b) The words: "juge de l'exécution" are replaced wherever they appear by the words: "presiding judge of the Court of first Instance or the judges delegated by him".

Article L334-10

(inserted by Order No. 2004-824 of 19 August 2004 Article 1 Official Journal of 21 August 2004)

A Council of State decree determines the present section's implementing provisions.

TITLE IV

Guarantees

Articles L341-1 to L341-6

Article L341-1

(inserted by Act no. 98-657 of 29 July 1998 art. 102 Journal officiel of 31 July 1998)

Without prejudice to special provisions, any natural person standing as surety is informed by the professional creditor that the principal debtor has defaulted as soon as the first payment difficulty arises that is not settled by the end of the month in which said payment is due. If the creditor does not comply with this obligation, the guarantor cannot be held liable for the payment of penalties or interest on arrears due between the date of this first incident and that on which it was informed of said incident.

Article L341-2

(inserted by Act No. 2003-721 of 1 August 2003 Article 11 II, Article 12 Official Journal of 5 August 2003 effective 5 February 2004)

Any natural person who undertakes to act as surety for a professional creditor through a private agreement shall, if his undertaking is not to be declared null and void, affix the following words above his signature in his own handwriting, and these words only: "By standing surety for X ..., for a maximum sum of ... in respect of payment of the principal, interest and, should this prove necessary, any arrears interest or penalties, for a term of..., I hereby undertake to pay the sum due to the lender from my own income and property should X... fail to pay it himself".

Article L341-3

(inserted by Act No. 2003-721 of 1 August 2003 Article 11 II, Article 12 Official Journal of 5 August 2003 effective 5 February 2004)

When the professional creditor requests a joint and several guarantee, the natural person standing surety shall, if his undertaking is not to be declared null and void, affix the following words above his signature in his own handwriting: "By waiving the benefit of discussion defined in Article 2021 of the Civil Code and committing myself jointly and severally with X..., I hereby undertake to pay the creditor without any right to demand that he prosecute X... beforehand".

Article L341-5

(inserted by Act No. 2003-721 of 1 August 2003 Article 11 II, Article 12 Official Journal of 5 August 2003 effective 5 February 2004)

Stipulations of joint and several liability and waiver of the benefit of discussion in a contract of guarantee granted by a natural person in favour of a professional creditor are deemed not to exist if the surety undertaking is not limited to an expressly and contractually determined global amount which includes the principal, interest, expenses and ancillary costs.

Article L341-6

(inserted by Act No. 2003-721 of 1 August 2003 Article 11 II, Article 12 Official Journal of 5 August 2003 effective 5 February 2004)

The professional creditor shall be required to inform the natural person standing surety, by 31 March of each year at the latest, of the amount of principal, interest, commissions, expenses and ancillary costs outstanding by virtue of the guarantee obligation as of 31 December of the previous year, and also the term of that undertaking. If the undertaking is open-ended, it shall refer to the right to cancel at any time and the conditions under which it may be exercised. Failing this, the surety shall not be required to pay any arrears interest or penalties incurred during the period between the previous provision of such information and the date of receipt of the most recent information.

BOOK IV

Consumer associations

Articles L411-1 to L422-3

TITLE I

Association approval

Articles L411-1 to L412-1

CHAPTER I

The associations

Article L411-1

Article L411-1

The terms under which consumer protection associations can be approved, upon the advice of the public prosecutor, taking into consideration their degree of representation on a national or local level, as well as the terms for withdrawal of this approval, are fixed by decree.

CHAPTER II

Consumer cooperatives

Article L412-1

Article L412-1

Approval can only be granted to associations that are independent of any form of professional activity. Associations deriving from consumer cooperatives, governed by the Act of 7 May 1917 relating to the organisation of credit for consumer cooperatives and subsequent texts may, however, be approved if they also satisfy the conditions fixed in application of article L. 411-1.

TITLE II

Associations' legal actions

Articles L421-1 to L422-3

CHAPTER I

Action taken in the collective interest of consumers

Articles L421-1 to L421-9

SECTION I

Compensation in criminal courts

Articles L421-1 to L421-5

Article L421-1

Duly declared associations whose statutory object specifies the protection of consumer interests may, if they are approved for this purpose, exercise the rights conferred upon civil parties in respect of events directly, or indirectly, prejudicing the collective interest of consumers.

The organisations defined in article 2 of the French family and social welfare code are exempt from approval to go to Act under the conditions provided for in this article.

Article L421-2

The consumer associations mentioned in article L. 421-1 and acting in accordance with the conditions specified in this article, may ask the civil court, ruling on civil actions, or the criminal court, ruling on civil actions, to order the counsel for the defence or the defendant, where appropriate subject to penalty, for any measure intended to stop illicit actions or to remove illicit clauses from the contract or the standard contract offered to consumers.

Article L421-3

The criminal court to which the case is referred in accordance with the terms of article L. 421-1 may, after having found the accused guilty, adjourn the sentencing, where appropriate subject to conformance, within a fixed deadline, with the requirements that it determines and which aim to stop illicit actions or to remove illicit clauses from the contract or the standard contract offered to consumers.

Should the criminal court combine the adjournment with a fine, it must specify the rate and the date from which it is to run. The adjournment, which can only be given once, may be decided even if the accused does not appear in person. The judge may order the provisional enforcement of the injunction.

Article L421-4

(Act No. 2004-204 of 9 March 2004 Article 198 V Official Journal of 10 March 2004 effective 1 January 2005)

At the postponed hearing, which shall take place within one year of the decision to adjourn, at the latest, the court shall rule on the penalty and fix the amount of the coercive fine, if appropriate. It may remove the coercive fine or reduce the amount thereof, as necessary. The coercive fine shall be recovered by the Treasury accountant in the same way as a fine imposed by a criminal court. It shall not give rise to any legal constraint.

NB: Act 2004-204 2004-03-09 Article 207 II: Articles 159 to 193 and 198 shall enter into force on 1 January 2005, without prejudice to the provisions of III and IV of the present article.

Article L421-5

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The fine is automatically cancelled each time it is established that the person concerned has complied with an injunction sous astreinte pronounced by another criminal judge ruling in order to stop an identical offence to the one on which the proceedings are based.

SECTION II

Stop orders

Article L421-6

Article L421-6

(Act no. 95-96 of 1 February 1995 art. 4 Journal officiel of 2 February 1995)

(Order no. 2001-741 of 23 August 2001 art. 19 and art. 20 Journal officiel of 25 August 2001)

The associations mentioned in article L. 421-1 and organisations able to provide proof of their inclusion on the list published in the Official Journal of the European Communities in application of article 4 of directive 98/27/CE of the European parliament and council relating to actions for an injunction to stop or prohibit any illicit action in respect of the provisions transposing the directives mentioned in article 1 of the aforementioned directive.

The judge may order, on these grounds, where appropriate subject to a fine, the deletion of an illicit or abusive clause in any contract or standard contract offered to, or intended for, the consumer.

SECTION III

Intervention in civil actions

Article L421-7

Article L421-7

The associations mentioned in article L. 421-1 may instituted proceedings in civil courts and, in particular, request the application of the measures provided for in article L. 421-2, where the initial application aims to repair damage suffered by one or more consumers due to events not constituting a criminal offence.

SECTION IV

Common provisions

Articles L421-8 to

L421-9

Article L421-8

The public prosecutor may submit before the court to which the case has been referred, notwithstanding legislation to the contrary, the inquiry statements or reports that it is holding and which may be required for the dispute to be settled.

Article L421-9

(Act no. 92-1336 of 16 December 1992 art. 331 Journal officiel of 23 December 1992 in force on 1 March 1994)

The court to which the case has been referred may order the public dissemination, by all appropriate means, of the judgement given, Where it orders the information to be displayed in application of this paragraph, this is implemented in accordance with the terms and under the penalties provided for in article 131-35 of the French penal code.

The information is disseminated at the expense of the unsuccessful or convicted party or the association bringing the civil action where proceedings initiated on its initiative have resulted in an order of nolle prosequi.

CHAPTER II

Representative action

Articles L422-1 to

L422-3

Article L422-1

Where several consumers, identified as natural persons, have suffered individual damages caused by the same business act and which have a common origin, any approved association recognised as been representative on a national level in application of the provisions of the part I may, if its has been duly authorised by at least to of the consumers concerned, may institute legal proceedings to obtain reparation before any court on behalf of these consumers.

The mandate may not be solicited by means of a public appeal on radio or television, nor by means of posting of information, by tract or personalised letter. Authorisation must be given in writing by each consumer.

Article L422-2

Any consumer who has agreed, in accordance with the conditions provided for in article L. 422-1, to the institution of proceedings before a criminal court is, in this event, deemed to be exercising the rights conferred upon a civil party in application of the French code of criminal procedure. Notifications or notices concerning the consumer are, however, addressed to the association.

Article L422-3

Associations instituting legal proceedings in application of the provisions of articles L. 422-1 and L. 422-2 may institute a civil action before the juge d'instruction or juridiction de jugement in the place where the company against which the action is being taken has its registered office or, failing this, in the place where the first offence occurred.

BOOK V

The institutions

Articles L531-1 to

L562-1

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TITLE III

"L'institut national de la consommation"

Article L531-1

CHAPTER I

Administrative organisation

Article L531-1

Article L531-1

The Institut national de la consommation, a national publicly owned institution, is a centre for research, information and study on consumer problems.

A Council of state decree will fix the conditions governing this article and, in particular, the organisation and operational procedures appertaining to the publicly owned institution.

TITLE VI

Testings laboratory

Articles L561-1 to L562-1

CHAPTER I

Aims

Article L561-1

Article L561-1

The test laboratory is a publicly owned national institution of an industrial and commercial nature responsible for performing study, research, consultation, expert survey, testing and monitoring work and for all technical support services required for the protection and information of consumers or for the improvement of product quality.

These works and studies may relate to metrology, manufacturing techniques and rating of industrial products, processed non-food agricultural produce and capital goods, as well as the measurement of pollution and nuisances.

This establishment may also be responsible for:

1° Studying on behalf of and at the request of the interested ministers, the test methods required for the compilation of regulations and standards, in particular, with regard to health, safety, nature and environmental protection, energy saving and raw materials, and, more generally, fitness for use of products;

2° Issuing qualification certificates;

3° Instituting links, under the authority and at the request of the interested ministers, with foreign or international organisations responsible for the questions mentioned in this article.

The establishment assumes the rights and obligations of the Laboratoire national d'essais du Conservatoire national des arts et métiers. Agents employed by the National testing laboratory on 11 January 1978 are, at their own request, maintained in their posts.

CHAPTER II

Operation

Article L562-1

Article L562-1

The establishment is administered by a board comprising representatives of the administration, of industrial concerns, of consumer organisations, of personnel employed by the establishment as well as of qualified entities.

With the participation of Henri TEMPLE, Director for the Consumer Law Research Centre – Montpellier University, Avocat à la Cour and Geoffrey WOODROFFE, Director for the Consumer Law Research Centre – Brunel's West London University, Solicitor

Regulatory Part – Council of State decrees

BOOK I

Consumer information and contract formation

Articles R112-1 to R142-2

TITLE I

Consumer information

Articles R112-1 to R115-12

CHAPTER II

Manner of presentation and labelling

Articles R112-1 to R112-16-3

Article R112-1

(Decree No. 2005-944 of 2 August 2005 Art. 1 Official Journal of 6 August 2005 effective 25 November 2005)

For the purposes of the present chapter, the following definitions shall apply:

1 Foodstuff: any commodity, product or drink intended to be consumed by man;

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2 Prepacked foodstuff: sale unit consisting of a foodstuff and the packaging that contains it prior to its presentation for sale, regardless of whether the said packaging covers it entirely or partially, provided that the contents cannot be altered without the packaging being opened or modified;

3 Labelling: the references, indications, trademarks or brand names, images or signs relating to a foodstuff and shown on all packaging, documents, notices, labels, rings or neck labels accompanying or referring to that foodstuff;

4 Collectivities: restaurants, hospitals, canteens and other similar entities.

Article R112-2

Ingredient is understood to mean any substance, including additives, used the manufacture or preparation of a foodstuff and which is still present in the finished product, possibly in a modified form.

When a foodstuff ingredient has been processed from several ingredients, the latter are considered to be ingredients of this foodstuff.

Article R112-3

(Decree No. 2005-944 of 2 August 2005 Art. 2 Official Journal of 6 August 2005 effective 25 November 2005)

The following are nevertheless not considered to be ingredients:

1 The constituents of an ingredient which, during the manufacturing process, have been temporarily removed for subsequent reincorporation in a volume which does not exceed their initial content;

2 Additives whose presence in a foodstuff is due solely to the fact that they were contained in one or more ingredients of that foodstuff and subject to them no longer having any technological function in the finished product;

3 Additives which are used as technological auxiliaries;

4 Substances which are not additives, but which are used in the same way and for the same purpose as technological auxiliaries and which are always present in the finished product, albeit in modified form;

5 Substances used in doses which are strictly necessary as solvents or supports for additives and flavourings.

Article R112-4

(Decree No. 2005-944 of 2 August 2005 Art. 3 Official Journal of 6 August 2005 effective 25 November 2005)

"Covering liquid" means the products enumerated below, alone or mixed and also when they are frozen or deep-frozen, provided that they are only accessories in relation to the essential elements of the preparation and are thus not decisive in the purchase, such as water, aqueous salt solutions, brines, aqueous solutions of food-grade acids, vinegar, aqueous sugar solutions, aqueous solutions of other substances or sweeteners, or fruit or vegetable juices in the case of fruits or vegetables.

Article R112-5

(Decree no. 2000-705 of 20 July 2000 art. 4 Journal officiel of 28 July 2000)

Batch is taken to mean a series of units of sale of a foodstuff that has been produced, manufactured or packaged under practically identical circumstances.

Article R112-6

It is prohibited to hold, with a view to the sale or distribution free of charge, with a view to putting on sale, selling or distributing free of charge, foodstuffs whose labelling or presentation do not conform to the requirements of this chapter.

Article R112-7

(Decree No. 98-879 of 29 September 1998 Art. 1 Official Journal of 2 October 1998)

(Decree No. 2005-944 of 2 August 2005 Art. 4 Official Journal of 6 August 2005 effective 25 November 2005)

The labelling and the manner in which it is done must not be likely to create confusion in the mind of the buyer or the consumer, particularly in regard to the characteristics of the foodstuff including its nature, identity, qualities, composition, quantity, life span, origin or source, or its method of manufacture or procurement.

The labelling must not include any wording which might suggest that the foodstuff has special characteristics when all similar foodstuffs have those same characteristics.

Without prejudice to the provisions applicable to foodstuffs intended for a specific diet or to natural mineral waters, the labelling of a foodstuff must not claim that it has properties which could prevent, treat or cure a human ailment, or refer to such properties.

The above prohibitions or restrictions also apply to the advertising and displaying of foodstuffs, particularly in regard to the form or appearance given to them or their packaging, the packaging material used, the manner of their presentation and the environment in which they are displayed.

Article R112-8

All the labelling statements provided for by this chapter must be easily understandable, written in French and be free of abbreviations other than those provided for by regulations or international conventions. They are written in an obvious place and are clearly visible, legible and indelible. They must not, in any way, be concealed, masked or separated by other indications or images.

Article R112-9

(Decree No. 98-879 of 29 September 1998 Art. 2 Official Journal of 2 October 1998)

(Decree No. 2000-705 of 20 July 2000 Art. 4 Official Journal of 28 July 2000)

(Decree No. 2005-944 of 2 August 2005 Art. 5 Official Journal of 6 August 2005 effective 25 November 2005)

Without prejudice to the provisions relating to metrological control, the labelling of prepacked foodstuffs shall include the following compulsory indications pursuant to the conditions and subject to the exceptions stipulated in the present

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Chapter:

- 1 The trade name;
- 2 A list of the ingredients;
- 3 The quantity of certain ingredients or categories of ingredients, as specified in Articles R. 112-17 and R. 112-17-1;
- 4 The net quantity;
- 5 The date of minimum durability or, in the case of foodstuffs which are microbiologically very perishable, the use-by date, as well as an indication of the special conditions of preservation;
- 6 The name or company name and address of the manufacturer or the packer or a supplier established within the European Community;
- 7 The batch number;
- 8 The place of origin or source whenever the omission of such information is likely to create confusion in the mind of the buyer concerning the real origin or source of the foodstuff;
- 9 The instructions for use whenever they are necessary for appropriate use of the foodstuff and, where applicable, the special conditions of use.

Article R112-9-1

(Decree No. 98-879 of 29 September 1998 Art. 3 Official Journal of 2 October 1998)

(Decree No. 2003-907 of 22 September 2003 Art. 1 Official Journal of 24 September 2003 effective 1 July 2004)

(Decree No. 2005-944 of 2 August 2005 Art. 6 Official Journal of 6 August 2005 effective 26 May 2006)

Without prejudice to the provisions of Article R. 112-9, the labelling of the prepackaged food items enumerated in this Article shall include the following additional compulsory wording:

1. The acquired alcoholic strength by volume for beverages titrating more than 1.2% proof;
2. The words "packed in a protective atmosphere" for food products whose life span has been extended by the use of packaging gas authorised pursuant to Decree No. 89-674 of 18 September 1989 relating to additives which may be used in foods intended for human consumption;
3. The words "with sweetener(s)" for foodstuffs containing one or more of the sweeteners authorised pursuant to the aforementioned decree of 18 September 1989. The words shall accompany the trade name as provided for in Article R. 112-14;
4. The words "with sugar(s) and sweetener(s)" for foodstuffs which contain both added sugar(s) and one or more of the sweeteners authorised pursuant to the aforementioned decree of 18 September 1989. The words shall accompany the trade name as provided for in Article R. 112-14;
5. The words "contains a source of phenylalanine" for foodstuffs containing aspartame;
6. The words "excessive consumption may have laxative effects" for foodstuffs in which polyols authorised pursuant to the aforementioned decree of 18 September 1989 have been incorporated at a level above 10%;
7. The words "high caffeine content" for beverages intended to be consumed as supplied or after reconstitution of the concentrated or dehydrated product, when such beverages contain caffeine, regardless of the source thereof, in a proportion above 150 milligrams per litre. The said words shall appear in the same visual field as the trade name. They shall be followed by an indication, in parentheses, of the caffeine content expressed in milligrams per 100 millilitres and must meet the conditions laid down in Article R. 112-8.

The said words and the said indication shall nevertheless not apply to beverages based on coffee, tea, coffee extract or tea extract whose trade name includes the word "coffee" or "tea".

8 The words "contains liquorice" for confectionery or drinks containing glycyrrhizic acid or its ammonium salt after the addition of such substance(s) or of *Glycyrrhiza glabra* liquorice at a concentration at or above 100 mg/kg or 10 mg/l, unless the word "liquorice" is already in the list of ingredients or in the name under which the product is marketed.

These words shall appear just after the list of ingredients, unless the word "liquorice" already appears there or is included in the name under which the product is marketed.

If there is no list of ingredients, the wording shall appear close to the name under which the product is marketed;

9 The words "contains liquorice - persons suffering from high blood pressure should avoid any excessive consumption" for confectionery containing glycyrrhizic acid or its ammonium salt after the addition of such substance(s) or of *Glycyrrhiza glabra* liquorice at a concentration at or above 4 g/kg.

These words shall appear after the list of ingredients.

If there is no list of ingredients, the words shall appear close to the name under which the product is marketed;

10 The words "contains liquorice - persons suffering from high blood pressure should avoid any excessive consumption" for drinks containing glycyrrhizic acid or its ammonium salt after the addition of such substance(s) or of *Glycyrrhiza glabra* liquorice at a concentration at or above 50 mg/l, or at or above 300 mg/l in the case of drinks containing more than 1.2% alcohol by volume.

These words shall appear after the list of ingredients.

If there is no list of ingredients, the words shall appear close to the name under which the product is marketed;

The contents indicated in 8, 9 and 10 apply to products ready for consumption as offered or after reconstitution pursuant to the manufacturer's instructions;

11 Any other compulsory wording stipulated by the regulatory provisions specific to certain other foodstuffs.

Article R112-10

(Decree No. 98-879 of 29 September 1998 Art. 4 Official Journal of 2 October 1998)

(Decree No. 2005-944 of 2 August 2005 Art. 7 Official Journal of 6 August 2005 effective 25 November 2005)

When prepacked foodstuffs are intended to be presented to the ultimate consumer or to collectivities, the wording

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stipulated in Articles R. 112-9 and R. 112-9-1 appears on the pre-packaging or on a label attached to it. The wordings enumerated in 1, 4 and 5 of Article R. 112-9 and 1 of Article R. 112-9-1 are placed in the same visual field.

Article R112-11

(Decree No. 98-879 of 29 September 1998 Art. 5 Official Journal of 2 October 1998)

(Decree No. 2000-705 of 20 July 2000 Art. 4 Official Journal of 28 July 2000)

(Decree No. 2005-944 of 2 August 2005 Art. 9 Official Journal of 6 August 2005 effective 25 November 2005)

When prepacked foodstuffs are marketed at a stage prior to the sale to the ultimate consumer or are to be delivered to "collectivities" for preparation, processing, fractionation or cutting, the wordings indicated in Article R. 112-9, with the exception of the batch number, and those indicated in Article R. 112-9-1 may appear simply on the forms, delivery notes or commercial documents when they accompany the foodstuffs to which they relate or are sent prior to delivery or simultaneously therewith. The said documents must be held at the places where the foodstuffs to which they refer are used or stored. In which case, the wordings indicated in 1, 5 and 6 of Article R. 112-9 also appear on the external packaging in which the said foodstuffs are presented when they are marketed.

Article R112-12

(Decree No. 98-879 of 29 September 1998 Art. 6 Official Journal of 2 October 1998)

(Decree No. 2005-944 of 2 August 2005 Art. 10 Official Journal of 6 August 2005 effective 25 November 2005)

In the case of mail-order sales, the catalogues, brochures, prospectuses and advertisements which make the products offered for sale known to the consumer and enable him to place his order directly must include the wordings indicated in 1, 2, 4 and 8 of Article R. 112-9 and 11 of Article R. 112-9-1.

Article R112-13

Orders issued by the minister for consumer affairs, the minister for agriculture and other interested ministers fix, where necessary, the practical procedures for applying articles R. 112-9 to R. 112-12, in particular, with regard to the use of conventional signs.

Article R112-14

The sales description of a foodstuff is that fixed by current regulations on fraud prevention or, failing this, by other regulations or by trading practice. In the absence of regulations or customary practices, this description must consist of a description of the foodstuff and, if necessary, of its use. The description must be accurate enough to enable the purchaser to know its real nature and to distinguish it from product with which it could be confused.

In any event, the sales description must be independent of the trademark or manufacturer's brand of the fancy name.

Every time that the omission of this information is likely to cause confusion in the mind of the purchaser, the sales description includes an indication of the physical state in which the foodstuff is to be found or the specific processing treatment to which it has been subjected, such as, in particular: in powdered form, freeze-dried, frozen, deep-frozen, defrosted, pasteurised, sterilised, reconstituted, concentrated, smoked.

Article R112-14-1

Where the foodstuff was produced in another European Community state, the trade name under which it is legally manufactured and marketed in this state is also admissible.

If necessary, this trade name is accompanied by other descriptive information which should appear in the proximity of the latter, where the application of other provisions of this chapter, in particular, those provided for by article R.112-9, is not likely to enable the consumer to know the real nature of the foodstuff and to distinguish it from other foodstuffs with which it may be confused.

Notwithstanding the provision of the first paragraph of this article, this trade name is not admissible where the foodstuff that it describes is so different, from the point of view of its composition or manufacture, from the foodstuff known by this name in the national territory, that the provisions of the previous paragraph are not sufficient to guarantee the consumer correct information.

Article R112-15

(Decree No. 98-879 of 29 September 1998 Art. 7 Official Journal of 2 October 1998)

(Decree No. 2005-944 of 2 August 2005 Art. 11 Official Journal of 6 August 2005 effective 25 November 2005)

A list of ingredients enumerates all the foodstuff's ingredients in decreasing order of their weight at the time when they were introduced.

It is preceded by an appropriate reference containing the word: "ingredient".

However:

1 Added water and volatile ingredients are indicated in the list on the basis of their weight in the finished product. The quantity of added water as an ingredient in a foodstuff is determined by subtracting from the total quantity of the finished product the total quantity of the other ingredients introduced.

Indication of the water is nevertheless not compulsory:

a) When it is used during the manufacturing process solely to facilitate the reconstitution in its original state of an ingredient used in concentrated or dehydrated form;

b) When it is used as a covering liquid which is normally not consumed;

c) When its quantity does not exceed 5% by weight of the finished product;

2 Ingredients used in concentrated or dehydrated form and reconstituted during manufacture may be indicated in the list of ingredients on the basis of their weight before concentration or dehydration;

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3 In the case of concentrated or dehydrated foodstuffs to which water must be added, the enumeration may be made in the order of the proportions in the reconstituted product, provided that the list of ingredients is accompanied by an indication such as "Ingredients of the reconstituted product" or "Ingredients of the product ready for consumption";

4 When fruits, vegetables or mushrooms, with none predominating significantly in terms of weight, are used in a mixture in proportions likely to vary as ingredients in a foodstuff, they may be combined in the list of ingredients under the designation "fruits", "vegetables" or "mushrooms" followed by the words "in variable proportions", immediately followed by an enumeration of the fruits, vegetables or mushrooms present. In this case, the mixture is indicated in the list of ingredients on the basis of the weight of all the fruits, vegetables or mushrooms present;

5 In the case of mixtures of spices or aromatic plants in which none predominates significantly in terms of weight, those ingredients may be enumerated in a different order provided that the list of ingredients is accompanied by an indication such as "in variable proportions";

6 Ingredients representing less than 2% of the finished product may be enumerated in a different order, after the other ingredients;

7 When ingredients which are similar and mutually substitutable are likely to be used in the manufacture or preparation of a foodstuff without altering the composition, nature or perceived value thereof and represent less than 2% of the finished product, their designation in the list of ingredients may consist of "contains ... and/or ..." in the event of at least one of not more than two ingredients being present in the finished product. This provision does not apply to the additives or ingredients enumerated in Appendix IV of the present chapter or those deriving from an ingredient enumerated in that same appendix.

Article R112-16

(Decree No. 2005-944 of 2 August 2005 Art. 13 Official Journal of 6 August 2005 effective 25 November 2005)

The ingredients are designated by their specific name.

However:

1 Ingredients belonging to one of the categories enumerated in Appendix I of the present chapter which are components of another foodstuff may be designated by the name of their category;

2 Ingredients belonging to one of the categories enumerated in Appendix II of the present chapter are designated by the name of their category followed either by their specific name or their EC number. When an ingredient belongs to several categories, the category indicated is the one corresponding to its primary function in the foodstuff concerned;

3 Flavourings are designated pursuant to Appendix III of the present chapter;

4 The provisions of 1, 2 and 3 are not applicable to the ingredients enumerated in Appendix IV of the present chapter or those deriving from an ingredient enumerated in that same appendix. Such ingredients are indicated as provided for in Article R. 112-16-1;

5 Contrary to 1 and 2, the designations "starch(es)" and "modified starch(es)" are supplemented with an indication of their specific vegetable origin when those ingredients may contain gluten.

Article R112-17

(Decree No. 98-879 of 29 September 1998 Art. 9 Official Journal of 2 October 1998 effective 14 February 2000)

(Decree No. 2000-705 of 20 July 2000 Art. 1 Official Journal of 28 July 2000)

(Decree No. 2005-944 of 2 August 2005 Art. 15 Official Journal of 6 August 2005 effective 25 November 2005)

Without prejudice to the provisions relating to the nutritional labelling of foodstuffs, the labelling of a foodstuff must include an indication of the quantity of an ingredient or a category of ingredients which was used in its manufacture or preparation in the following cases:

1 If the ingredient or category of ingredients in question is indicated in the trade name or is generally associated with the trade name by the consumer;

2 If the ingredient or category of ingredients in question is emphasised on the labelling by words, images or a graphic representation;

3 If the ingredient or category of ingredients in question is essential for identification of the foodstuff and to distinguish it from products with which it might be confused on account of its name or its appearance.

The indication referred to in the first paragraph may be in the foodstuff's trade name, or very close to that name, or in the list of ingredients relating to the ingredient or category of ingredients in question.

The quantity indicated, expressed in percentages, corresponds to the quantity of the ingredient(s) at the time of their introduction.

When a foodstuff has undergone a loss of humidity following thermal or other processing, that quantity corresponds to the relationship expressed in percentages between the quantity of the ingredient(s) introduced and that of the finished product.

However, when the quantity of an ingredient or the total quantity of all the ingredients indicated on the labelling exceeds 100% of the total quantity of the finished product after a loss of humidity, the percentage is replaced by an indication of the weight of the ingredient(s) used for preparation of 100 grams of finished product.

The quantity of volatile ingredients is indicated on the basis of their weight in the finished product.

The quantity of the ingredients used in concentrated or dehydrated form and reconstituted during manufacture may be indicated on the basis of their weight before concentration or dehydration.

In the case of concentrated or dehydrated foods to which water must be added, the quantity of the ingredients may be indicated on the basis of their weight in the reconstituted product.

Article R112-17-1

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(Decree No. 98-879 of 29 September 1998 Art. 10 Official Journal of 2 October 1998 effective 14 February 2000)

(Decree No. 2000-705 of 20 July 2000 Art. 2 Official Journal of 28 July 2000)

(Decree No. 2005-944 of 2 August 2005 Art. 16 Official Journal of 6 August 2005 effective 25 November 2005)

The provisions of the previous Article are not applicable:

1 To an ingredient or category of ingredients:

a) Whose drained net weight is indicated pursuant to Article R. 112-20;

b) Whose quantity must already be shown on the labelling pursuant to the European Community regulations or regulatory provisions resulting from transposition of European Community directives;

c) Used in low concentrations for flavouring purposes;

d) Which, although included in the trade name, is not likely to determine the consumer's choice given that the quantity variation is not essential for classification of the foodstuff or likely to distinguish it from other similar products;

2 When specific provisions contained in European Community regulations or resulting from the transposition of European Community directives precisely determine the quantity of the ingredient or category of ingredients without providing for their indication on the labelling;

3 To mixtures of fruits, vegetables, mushrooms, spices or aromatic plants in which none predominates significantly in terms of weight;

4 To mixtures of spices or aromatic plants in which none predominates significantly in terms of weight;

5 To cases in which the words "sweetener(s)" or "with sugar(s) and sweetener(s)" accompanies the trade name of a foodstuff pursuant to the provisions of Article R. 112-9-1 (3 and 4);

6 To references to the addition of vitamins and minerals in cases in which such substances are the subject of nutritional labelling.

Article R112-18

(Decree No. 98-879 of 29 September 1998 Art. 11 Official Journal of 2 October 1998)

(Decree No. 2005-944 of 2 August 2005 Art. 17 Official Journal of 6 August 2005 effective 25 November 2005)

Indication of the net quantity is expressed in volume units for liquid products and mass units for other foodstuffs using litres, centilitres, millilitres or kilograms or grams, as applicable.

For snails prepared in their shells and oysters, the quantity may be expressed in numbers of units with an indication of the size.

For mussels in their shells, the quantity may also be indicated in volume units.

When the Community provisions or, in the absence thereof, the national provisions, provide for indication of a certain type of quantity such as nominal quantity, minimum quantity or average quantity, that quantity is the net quantity.

Article R112-19

(Decree No. 2005-944 of 2 August 2005 Art. 18 Official Journal of 6 August 2005 effective 25 November 2005)

Indication of the net quantity of prepacked foodstuffs is not compulsory:

1 For products whose net quantity is below 5 grams or 5 millilitres, with the exception of spices and aromatic plants;

2 For products subject to considerable losses of volume or mass which are either sold individually or are weighed in the presence of the buyer;

3 For confectionery products traditionally sold individually whose net weight is below 20 grams;

4 For jams, jellies, fruit compotes, prune creams, chestnut creams and other shelled fruits, petal confits or fruit confits and fruits preserved in grape jelly in quantities below 50 grams;

5 For cheeses entitled to use the labels of origin "Vacherin du haut Doubs" or "Mont d'Or";

6 For undefined cheeses manufactured by agricultural producers who only process milks produced by themselves, traditionally sold individually;

7 For chocolate products whose net weight is below 50 grams, sold individually.

Article R112-20

When a foodstuff is presented in a covering liquid, the drained net weight of that foodstuff is also indicated on the labelling.

Article R112-21

(Decree No. 2005-944 of 2 August 2005 Art. 19 Official Journal of 6 August 2005 effective 25 November 2005)

When pre-packaging consists of several pre-packaged items containing the same quantity of the same product, the net quantity indication shows the net quantity contained in each pre-packaged item and the total number of such items. Such indications are not compulsory, however, when the total number of individually pre-packaged items is clearly visible and easily determined from the outside and when at least one indication of the net quantity contained in each pre-packaged item is clearly visible from the outside.

When pre-packaging consists of several individual pre-packaged items containing the same quantity of the same product which are not considered to be sale units, the net quantity is indicated by showing the total net quantity and the total number of individual packages.

Article R112-22

(Decree No. 2005-944 of 2 August 2005 Art. 20 Official Journal of 6 August 2005 effective 25 November 2005)

The packer is responsible for ensuring that the labelling indicates the date until which the foodstuff shall retain its specific properties in appropriate storage conditions.

For foodstuffs which are microbiologically very perishable and which are therefore likely to present an immediate

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danger to human health after a short period of time and for foodstuffs in respect of which the health control regulations stipulate a shelf life, the said date is a use-by date indicated by wording such as "To be used until" or "To be used until the date shown" followed respectively by the date itself or by an indication of the place where it is shown on the labelling. The date consists of a clear indication of the day, the month and, where relevant, the year, in that order. This information is followed by a description of the storage conditions, including the temperature to be maintained.

In other cases, the said date is a best-before date preceded by the words "Best before" when the day is indicated and "Best before end" in other cases. This wording is followed by the date itself or by an indication of the place where it is shown on the labelling. The date consists of a clear indication of the day, the month and the year, in that order. However, when the life span of such foodstuffs is less than three months, an indication of the day and the month suffices; when that life span is longer than three months but does not exceed eighteen months, an indication of the month and the year suffices, and when the life span is longer than eighteen months, an indication of the year suffices.

The date is accompanied, where applicable, by an indication of the storage conditions, including the temperature to be maintained in order to ensure the life span indicated.

Article R112-23

(Decree No. 2005-944 of 2 August 2005 Art. 21 Official Journal of 6 August 2005 effective 25 November 2005)

Indication of a date is not required for the following foodstuffs:

- 1 Fresh fruits and vegetables, including potatoes, which have not been peeled, cut or otherwise processed. This exemption does not apply to germinating seeds and similar products such as legume shoots;
- 2 Wines, liqueur wines, sparkling wines, flavoured wines and similar products made from fruits other than grapes;
- 3 Drinks subject to codes N.C. 2206.00.91, 2206.00.93 and 2206.00.99 of (EEC) Council Regulation No. 2658/87 of 23 July 1987 relating to pricing and statistical nomenclature and the common customs tariff which are made from grapes or grape must;
- 4 Drinks titrating 10% or more alcohol by volume;
- 5 Refreshing soft drinks, fruit juices, fruit nectars and alcoholic drinks in individual containers of more than 5 litres intended for collectivities;
- 6 Bread or pastry products which, by their very nature, are usually consumed within twenty-four hours of manufacture;
- 7 Vinegars;
- 8 Cooking salt;
- 9 Sugars in solid state;
- 10 Confectionery products consisting almost solely of flavoured and/or coloured sugars;
- 11 Chewing gums and similar products for chewing;
- 12 Individual portions of ice-creams.

Article R112-25

(Decree No. 98-879 of 29 September 1998 Art. 12 Official Journal of 2 October 1998)

(Decree No. 2005-944 of 2 August 2005 Art. 22 Official Journal of 6 August 2005 effective 25 November 2005)

The storing of foodstuffs having a use-by date which has expired with the intention of selling them or distributing them free of charge, and likewise the offering for sale, selling or free distribution thereof, are prohibited.

The storing of foodstuffs in a manner which does not meet the conditions stipulated on their labelling with the intention of selling them or distributing them free of charge, and likewise the offering for sale, selling or free distribution thereof, are prohibited.

Article R112-26

(Decree no. 98-879 of 29 September 1998 art. 13 Journal officiel of 2 October 1998)

Orders issued by the minister for consumer affairs, the minister for agriculture and, When appropriate, other relevant ministers fix the conditions for determining the alcoholic strength by volume acquired, as well as practical procedures for indicating said strength.

The provisions provided for in the previous paragraph as well as in point 1 of article R. 112-9-1 do not apply to product subject to the provisions of regulation no. 1627/86 of the Council of the European communities of 6 May 1986 establishing rules for describing the alcoholic strength by volume of special wines.

Article R112-27

(Decree no. 98-879 of 29 September 1998 art. 14 Journal officiel of 2 October 1998)

(Decree no. 2000-705 of 20 July 2000 art. 4 Journal officiel of 28 July 2000)

Prior to being put on the market, foodstuffs, whether pre-packaged or not, must be accompanied by an indication enabling the batch to which they belong to be identified.

The batch indication is determined and affixed by the producer, the manufacturer or the packager of the foodstuff, the latter being responsible for said indication, or by the first established vendor within the European community.

Article R112-28

(Decree No. 98-879 of 29 September 1998 Art. 15 Official Journal of 2 October 1998)

(Decree No. 2000-705 of 20 July 2000 Art. 4 Official Journal of 28 July 2000)

(Decree No. 2005-944 of 2 August 2005 Art. 23 Official Journal of 6 August 2005 effective 25 November 2005)

The batch number of prepacked foodstuffs is shown on the pre-packaging or on a label attached to it.

The manufacturing batch number is preceded by the letter "L" unless it is clearly distinguished from the other

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wording of the labelling.

However, when the date of minimum durability or the use-by date appears on the labelling, the manufacturing batch number may be omitted provided that the said date consists of a clear indication of the day and the month, at least, in that order.

The batch number of non-pre-packaged foodstuffs appears on the packaging or on the foodstuff's container or, failing that, on the commercial documents relating thereto.

Article R112-29

(Decree no. 98-879 of 29 September 1998 art. 16 Journal officiel of 2 October 1998)

(Decree no. 2000-705 of 20 July 2000 art. 4 Journal officiel of 28 July 2000)

The following foodstuffs are exempt from indicating the batch:

Agricultural products which, when they leave the farm, are:

either sold or delivered to temporary storage, preparation or packaging stations;

are sent to producers' organisations;

are collected with a view to their immediate use in a preparation or processing procedure;

Foodstuffs, presented at places of sale to the end consumer, which:

are not pre-packaged, included where they are subsequently packaged at the request of the purchaser;

are pre-packaged, with a view to their immediate sale;

Foodstuffs contained in packaging or containers where the largest surface area is less than 10 centimetres squared;

Individual ice-creams. The indication enabling the batch to be identified must appear on bundled packages.

Article R112-30

(Decree No. 98-879 of 29 September 1998 Art. 17 Official Journal of 2 October 1998)

(Decree No. 2000-705 of 20 July 2000 Art. 4 Official Journal of 28 July 2000)

(Amending Decree No. 2005-944 of 2 August 2005 Art. 30 Official Journal of 6 August 2005 effective 25 November 2005 JORF 14 January 2006)

Orders of the Minister for Consumer Affairs, the Minister of Agriculture and, where applicable, any other interested ministers, specify the present chapter's implementing regulations, as necessary.

Article R112-31

(Decree no. 98-879 of 29 September 1998 art. 18 Journal officiel of 2 October 1998)

Any other non pre-packaged foodstuff presented at places of sale to the end consumer must itself be equipped with, or must appear in close proximity, without risk of confusion, a poster, a notice or any other appropriate means including the sales description in accordance with the conditions provided for in articles R. 112-14 and R. 112-14-1, accompanied, where appropriate, by the statements provided for in points 3 and 4 of article R. 112-9-1.

Article R112-10-1

(inserted by Decree No. 2005-944 of 2 August 2005 Art. 8 Official Journal of 6 August 2005 effective 25 November 2005)

The provisions of Article R. 112-10 do not apply to pre-packaging if its largest flat surface area is under 10 square centimetres, or to glass bottles intended for re-use which are marked indelibly and which therefore do not have a label, a ring or a neck label. The labelling of such products may simply include the wordings indicated in 1, 4 and 5 of Article R. 112-9 and, where applicable, those indicated in Article R. 112-16-1.

Article R112-15-1

(inserted by Decree No. 2005-944 of 2 August 2005 Art. 12 Official Journal of 6 August 2005 effective 25 November 2005)

Indication of ingredients is not required for the following foodstuffs:

1 Fresh fruits and vegetables, including potatoes, which have not been peeled, cut or otherwise processed;

2 Aerated waters whose name indicates that characteristic;

3 Fermented vinegars made from a single primary product to which no other ingredient has been added;

4 Cheese, butter, fermented milks and creams, insofar as only the lacteal products, enzymes and micro-organism cultures required for manufacture, or the salt required for manufacture of cheeses other than fromage frais or process cheese, have been added to those foodstuffs;

5 Products having only one ingredient, provided that the trade name is either identical to the name of the ingredient or permits determination of the nature of the ingredient without risk of confusion.

Article R112-15-2

(inserted by Decree No. 2005-944 of 2 August 2005 Art. 12 Official Journal of 6 August 2005 effective 25 November 2005)

The provisions of Article R. 112-15-1 do not apply to ingredients used in the production of a foodstuff which are always present in the finished product, albeit in modified form, and are enumerated in Appendix IV of the present chapter, or those deriving from an ingredient enumerated in that same appendix. Such ingredients are indicated as provided for in Article R. 112-16-1.

Article R112-16-1

(inserted by Decree No. 2005-944 of 2 August 2005 Art. 14 Official Journal of 6 August 2005 effective 25 November 2005)

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Any ingredient used in the production of a foodstuff which is always present in the finished product, albeit in modified form, and is enumerated in Appendix IV of the present chapter or which derives from an ingredient enumerated in that same appendix, is indicated on the labelling along with a clear reference to the name of the ingredient, unless the trade name clearly refers to the ingredient.

Any substance used in the production of a foodstuff which is always present in the finished product, albeit in modified form, and which derives from ingredients enumerated in Appendix IV of the present Chapter is deemed to be an ingredient and is indicated on the labelling, along with a clear reference to the name of the ingredient from which it derives.

For alcoholic drinks, this indication includes the word "contains" followed by name of the ingredient(s) concerned. However, such an indication is not necessary if the ingredient is already included in the list of ingredients under its specific name or appears in the drink's trade name.

These provisions are applicable to all prepacked foodstuffs, including foodstuffs presented in:

1 Glass bottles intended for re-use which are marked indelibly and which therefore do not have a label, a ring or a neck label;

2 Packaging or recipients whose largest flat surface area is under 10 square centimetres.

Article R112-16-2

(inserted by Decree No. 2005-944 of 2 August 2005 Art. 14 Official Journal of 6 August 2005 effective 25 November 2005)

When an ingredient has been made from several others, that composite ingredient may be included in the list of ingredients under its own name and in the position corresponding to its weight if this is provided for in the regulations or is an established practice, provided that it is immediately followed by an enumeration of its own ingredients.

Article R112-16-3

(inserted by Decree No. 2005-944 of 2 August 2005 Art. 14 Official Journal of 6 August 2005 effective 25 November 2005)

The enumeration referred to Article R. 112-16-2 is nevertheless not compulsory for ingredients other than those enumerated in Appendix IV of the present chapter or deriving from an ingredient enumerated in that same appendix:

1 When the composition of the composite ingredient is defined in accordance with the Community regulations in force, and provided that the composite ingredient represents less than 2% of the finished product; this provision nevertheless does not apply to additives, without prejudice to the provisions of Article R. 112-3;

2 For composite ingredients consisting of mixtures of spices and/or aromatic plants which represent less than 2% of the finished product, with the exception of additives, and without prejudice to the provisions of Article R. 112-3;

3 When the composite ingredient consists of a foodstuff in respect of which the regulations do not require a list of ingredients.

CHAPTER III

Price and conditions of sale

Article R113-1

Article R113-1

(Decree no. 99-513 of 16 June 1999 art. 1 Journal officiel of 23 June 1999)

The sale of goods or products, or the provision of service at fixed prices in violation of the decrees adopted in application of article 1 of order no. 86-1243 of 1 December 1986 reproduced in article L. 113-1, or orders with the same objective adopted in application of order no. 45-1483 of 30 June 1945 and kept in force, as a transitional arrangement, by article 61 of the order of 1 December 1986 mentioned above, appearing in the annex to this code, is punishable by the fine laid down for petty offences (fifth category).

The same penalties apply in the event of breach of the orders provided for in article L. 113-3 fixing consumer information procedures in respect of prices and special terms of sale as well as in the event of breach of order with the same objective adopted in application of order no. 45-1483 of 30 June 1945.

In the event of repeat offence, the fines laid down for repeated fifth category offences are applicable.

CHAPTER IV

Information on delivery dates

Article R114-1

Article R114-1

(Decree no. 2001-95 of 2 February 2001 art. 1 Journal officiel of 3 February 2001 in force on 1 January 2002)

Contracts concluded between professionals and consumers relating to the sale of movable property or the supply of a service provision where the agreed price is in excess of EUR 500 are subject to the provisions of article L. 114-1 where the delivery of the goods or the supply of the services is not immediate.

CHAPTER V

Development of products and services

Articles R115-1 to
R115-12

Section 4

Certification of services and non-food products

Articles R115-1 to
R115-12

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Subsection 1 Certifying bodies

Articles R115-1 to
R115-5

Article R115-1

The declaration provided for in article L. 115-28 is sent by the certifying body to the minister for industry, by recorded delivery letter.

It is accompanied by a dossier establishing the impartiality and competence of the certifying organisation, assessed with respect to current regulations relating to certification organisations.

Article R115-2

The dossier mentioned in article R. 115-1 includes:

A description of the organisation's activities, its structure, its technical resources, its mode of funding as well as any links it may have with manufacturers, importers or vendors of products or services to which the certification which it is offering to implement relates;

Its articles of association, its rules of procedure, the names and positions of directors responsible for certification and members of the board or similar body;

A list of products or services that the organisation proposes to certify, a description of the methods or procedures that will be used to compile and validate the benchmarks used by the organisation for the certification and procedures for presenting the certification;

General rules relating to the issue and monitoring of the use of the certification;

The measures provided for in respect of professionals who may use their certification contrary to the provisions of articles L. 115-27 and L. 115-28;

The methods that the certifying body proposes to use to monitor the products or services that it certifies, the distribution of responsibility within the organisation as well as the competence of personnel charged with certification;

Procedures for managing documents relating to certification and to complaints.

Article R115-3

If the declaration includes the documents listed in article R. 115-2 hereinabove, the minister for industry acknowledges receipt by means of a recorded delivery letter, within fifteen days of receiving the dossier.

If the declaration dossier is incomplete, the minister for industry, within fifteen days of receiving the dossier, invites the body, by recorded delivery letter, to supply the additional documents in accordance with the conditions provided for by article R. 115-1. When these documents have been produced, the first paragraph of this article applies.

Article R115-4

Any modification of one of the components of the dossier provided for in article R. 115-2 must be the subject of a declaration in the same forms and must give rise to an acknowledgement of receipt in accordance with the terms provided for in article R. 115-3.

Article R115-5

The list of declared certifying bodies is published and regularly updated, in the form of a notice appearing in the Journal officiel de la République française. This publication, which is not valid as official acceptance, is not binding for the government.

Subsection 2 Accreditation

Articles R115-6 to
R115-7

Article R115-6

The impartiality and competence of a certifying body may be established by a document issued to this end by an accreditation authority, acknowledged by joint order of the minister for consumer affairs and minister for industry.

In this event, the dossier accompanying the declaration provided for by article R. 115-1 can only include the components cited in points 1, 2 and 3 of article R. 115-2.

Article R115-7

Only independent, impartial and competent organisations conforming to existing international standards, disposing of adequate technical and financial resources and made up in a balanced way such as to represent all the interests concerned by the certification, without predominance of one over the other, can be recognised as accreditation authorities.

Subsection 3 Benchmarks

Articles R115-8 to
R115-9

Article R115-8

Benchmarks must, in accordance with the conditions given in point 3 of article R. 115-2, be drafted and validated in consultation with representatives of the various interested parties and, in particular, associations or bodies representing professionals, associations or bodies representing consumers and users, as well as relevant government departments.

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When this relates to documents drafted unilaterally, they must at least be validated by representatives of the aforementioned various interested parties.

The organisation of said consultation and validation lies with the certifying body which is obliged to bring together all the partners involved, in adhering to the undertakings given in accordance with the provisions of point 3 of article R. 115-2.

Article R115-9

Each benchmark defines its own field of application and includes:

The characteristics used to describe the products or services to be monitored, the limiting value of characteristics that may be required for certification and procedures used to categorise these products or these services in line with their characteristics;

The nature and means of presenting information considered to be essential and that must be brought to the attention of users and consumers;

Trial, measuring, analytical, test or evaluation methods used to determine the certified characteristics and which, as far as possible, must refer back to existing officially approved standards;

The checking procedures used by the certifying body and those that the manufacturers, importers, retailers of products or services to which the certification relates undertake to carry out.

Where appropriate, undertakings given by manufacturers or service providers concerning installation conditions for products or for the performance of certified services, after-sales service conditions and those relating to the reparation of damages caused to users and consumers for non-conformance of the product or service with the certified characteristics.

Subsection 4

Consumer and user information

Articles R115-10 to
R115-11

Article R115-10

When reference is made to the certifications in advertising, labelling or display of any product or service or on related business documents of any kind, the consumer or user must compulsorily be made aware of the following:

The name or company name of the certifying body or its collective certification mark, as well as its address;

Identification of the benchmark serving as a basis for the certification;

Characteristics certified as being essential and presented in accordance with the conditions provided for in point 2 of article R. 115-9.

Article R115-11

Validated benchmarks are published in the form of a notice in the Journal officiel de la République.

This publication includes the name and address of the certifying body, accurate identification of the product or the service in question as well as the essential components of the benchmark and, in particular, the certified characteristics being checked.

These benchmarks held at the disposal of the general public by the certifying body, in accordance with the conditions provided for by the fourth paragraph of article L. 115-28.

Subsection 5

Criminal provisions

Article R115-12

Article R115-12

The act, by any person responsible for marketing a product or any service provision, that makes reference to the certification of this product or service, of failing to include in the advertising, labelling or presentation of the latter, one of the statements or indications provided for in article R. 115-10, is punishable by the penalties provided for petty offences (fifth category).

TITLE II

Commercial practice

Articles R121-1 to
R122-1

CHAPTER I

Regulated commercial practice

Articles R121-1 to
R121-13

Section 2

Distance selling

Articles R121-1 to
R121-2

Article R121-1

(Decree n°2003-137 of 18 February 2003, article 1, Official journal of 20 February 2003)

The violation of the provisions of article L121-18 shall be punished by the fines laid down for petty offences of the fifth category.

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Article R121-1-1

The violation of the provisions of article L111-19 shall be punished by fines laid down for petty offences of the fifth category.

Article R121-1-2

The refusal of the seller to refund (the price), according to the terms fixed in article L121-20-1, of the goods returned by the buyer, when the latter is entitled to withdraw, shall be punished by the fines laid down for petty offences of the fifth category.

Article R121-2

(Decree n° 2003-137 of 18 February, article 1, Official Journal of 20 February 2003)

I - In case of repetition of offences provided for in articles R 121-1, R121-1-1 and R121-1-2, the fines laid down for repetition of petty offences of the fifth class shall apply.

II - The legal persons may be held responsible for the offences provided for in articles R121-1, R121-1-1 and R121-1-2 according to the terms provided for in article 121-2 of the Penal Code. They face the fines according to the conditions provided for in article 131-41 of the same code.

Section 3
Canvassing

Articles R121-3 to
R121-6

Article R121-3

The detachable form intended to facilitate use of the withdrawal option provided for in article L. 121-25 forms part of the copy of the contract left with the customer.

It must be able to be easily separated.

The following statement must appear on the copy of the contract:

“If you cancel your order, you can use the detachable form attached hereto”

Article R121-4

The form provided for in article L. 121-24 includes, on one side, the full and exact address to which it must be sent.

Sending said form to this address within the seven day deadline provided for in article L. 121-25 has the effect of cancelling the order without the vendor being able to invoke an error in the wording of said address, as it appears on the detachable form, or the fact that the receipt for the dispatch required by article L. 121-25 for the cancellation of the contract, was not signed by an authorised signatory, at this address.

Article R121-5

The form provided for in article L. 121-24 includes, on the reverse, the following statements in clearly legible characters:

At the top, the words “Contract cancellation” (in bold letters), followed by the reference “Consumer code, articles L. 121-23 to L. 121-26”;

Then, under the heading “Conditions”, the following instructions, listed on separate lines:

“Complete and sign this form”;

“Send it by recorded delivery mail” (these words must be underlined or must appear in bold);

“Send it to the address appearing on the reverse”;

“Post it, at the latest, on the seventh day after the date of the order or, if this deadline would normally expire on a Saturday, Sunday or bank holiday or non-working day, on the next working day” (underlined and in bold);

And, after a space, the phrase:

“I, the undersigned, hereby declare the order appearing hereinafter to be cancelled”, followed by the following pieces of information, one on each line:

“Nature of the goods or services ordered...”

“Order date”.

“Customer name”.

“Customer address”.

Finally, clearly shown, the words:

“Customer signature”.

Article R121-6

The seller must only include the statements provided for in articles R. 121-4 and R. 121-5, in the form, as well as references of an accounting nature.

Section 5
Sales or services with free gifts

Articles R121-8 to
R121-10

Article R121-8

(Decree no. 2001-95 of 2 February 2001 art. 1 Journal officiel of 3 February 2001 in force on 1 January 2002)

The maximum value of samples, objects and services referred to in the second paragraph of article L. 121-35 is determined in line with the net sale price, inclusive of tax, of the products, goods or services to which the sale relates in

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accordance with the following terms: 7% of the net price defined hereinabove if the latter is less than or equal to EUR 80; EUR 5 plus 1% of the net price defined hereinabove if the latter is in excess of EUR 80.

This value must not, under any circumstances, exceed EUR 60 and shall be understood to be ex factory and inclusive of tax for objects produced in France and carriage free, duty-paid at the French border for imported objects.

Article R121-9

The following are not considered as free gifts:

The product's customary packaging, goods, products or service provisions essential for the normal use of the product, goods or services being sold;

After-sale service provisions and parking facilities offered by traders to their customers;

Services provided free of charge if said services are not ordinarily the subject of a fee-paying contract and are devoid of market value.

Article R121-10

The objects mentioned in article R. 121-8 must be clearly and indelibly marked with the name the brand name, the distinguishing abbreviation or logo of the person involved in the publicity exercise.

The samples referred to in the same article must bear the wording: "Free sample not for resale", written in a legible and indelible manner, clearly displayed.

Section 6

Lottery and sweepstake averting

Articles R121-11 to

R121-13

Article R121-11

When documents introducing a written advertising operation likely to engender hopes of winning, by means of the random selection of participants, include the following components or some of these components:

Order form;

Extracts from a regulation;

Presentation of lots;

Entry form or slip;

these components must each appear in a separate Section bearing the clearly marked headings given above which correspond to the purpose of the document, to the exclusion of any other wording.

Article R121-12

The lots brought into play and appearing in the list provided for in article L. 121-37 are given in order of value.

Article R121-13

(Decree no. 99-513 of 16 June 1999 art. 3 Journal officiel of 23 June 1999)

The following are punishable by the fines laid down for petty offences (fifth category):

Sales or sale offers, service provisions or offers of these service provisions made with free gifts to consumers or purchasers, prohibited by article L. 121-35;

Refusals or rendering subject to conditions, of sales or service provisions, prohibited by article L. 122-1;

Breaches of rules on the value of samples fixed in article R. 121-8;

Breaches of rules on the marking of advertising objects defined in article R. 121-10.

In the event of a repeat offence, the fines laid down for repeated petty offences (fifth category) apply.

CHAPTER II

Illegal business practices

Article R122-1

Section 2

Unsolicited goods and services

Article R122-1

Article R122-1

Rules relating to the prohibition of unsolicited postal sales are defined by article R. 635-2 of the French penal code reproduced hereinafter:

"Art. R. 635-2:

"The act of sending a person, without prior request from the latter, any object whatsoever accompanied by correspondence indicating that this object may be accepted for payment of a fixed price or returned to its sender, even if said object can be returned without cost for the addressee, is punishable by the fine laid down for petty offences (fifth category).

"Persons guilty of the contravention provided for in this article shall also incur the following additional penalties:

A ban, for a period of three years at the most, on issuing cheques other than those which permit the withdrawal of funds by the drawer from the drawee or those which are certified;

The confiscation of the thing which served or was intended to commit the offence or of the thing which is the resultant product.

"Legal persons may be declared criminally liable, in accordance with the conditions provided for by article 121-2, for the offence defined in this article.

"The penalties incurred by legal persons are:

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"1. A fine, in accordance with the procedures provided for by article 131-41;

"2. A ban, for a period of three years at the most, on issuing cheques other than those which permit the withdrawal of funds by the drawer from the drawee or those which are certified;

"3. The confiscation of the thing which served or was intended to commit the offence or of the thing which is the resultant product.

"A repeat of the contravention provided for in this article is repressed in accordance with articles 132-11 and 132-15".

TITLE III

General contractual provisions

Articles R132-1 to R134-1

CHAPTER II

Unfair terms

Articles R132-1 to R132-6

Section 1

Consumer protection against unfair terms

Articles R132-1 to R132-2

Article R132-1

In sale contracts concluded between professionals, on the one hand, and non-business or consumers, on the other, clauses with the aim, or effect, of cancelling or reducing the right to reparation of the business or consumer in the event of non-fulfilment by the business of any one of its obligations, are prohibited as abusive in the sense of paragraph 1 of article L. 132-1.

Article R132-2

In contracts concluded between businesses and non-business or consumers, clauses with the aim, or effect, of reserving the business the right to unilaterally amend the characteristics of the goods to be delivered or the service to be rendered, are prohibited.

It may, however, be stipulated that the business may make modifications relating to technical changes, provided that there is no resultant price increase nor alteration in quality and that the clause reserves the right of the non-business or consumer to mention the characteristics to which his undertaking is subject.

Section 2

The unfair terms commission

Articles R132-3 to R132-6

Article R132-3

The unfair terms commission, instituted by article L. 132-2, includes thirteen members, divided up as follows:

A member of the national legal service, chair;

Two legal or administrative magistrates or members of the Council of State;

Two entities qualified in contract law or technique, selected on the advice of the Conseil national de la consommation;

For professionals' representatives;

Four business representatives.

A vice-chair, appointed by virtue of point 2, is designated.

The office of Government commissioner is performed by the director general for competition, consumer protection and fraud prevention or his/her representative.

Article R132-4

The chair and the commission members are appointed by order of the minister for consumer affairs for a renewable three year term of office. This order designates a deputy for each regular member apart from the chair. Magistrates are appointed at the proposal of the Keeper of the Seals, Ministry for Justice.

No commission member may deliberate on a matter in which he/she has a direct and personal interest or if he/she is representing, or has represented, one of the interested parties.

The commission is assisted by a secretary general and by one or more permanent reporters provided by the minister for consumer affairs. In addition, special reporters may be appointed by the chair on the basis of their skills.

Article R132-5

The commission sits in plenary session or in one or more restricted formations comprising the chair or the vice-chair and commission members designated to this effect by the chair.

The chair divides cases that he does not intend to reserve for plenary session between the restricted formations. He divides, with the secretary general, cases between reporters.

Commission members and reporters may hear any person likely to provide information on cases referred to them and may ask for any document required for the completion of their task to be sent to them.

Sessions are not public. The interested parties may ask for a hearing prior to the debate apart from where a judicial

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referral is being examined. In the event of votes being equal, the chair shall have the casting vote.

Any regular member who fails to attend three consecutive meetings, without a legitimate reason, is considered to have resigned.

The commission establishes its rules of procedure which, in particular, defines the physical procedures for admissibility of referrals other than those of a judicial origin. This regulation is published in the Official bulletin on competition, consumer protection and fraud prevention.

Article R132-6

The commission may be asked for its opinion where, upon the occasion of proceedings, the unfair nature of a contractual term is alleged.

The competent judge asks the commission, by decision not open to appeal, for its opinion on the unfair nature of this term as defined by article L. 132-1. The opinion is not binding for the judge.

The commission makes known its opinion within a maximum of three months from the referral.

Any decision on the substance of the case is deferred until the commission's opinion has been received or, failing this, until the expiry of the aforementioned three month deadline. Urgent or interim measures may be adopted.

CHAPTER IV

Provision of standard form contracts

Article R134-1

Article R134-1

Professional service providers or vendors shall be punished by fines provided for petty offences (5th category) for failing to send a copy of their standard agreements to any interested person who has made a request for same.

In the event of a repeat offence, fines laid down for repeated petty offences (5th category) apply.

TITLE IV

Agent's powers and jurisdictional proceedings

Articles R141-1 to R142-2

CHAPTER I

Special provisions relating to agent's powers and to jurisdictional proceedings

Articles R141-1 to R141-2

Article R141-1

Rules relating to reports provided for in article 46 of order no. 86-1243 of 1 December 1986 relating to free prices and competition are fixed by article 31 of decree no. 86-1309 of 29 December 1986 reproduced hereinafter:

"Art. 31:

"The reports provided for in article 46 of order no. 86-1243 of 1 December 1986 relating to freedom of prices and competition are compiled as soon as possible. They state the nature, the date and place of the investigations and checks carried out. They are signed by the investigator and the person concerned by the investigations. In the event of the latter's refusal, this is mentioned in the report".

Article R141-2

Rules relating to the reports provided for in article 48 of order no. 86-1243 of 1 December 1986 relating to free prices and competition are fixed in article 32 of decree no. 86-1309 of 29 December reproduced hereinafter:

"Art. 32:

"The reports provided for in article 48 of order no. 86-1243 of 1 December 1986 relating to free prices and competition recount the sequence of the inspection and record the investigations carried out. They are written in the field. The inventory of papers and documents seized is annexed to the report.

Reports are signed by investigators, by the occupant of the premises or his/her representative as well as by the judicial police officer charged with attending these operations.

One copy of the report and the inventory is given to the occupant of the premises or to his/her representative. These papers and documents cannot be cited against interested parties until after their return or once the interested parties have been able to familiarise themselves with said papers and documents.

CHAPTER II

Simplified civil procedures

Articles R142-1 to R142-2

Article R142-1

Civil disputes born of the application of this code are covered, where the amount of the claim does not exceed the rate of jurisdiction ruling in last resort of the tribunal d'instance, by rule relating to the simplified referral to the tribunal d'instance fixed by articles 847-1 and 847-2 of the French new code of civil procedure reproduced hereinafter:

- Art. 847-1: "When the amount of the claim does not exceed the rate of jurisdiction ruling in last resort of the tribunal d'instance, the matter may be referred to said court by a declaration made, submitted or addressed to the office of the clerk of the court where it is registered.

The declaration must indicate the name, forenames, profession and address of the parties or, for legal entities, their company name and registered office and must specify the purpose of the claim.

The period of limitation and deadlines for taking action are interrupted by registration of the declaration.

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Art. 847-2:

The parties are called to the hearing by the clerk to the court by recorded delivery letter. On the same day the clerk sends a copy of this invitation by ordinary mail. The claimant may also be called verbally against a signature.

The invitation to attend sent to the counsel for the defence is valid as a summons. It states that, should the defendant fail to attend, he/she risks having a judgement made against him/her based solely on the information supplied by his/her adversary. A copy of the declaration is annexed to the invitation to attend".

Article R142-2

(Decree No. 97-298 of 27 March 1997 Article 1 Official Journal of 3 April 1997)

(Decree No. 2004-836 of 20 August 2004 Article 51 Official Journal of 22 August 2004 effective 1 January 2005)

Civil disputes arising from application of the present code may come within the scope of the procedure referred to in Articles 1425-1 to 1425-9 of the New Code of Civil Procedure reproduced hereunder:

"Article 1425-1:

"Application for performance in kind of an obligation deriving from a contract concluded between persons who lack trader status may be made to the district court when the value of the service in respect of which performance is sought does not exceed the said court's financial limit.

"The local judge is competent within the limits stipulated in the Judicial Organisation Code and Article 847-4 of the present code".

"Article 1425-2:

"The application is made, at the applicant's discretion, either to the district court of the place where the defence counsel is domiciled or to the district court of the place of performance of the obligation".

"Article 1425-3:

"The application takes the form of a petition lodged with or sent to the clerk's office by the beneficiary of the obligation or by the persons referred to in Article 828.

"The petition contains:

"1. For natural persons, the surname, forenames, occupation and address of the parties or, for legal entities, their corporate name and their registered office;

"2. A precise indication of the nature of the obligation in respect of which performance is sought and of the basis therefor;

"3. Any damages to be claimed in the event of failure to perform.

"It is accompanied by supporting documents.

"Registration of the petition at the clerk's office interrupts the limitation period and the time limits for performance.

"Article 1425-4:

"If, on seeing the documents produced, the judge considers the application to be founded, he issues an unappealable order to perform.

"He determines the object of the obligation and the time limit and conditions applicable to its performance.

"The order stipulates, moreover, the place, date and time of the hearing at which the case shall be examined, unless the applicant has made it known that the order has been executed.

"Article 1425-5:

"The clerk's office shall notify the order to the parties by recorded-delivery registered mail, and shall send them a copy by ordinary post on the same day. The letter of notification shall refer to the provisions of Articles 1425-7 and 1425-8".

"Article 1425-6:

"The order to perform and the petition are held as official minutes of the case by the clerk's office, which also provisionally holds the documents produced in support of the petition".

"Article 1425-7:

"When the order to perform has been executed within the time allowed, the applicant shall inform the clerk's office thereof. The case shall then be removed from the list for hearing.

"If the clerk's office is not so informed and if the applicant fails to attend the hearing without a legitimate reason, the court shall declare the performance proceedings null and void.

"The declaration of nullity may be revoked if, within fifteen days, the applicant informs the clerk's office of a legitimate reason which he was unable to invoke at the proper time. In such cases, the parties are summoned to a later hearing.

"Article 1425-8:

"In the event of total or partial non-performance of the order to perform which it issued, the court shall rule on the application, after attempting to reconcile the parties.

"Within the limits of its absolute jurisdiction, it shall hear and determine the initial application and all incidental claims and defences on the merits.

"If it is found to lack jurisdiction, the case shall be referred to the competent jurisdiction pursuant to the rules laid down in Article 97".

"Article 1425-9:

"If the judge rejects the petition, the decision is unappealable for the applicant, unless he decides to proceed on the basis of ordinary law. The petition and the documents produced are returned to the applicant".

BOOK II

Quality of products and services

Articles R211-1 to R224-12

**TITLE I
Conformity**

Articles R211-1 to R216-2

CHAPTER I
General provisions

Articles R211-1 to R211-5

Section 2
Special provisions relating to contractual guarantee

Articles R211-1 to R211-5

Article R211-1

The provisions of articles R. 211-2 and R. 211-3 apply to written documents recording contracts concluded between business and non-business or consumers and concerning the guarantee and after-sales service for equipment placed on a list fixed by order of the ministers for consumer affairs, for justice, for industry, for trade and the craft industry.

Article R211-2

Presentation of written documents must conform to the table annexed to this code and all of the headings must be completed.

Article R211-3

Anyone who contravenes the provisions of article R. 211-2 will be punished by the fine laid down for petty offences (third category).

Article R211-4

In contracts concluded between business, on the one hand, and, on the other hand, non-business or consumers, the business cannot contractually guarantee the item to be delivered or the service to be rendered without clearly stating that, whatever the circumstances, the legal guarantee obliging the business seller to cover the purchaser against any consequences of faults or hidden defects in the item being sold or the service being rendered, applies.

Article R211-5

Business who have inserted a clause drafted in contravention of the provisions of article R. 211-4 into a contract concluded with a non-business or consumer, will be punished by the fine laid down for petty offences (fifth category).

CHAPTER IV
Powers of investigation

Articles R215-1 to R215-23

Section 1
Authorised authorities

Article R215-1

Article R215-1

The offences referred to in articles L. 213-1 to L. 216-9 are researched and investigated in accordance with provisions appearing in this chapter and in chapter VI. These provisions do not pose an obstacle to proof of said offences being established by means of common law procedures.

Section 2
Investigation and report

Articles R215-2 to R215-15

Article R215-2

The officials and agents listed in L. 215-1 carry out elementary checks with the aim of identifying merchandise or revealing any non-conformity in respect of the characteristics that they should possess. They compile reports of their findings. They may attach thereto, packaging or labelling specimens as well as a sample of the merchandise intended to serve as items produced in evidence. The quantity of the product rendered unusable is the subject of the reimbursement procedure provided for in article R. 215-9.

They may, in addition, take samples and make seizures in accordance with the conditions fixed by the articles given below.

Article R215-3

Members of the police force are obliged, if necessary, to give assistance for investigations, samples or seizures to the agents mentioned in article L. 215-1.

Transport operators are obliged not to obstruct requisitions for sample taking and for seizures and to represent the permits, way bills, receipts, bills of lading and declarations that they hold.

The various public administrations are obliged to give the agents mentioned in article L. 215-1 the information

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required for the completion of this task.

Article R215-4

Apart from in the cases provided for in articles R. 215-12 to R. 215-14 any sample taken includes three separate samples, one for the laboratory for analysis, the other two possibly intended for experts.

Article R215-5

All sampling results, a meeting having been held, in the drafting, on unstamped paper, of a report comprising the following information:

The name, forenames, position and residence of the reporting officer;

The date, time and place where the sample was taken;

The name, forenames, profession and domicile or residence of the person on whose premises the sample was taken. If the sample took place on the highway, the names and domiciles of the persons appearing on the way bills or bills of lading as senders and addressees;

The number of the sample order;

The signature of the reporting officer.

Article R215-6

The report mentioned in the previous article must, in addition, contain a brief description of the circumstances under which the sample was taken, must relate the marks and labels affixed to envelopes or containers, the size of the batch of merchandise from which the sample was taken as well as all information deemed to be necessary to establish the authenticity of the samples taken, the identity of the merchandise and the exact name under which the latter was held or put on sale.

The proprietor or holder of the merchandise or, where appropriate, the transport company representative may, in addition, have any statements that it deems useful inserted into the report. The latter is invited to sign the report and, in the event of refusal, this is mentioned by the reporting officer.

The report also shows the number with which it is registered upon receipt by the administrative department.

Article R215-7

Samples must be taken in such a way that the three samples are, as far as possible, identical.

To this end, orders issued by the minister for economic affairs and finance, adopted at the proposal of the commission referred to in article R. 551-1, may determine, for each product or piece of merchandise, the quantity to be sampled, the procedures to be used to obtain uniform samples, as well as precautions to be taken for the transportation and storage of samples.

Article R215-8

Any sample taken is placed under seal. These seals have an identifying label bearing, in particular, the following information:

The name under which the product is either held with a view to being sold, put on sale or sold;

The date, time and place where the sample was taken;

The name, company name and address of the person on whose premises the sample was taken. If the sample is taken on the highway, the names and addresses of the senders and addressees;

The sample order number;

The number with which the samples are registered upon receipt by the administrative department;

The signature of the reporting officer.

Article R215-9

Soon after having sealed the samples, the reporting officer, if he/she is in the presence of the proprietor or holder of the merchandise, must formally notify the latter of the declared value of the samples taken. The proprietor or holder may provide proof of this value with the aid of his/her accounting documents.

The report mentions the value declared by the proprietor or holder and, should the reporting officer believe this value to be exaggerated, the estimate made by this agent.

A receipt detached from counterfoil book is handed to the proprietor or holder of the merchandise. This includes a description of the nature and quantities of samples taken, the declared value and, in the case provided for in the paragraph above, the estimate made by the agent.

In the event of sampling during transit, the transport company representative receives a receipt for his/her discharge indicating the nature and quantity of the merchandise sampled as well as the value estimated by the agent.

Article R215-10

One of the samples is left for the proprietor or holder of the product. If the latter refuses to store said sample in the depot, this refusal is mentioned in the report.

It must not, under any pretext, modify the state of the sample assigned to it. The guarantee measures that may be imposed, to this end, will be fixed by one of the ministerial orders provided for in article R. 215-7.

Article R215-11

The report and samples, with the exception of the one that the proprietor or holder of the product has been able to store in the depot, are immediately sent, by the reporting officer, to the prefecture of the department where the sample was taken and, within the jurisdiction of the Préfecture de police, to the préfet de police.

If this relates to samples taken for comparison with other samples taken previously, the report and the samples are

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sent by the reporting officer to the government department under whose jurisdiction the initial sample was taken.

Ministerial orders may authorising the sending of samples to sub-prefectures or to any other administrative department.

The administrative department that receives this deposit registers it, lists the entry number on the report and the label on each sample attached to this report. As soon as possible it sends one of these samples to the competent laboratory. Samples for comparison must be sent to the same laboratory.

The other sample or, in the case provided for by the first paragraph of article R. 215-10, the two other samples are retained by the prefecture.

If the nature of the commodities or products does, however, require special storage procedures, the samples are sent to the laboratory, where measures are taken in accordance with the orders provided for by article R. 215-7.

Article R215-12

(Decree no. 99-513 of 16 June 1999 art. 4 I Journal officiel of 23 June 1999)

In the case of the alterable products mentioned in article L. 215-15, a receipt submitted to the proprietor or holder of the object under the conditions provided for by article R. 215-9 mentions the value of the quantity of product rendered unusable.

The product placed under seals is deposited by the agent in a place suitable, as far as possible, for its storage. It may be left in the care of its proprietor or holder.

In view of the possible expert survey provided for in article L. 215-15, the reporting officer invites the proprietor or holder of the object to choose an expert and a replacement expert from the official lists, or to refer to a sole expert appointed by the juge d'instruction.

The reporting officer notes, as soon as possible, in a report, all the circumstances likely to justify the start of preliminary investigation, as well as statements from the proprietor or holder of the object relating to the expert survey. This report is sent to the procureur de la République .

A copy is sent to the préfet.

Article R215-13

(Decree no. 99-513 of 16 June 1999 art. 4 II Journal officiel of 23 June 1999)

In the cases provided for in article L. 215-15 where three samples cannot be taken from the object or merchandise, the object of merchandise is placed under seals in its entirety. The report and the object or merchandise are sent to the procureur de la République. The object or the merchandise may, however, be left on deposit with its proprietor or holder. The formalities required by the three final paragraphs of article R. 215-12 are carried out.

Article R215-14

In respect of checks on bacteriological or biological purity, only one sample is taken.

The sample is immediately forwarded by the reporting officer to one of the laboratories competent for the purposes of bacteriological studies.

The report is sent to the préfet in accordance with the rules fixed by article R. 215-11.

Article R215-15

In the event of non-suit or relaxe, reimbursement of the value of the samples is made in accordance with the terms provided for by article R. 215-21, apart from where it is stated, by the order of non-suit or by the relaxe, that the product was falsified, adulterated or toxic.

Section 3

Emergency measures

Articles R215-16 to
R215-17

Article R215-16

Agents witnessing a flagrant act of falsification, fraud or putting on sale of adulterated or toxic products are obliged to open an inquiry immediately. A report is compiled to this end and the reporting agent records, with the statements provided for in article R. 215-5 and R. 215-6, all the circumstances likely to establish before the judicial authority the value of the investigations carried out.

This report is sent by the agent within twenty four hours to the procureur de la République.

A copy is sent to the préfet .

Article R215-17

The seized products are placed under seal and sent to the procureur de la République at the same time as the report. If it proves impossible to dispatch them immediately, they are left for storage by the interested part or, subject to the refusal of the latter, in a place selected by the reporting official.

Section 4

Analysis

Articles R215-18 to
R215-23

Article R215-18

(Decree no. 99-1233 of 31 December 1999 art. I Journal officiel of 4 January 2000)

The competence of each government laboratory allowed to analyse or test samples is fixed by an order issued by

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the minister for economic affairs and finance. Where the government laboratory comes under the jurisdiction of another minister, the order is adopted jointly by this minister and the minister for economic affairs and finance.

Article R215-18-1

Laboratories other than those provided for in article R. 215-18 may be accepted for analysis or testing, subject to being approved. The minister for economic affairs and finance fixes by order the conditions for approval of laboratories that supply proof of their aptitude to carry out analyses or tests in accordance with current regulations and that offer guarantees in terms of confidentiality, impartiality and independence in respect of any company or group of companies performing a production, importation or marketing activity for products or goods within the analytical domain for which the approval is sought. It grants approval by order.

Approved laboratories are subject, at any time, to monitoring of adherence to the terms of the approval, on the basis of documents and on the spot, by the directorate-general for competition, consumer protection and fraud prevention.

Where the laboratory does not fulfil one or more of the conditions required for approval, it must inform the director general for competition, consumer protection and fraud prevention of this without delay. In the event of non-adherence to the conditions required for approval, the minister for economic affairs and finance may suspend or withdraw the approval.

Article R215-18-2

Where the laboratories mentioned in articles R. 215-18 and R. 215-18-1 cannot perform, due to their exceptionally specialist nature or due to extreme urgency, the analyses or test, the government laboratory that normally deals with the product in question uses, under its supervision, a laboratory that is in a position to provide the services required, or secures the assistance of an expert of its choice.

Article R215-19

Laboratories must use the methods indicated by the commission referred to in article R. 551, where these exist, for the examination of samples.

These methods are described in detail by orders issued by the minister for economic affairs and finance or, if the matter relates to government laboratories under the jurisdiction of another minister, by joint orders issued by the minister for economic affairs and finance and the relevant minister, adopted upon the advice of this commission.

Laboratories may, however, employ other additional methods and their managers may secure the assistance of any specialist of their choice.

Analyses are both qualitative and quantitative.

Article R215-20

(Decree no. 99-1233 of 31 December 1999 art. 1 Journal officiel of 4 January 2000)

The government laboratory, mentioned in article R. 215-18 compiles, as soon as its work is complete, or as soon as the results of analyses or tests assigned to laboratories allowed to proceed with the expert survey by virtue of articles R. 215-18-1 and R. 215-18-2 are received, a report in which the results of the examination and analyses to which this sample has been subjected are recorded and interpreted.

Where a laboratory covered by articles R. 215-18-1 or R. 215-18-2 is called upon, its analyses and test reports are attached to the government laboratory report.

The government laboratory report is sent to the préfet of the department where said sample comes from.

Article R215-21

Should the laboratory report show that the sample conforms to the characteristics to which the product should adhere, the préfet, in the absence of any other piece of information likely to constitute an allegation of fraud, notify the proprietor or holder of the product of this without delay.

In this event, the value of the samples taken is paid automatically.

Article R215-22

Should the laboratory report show that the sample does not conform to the characteristics to which the product should adhere, the directorate for competition, consumer affairs and fraud prevention, after all necessary additional inquiries, constitutes the dossier in consideration of all the information at its disposal.

This dossier is sent by the préfet to the procureur de la République . If it relates to products that are subject to regulations appertaining to indirect contributions, an opinion must be given by the préfet to the director of the department's tax services.

Article R215-23

In respect of bacteriological or biological purity checks, should the laboratory report show that the product, although not conforming to the characteristics to which it should adhere, is not toxic, the préfet arranges, as soon as possible, for a copy of the laboratory report to be submitted to the proprietor or holder of the product by the directorate for competition, consumer protection and fraud prevention. It invites the proprietor or holder to take all necessary measures to remedy the non-conformity and informs the latter that a second sample of the product will be taken at a later date. There must be a minimum of eight days and a maximum of one month between the notification of these observations and the second sampling.

If the analysis performed subsequent to this second sampling once again reveals that the sample does not comply with regulatory requirements, the préfet sends the procureur de la République the dossier comprising, in particular, the two sampling reports and the two laboratory reports, as well as all the information gathered by the directorate for

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competition, consumer protection and fraud prevention

The proprietor or holder of the product is informed by the procureur de la République that it may have access to the file, that a third sample likely to motivate the institution of legal proceedings will be taken at a later date on its product within a maximum of one month and that he/she has a period of three clear days to present his/her observations and to state whether the expert survey agreed by both parties provided for in article L. 215-17 is required and whether he/she also requires the expert of his/her choice to take part in the sampling.

The proprietor or holder of the product may explicitly waive the right to appoint an expert and a replacement and may refer to the findings of the expert appointed by the juge d'instruction .

Should the expert take part in the sampling operation, he/she is invited, by the reporting officer, to sign the report and, if necessary, add his/her observations. Once a meeting has been held the officer forwards this third sample to the competent laboratory that has already examined the first two samples.

CHAPTER VI Common provisions

Articles R216-1 to
R216-2

Article R216-1

The procureur de la République must make known, at least ten days in advance, the date and time of the hearing at which the case is to be called:

To the departmental customs director or his/her representative, if the case relates to products that are subject to regulations appertaining to indirect contributions;

To the regional director for industry, research and the environment if the case relates to measuring instruments.

Article R216-2

There is nothing new in the procedure following by the tax and customs authorities for the investigation and institution of proceedings in respect of acts constituting either a customs or tax offence and a breach of the requirements of this code and the Act of 29 June 1907.

The procedure followed by agents from the department for measuring instruments for the investigation and institution of proceedings in respect of facts constituting a breach of articles L. 213-2 (2) and L. 213-4 (1) are still governed by these same articles.

As soon, however, as a case relating to an act covered by the category referred to in this article is referred to the procureur de la République , the competent authorities must inform the préfet as soon as possible.

TITLE II Safety

Articles R221-1 to
R224-12

CHAPTER I Prevention

Articles R221-1 to
R221-2

Article R221-1

The costs incurred by the business upon the occasion of the checks required in application of article L. 221-7 will be reimbursed if the approved body fails to reveal any indication that the product or service does not satisfy the general safety obligation mentioned in article L. 221-1 and if the business has made arrangements to check, prior to the intervention of the interested minister or ministers, that the product or service in question meets this safety obligation.

Article R221-2

Claims for reimbursement are sent to the minister that ordered the checks.

They must be accompanied by documents establishing that the conditions posed in the previous article have been fulfilled and documentary evidence of the sums incurred by the business upon the occasion of the checks.

CHAPTER III Penalties

Articles R223-1 to
R223-2

Article R223-1

Anyone who, in contravention of the provisions of an order adopted in application of article L. 221-5:

Has manufactured, imported, exported, put on the market free of charge or at a fee, a product or a service that is subject to a suspension measure;

Has failed to circulate warnings or precautions for use ordered;

Has not, in accordance with prescribed conditions of place and time, totally or partially exchanged, modified or reimbursed, the product or service;

Has not withdrawn or destroyed the product,

will be punished with the fine laid down for petty offences (fifth category).

In the event of a repeat offence, the fine laid down for repeat petty offences (fifth category) applies.

Article R223-2

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Anyone who, in contravention of the provisions of an order issued by the préfet adopted in application of article L. 221-6, has not respected:

Emergency measures prescribed in order to stop the serious or immediate danger presented by the product or service;

The detention measure decided upon for products likely to present a serious or immediate danger;

Measures to suspend the provision of services;

will be punished by the fine laid down for petty offences (fourth category).

CHAPTER IV

The commission for consumer safety

Articles R224-1 to
R224-12

Article R224-1

The Commission for consumer safety comprises, in addition to its chair, fifteen members, appointed by order of the minister for consumer affairs upon the advice of the interested ministers:

One member of the Council of State, proposed by general meeting of the Council of State;

One judiciary magistrate, proposed by general meeting of the Cour de cassation ;

One member of the Court of auditors, proposed by all the magistrates forming part of said court;

Three members of national consumer organisations, selected from a list of nine names proposed by the consumers' panel of the Conseil national de la consommation;

Three members of national business organisations, selected from a list of nine names proposed by the professional panel of the Conseil national de la consommation;

Six qualified persons, each selected from a list of three names, the first list proposed by the chair of the Conseil supérieur d'hygiène publique, the second proposed by the board of directors of the Caisse nationale d'assurance maladie des travailleurs salariés, the fifth proposed by the board of directors of the scientific and technical centre for the building industry and the sixth, made up of doctors competent in emergency medicine, proposed by the chair of the Conseil national de l'ordre des médecins.

Article R224-2

The chair of the Commission for consumer safety is appointed for five years, the members of the commission for three years.

The terms of office of the chair and members of the commission are renewable once.

Article R224-3

Any member of the commission who, without just cause, has failed to participate in three consecutive meetings is considered to have automatically resigned his/her office.

In the event of death or resignation his/her successor is appointed, in accordance with the terms fixed by article R. 224-1, for the remaining term of office.

If this is less than eighteen months, the term of office completed by the successor is not taken into consideration for application of the rule under which terms of office are renewable once only.

In the event of absence or unexpected difficulty, the chair is replaced by the member from the Council of State or, failing this, by the judicial magistrate or, failing this, by the member from the Court of auditors.

Article R224-4

Public officials and magistrates made available to the commission with the approval of the chair, for a fixed, renewable period, assist it in its work.

The chair appoints one of them to perform the duties of secretary general.

The commission may also, for its research, as for the assistance of the agents mentioned in article L. 222-1. These agents send their reports direct to the commission.

Article R224-5

The credits required by the commission to complete its mission appear in the budget of the minister for consumer affairs and are entered as individual items.

Article R224-6

Applications referred to the commission are registered in the order that they arrive.

Where the commission decides to act of its own motion in respect of a case, the latter is registered soon after the sitting during the course of which the decision was taken.

Article R224-7

For the application of the first paragraph of article L. 224-3, the chair assigns the applications to a member of the commission who compiles a brief report on how the application is to be followed up.

The commission rules on the findings of this report and decides either not to follow it up or to process the application.

Where the commission decides to follow up the application the chair appoints one of the members of the commission to be the reporter responsible for conducting the investigation. The latter is invested with all the powers given to the commission in article L. 224-4.

To assist the reporter in investigating cases, the chair may, with the approval of the interested minister, call upon

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category A officials or government contracted agents of an equivalent level, who then act in the capacity of commission agents. These officials or agents may attend commission meetings where cases which they have been involved in investigating are being examined.

Article R224-8

The person making the referral and the professional or professionals in question are given access to information gathered by the reporter which is not protected either by professional or trade secrecy.

They have one month to submit their observations. This time limit may be extended to three months by decision of the chair.

These observations are annexed to the report with the remarks that they have received from the reporter.

Article R224-9

The minister for consumer affairs appoints a government commissioner and any replacements.

The government commissioner takes part in all commission meetings. He/she may be assisted by one or more qualified officials. The reporter's report is sent to him/her at least eight days prior to the meeting, apart from in an emergency. The four day deadline provided for in the last paragraph of article L. 224-1 runs from the day of the meeting until the day of the meeting during which the opinion was adopted.

Article R224-10

The commission cannot take valid decisions unless seven of its members attend the meeting. It hears, in addition to the persons concerned, any person who it feels may be likely to contribute to the investigation.

Commission meetings are closed.

Article R224-11

Commission decisions are taken by majority vote of the members present. In the event of a tie, the chair has the casting vote.

Article R224-12

Opinions of the commission are reasoned.

Notification of said opinions is sent to the minister for consumer affairs, to interested ministers, to the person making the referral and to interested professionals.

Each year, the government commissioner compiles a report on the follow-up given to the latter's opinions and sends it to the commission.

BOOK III Endebtmnt

Articles R311-4 to R333-5

TITLE I

Credit

Articles R311-4 to R313-10

CHAPTER I

Consumer credit

Articles R311-4 to R311-9

Section 3

The interest free credit

Articles R311-4 to R311-5

Article R311-4

The cash price referred to in article L. 311-7 cannot be higher than the sum:

of any advance payment on the credit price payable on the day of the sale or service provision;

of the actual value, on the same date, of periodic payments required from the credit purchaser, calculated according to the compound interest method, the annual rate serving as the reference for this calculation being the average rate of return for bonds issued during the course of the previous six months plus 50%.

In the case of loans repayable according to a different periodicity, the rate used to calculate the current values is obtained by multiplying the annual reference rate by the ratio between the length of the period and that of a calendar year.

Article R311-5

(Decree no. 2001-95 of 2 February 2001 art. 1 Journal officiel of 3 February 2001 in force on 1 January 2002)

An opinion published in the Journal officiel de la République française indicates, for each six months, the current value of the monthly repayments corresponding to EUR 10 of credit depending on whether the vendor or the service provider is responsible for all, or part, of the cost of the credit.

Section 4

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The credit contract

Articles R311-6 to
R311-7

Article R311-6

The prior loan offer provided for in article L. 311-8 includes the information appearing in the standard specimens annexed to this code which correspond to the credit transaction proposed.

This document must be presented in a clear and legible manner. It is written in characters no less than 8 point font.

Article R311-7

The detachable withdrawal form provided for in article L. 311-15 is drafted in accordance with the standard specimen attached in the annex.

It may not have anything other than the name and address of the lender on the reverse.

Section 5

Connected credit

Articles R311-8 to
R311-9

Article R311-8

The purchaser who asks for immediate delivery or supply of the goods or service provision in application of article L. 311-24 must affix a request written in his/her own handwriting to the sale contract using the following wording:

"I request immediate delivery (or immediate supply of services).

"I acknowledge that I have been informed that this request has the effect of reducing the legal deadline for withdrawal. This will expire on the date on which the goods are supplied (or the service provided), this being not less than three days and no longer than seven days".

Article R311-9

The seller or the service provider who arranges to enter into any agreement for immediate delivery or supply with the purchaser, in contravention of the provisions of article R. 311-8, will be punished by the fine laid down for petty offences (third category).

CHAPTER II

Credit for land and purchase

Articles R312-1 to
R312-4

Section 3

The credit contract

Article R312-1

Article R312-1

(Decree no. 2001-95 of 2 February 2001 art. 1 Journal officiel of 3 February 2001 in force on 1 January 2002)

The research costs, provided for in article L. 312-14, that the lender may require from the borrower where the contract in view of which the loan has been requested is not concluded, are limited to 0.75% of the full amount of the loan, not exceeding EUR 150.

Section 5

Early settlement and debtor default

Articles R312-2 to
R312-3

Subsection 1

Early settlement

Article R312-2

Article R312-2

Any compensation that may be owing by the borrower, as provided for by article L. 312-21 in the event of early repayment, may not exceed the value of one half-year's interest on the capital repaid at the average loan rate, not exceeding 3% of the capital amount still owing prior to repayment.

Should a loan contract have different interest rates for different repayment periods, the compensation provided for in the previous paragraph may be increased by the sum that guarantees the lender the average rate laid down when the loan was granted on the period that has elapsed since the start date.

Subsection 2

Debtor default

Article R312-3

Article R312-3

(Decree no. 99-513 of 16 June 1999 art. 5 Journal officiel of 23 June 1999)

In the event of default by the borrower and when the immediate repayment of the capital is not requested, the increase in rate provided for by article L. 312-22 may not exceed three interest points.

For the advance payments provided for by articles R. 317-1 and subsequent articles of the building and housing code, the interest applied cannot be higher than the highest maximum interest rates for contractual loans guaranteed by the government in application of article R. 312-3-1 of the building and housing code, applicable when the advance offer is made.

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The compensation provided for in the event of cancellation of the loan contract may not exceed 7% of the sums owing by virtue of the outstanding capital amount as well as interest accrued and not paid.

Section 6

Lease purchase and lease with promise to sell

Article R312-4

Article R312-4

The compensation, provided for in article L. 312-29 in the event of default by the lessee in the performance of hire-purchase or lease contracts accompanied by an undertaking to sell, may not exceed 2% of that part of the payments corresponding to the capital value of the property to be made up until the date appointed for transfer of ownership.

CHAPTER III

Common provisions

Articles R313-1 to
R313-10

Section 1

Interest rate

Articles R313-1 to
R313-5

Subsection 1

The annual percentage rate

Articles R313-1 to
R313-5

Article R313-1

(Decree n° 2002-927 of 10 June 2002, Article 1, Official Journal of 11 June 2002, in force on 1 July 2002)

Save the loan transactions mentioned in 3° of article L311-3 and in article L312-2 of this code for which the annualised percentage rate is an annual rate, proportional to the period rate, at the end of the term and expressed for one hundred monetary units, the annualised percentage rate is an annual rate, at the end of the term, expressed for hundred monetary units and calculated in accordance with the method of equivalence defined by the system indicated in the enclosure attached to this code. The borrower shall expressly be informed about the period rate as well as about the length of the period.

The period rate is calculated actuarially, from a unitary period corresponding interval of payments made by the borrower. It ensures, according to the compound interest method, equality between, on the one hand, the sums loaned and, on the other hand, all the payments owed by the borrower by virtue of the loan, in capital, interest and other costs, this items being, if necessary, estimated.

When the interval of payments is irregular, the unitary period is that which corresponds to the shortest interval between two payments. The shortest calculation interval may not, however, be less than one month.

For the transactions mentioned in 3° of article L312-2, when payments are not made annually, the annualised percentage rate is obtained by multiplying the period rate by the ratio between the duration of the calendar year and that of the unitary period. The ratio is calculated, where appropriate, with a accuracy of at least one decimal point.

Article R313-2

When this relates to an overdrawn account, the amount of credit to be taken into consideration in calculating the annualised percentage rate is attributed, according to the numbers method, to a period of one day upon expiry of which it is deemed to have been repaid at the same time as the related charges. To this end, each of the debit balances successively listed in the account during the course of the interval separating two contractual orders is multiplied by its own duration in days.

If the credit takes the form of the institution of drawing rights, the annualised percentage rate is calculated on the totality of the rights made available to the client.

Article R313-3

When this relates to discounting, the period rate is understood to be the ratio between the interest and other costs owed by the borrower in respect of the discount and the amount of the discounted bill. The period is equal to the number of calendar days, from the date of the negotiation exclusive until the actual expiry date of the bill inclusive. This period cannot be retained for a period of less than ten days.

Article R313-4

When the amount of the transactions mentioned in articles R. 313-2 and R. 313-3 is less than an amount fixed by order of the minister for economic affairs and finance, a fixed amount may be received for each transaction which is not taken into consideration in order to determine the annualised percentage rate. The borrower must be notified of this minimum amount.

Article R313-5

Where the granting of a loan is subject to a prior phase of saving, the annualised percentage rate is calculated without taking this saving phase into consideration.

Section 3

Article R313-10

Anyone who may have remunerated a seller or arranged for a seller to be remunerated for moveable or immovable property under conditions contrary to the provisions of article L. 313-11 will be punished with the fine laid down for petty offences (fifth category).

Any seller who may have been remunerated under the same conditions will be punished with the same penalty. In the event of a repeat offence, the fine laid down for repeated petty offences (fifth category) will apply.

TITLE III**Handling situations of overindebtedness****Articles R331-1 to R333-4**

CHAPTER I

Proceedings before the Commission for private overindebtedness

Articles R331-1 to R331-20

Section 1

Organisation and operation of the Commission for private overindebtedness

Articles R331-1 to R331-6

Article R331-1

(Decree No. 2004-180 of 24 February 2004 Article 1 I Official Journal of 25 February 2004)

More than one commission for private overindebtedness per department may be created by order of the Préfet where the department's economic, social, geographical or demographic situation so requires. The said order determines the commission's territorial jurisdiction and its headquarters.

The secretariat is located in premises designated by the Bank of France.

Article R331-2

(Decree No. 99-65 of 1 February 1999 Article 1 Official Journal of 2 February 1999)

(Decree No. 2004-180 of 24 February 2004 Article 1 I Official Journal of 25 February 2004)

The Préfet, the trésorier-payeur général and the director of the tax authority may each be represented on each commission by a single representative only.

The Préfet selects his representative from among the members of the corps préfectoral, the heads of decentralised government departments or the directeurs de préfecture.

The trésorier-payeur général selects his representative from among the officials of the trésorerie générale having the rank of inspector at very least, or from among the district tax collectors.

The director of the tax authority selects his representative from among the management team officials having the rank of inspector at very least.

The Préfet's representative chairs the commission only in the absence of the trésorier-payeur général.

Article R331-3

(Decree No. 2004-180 of 24 February 2004 Article 1 I Official Journal of 25 February 2004)

The governor of the Bank of France appoints that institution's local representatives on the commissions as well as the persons authorised to represent them.

Article R331-4

(Decree No. 99-65 of 1 February 1999 Article 2 Official Journal of 2 February 1999)

(Decree No. 2004-180 of 24 February 2004 Article 1 I Official Journal of 25 February 2004)

For each commission, the Préfet issues an order appointing one person and his deputy, for a renewable one-year term, selected from a departmental list of four names sent to him by the French Association of Credit Institutions and Investment Companies, and also one person and his deputy proposed in the same way by family or consumer associations having a seat on the departmental consumer committee referred to in article R.512-1.

If the absence of one of these persons and his deputy is noted at three consecutive commission meetings, the Préfet may terminate their appointment before expiry of the one-year term. He shall then appoint another person and a deputy from the same list.

Article R331-5

(Decree No. 99-65 of 1 February 1999 Article 3 Official Journal of 2 February 1999)

(Decree No. 2004-180 of 24 February 2004 Article 1 I Official Journal of 25 February 2004)

The commission shall meet validly only if at least four of its six members are present or represented. In the event of a tied vote, the chairman shall have a casting vote.

Article R331-6

(Decree No. 2004-180 of 24 February 2004 Article 1 I Official Journal of 25 February 2004)

In the overseas departments and the territorial authority of Saint-Pierre-and-Miquelon, the branch manager of the overseas departments' issuing institution shall sit on the commission in place of the Bank of France's representative. The branch manager may arrange to be represented by one of his assistants. The commission's secretariat is provided

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by the issuing institution.

Section 2
Procedure before the Commission

Articles R331-7 to
R331-20

Subsection 1
General provisions

Articles R331-7 to
R331-10-2

Article R331-7

(Decree No. 99-65 of 1 February 1999 Article 4 Official Journal of 2 February 1999)

(Decree No. 2004-180 of 24 February 2004 Article 1 IV Official Journal of 25 February 2004)

(Decree No. 2004-180 of 24 February 2004 Article 1 I, III, V Official Journal of 25 February 2004)

Save for the case envisaged in Article L. 333-3-1, the commission having jurisdiction is that of the debtor's domicile.

Article R331-8

(Decree No. 2004-180 of 24 February 2004 Article 1 I, III, IX, X Official Journal of 25 February 2004)

The commission examines the admissibility of the application and gives a reasoned decision notified to the debtor and creditors by recorded-delivery registered mail. The letter states that the decision may be appealed within fifteen days of its notification through a declaration handed in to the commission secretariat or sent there by recorded-delivery registered mail.

The said declaration, signed by the declarant, indicates his surname, forenames, occupation and address, as well as the decision being appealed against. The commission secretariat sends a copy of the declaration to the juge de l'exécution together with the case file.

Article R331-9

(Decree No. 2004-180 of 24 February 2004 Article 1 I, III, IX, XI Official Journal of 25 February 2004)

The call-up of creditors provided for in the fifth paragraph of Article L. 331-3 is published at the behest of the commission secretariat in a journal authorised to accept legal notices in the department where the commission meets. The call-up specifies the time limit within which the creditors must declare their debts to the commission secretariat by ordinary post.

Failing agreement between the parties, the commission shall refer the case to the juge de l'exécution for an order designating the party or parties who shall bear the cost of calling up the creditors.

Article R331-10

(Decree No. 99-65 of 1 February 1999 Article 5 Official Journal of 2 February 1999)

(Decree No. 2004-180 of 24 February 2004 Article 1 VI Official Journal of 25 February 2004)

(Decree No. 2004-180 of 24 February 2004 Article 1 I, III, IX Official Journal of 25 February 2004)

The commission shall inform the creditors by recorded-delivery registered mail of the statement of liabilities declared by the debtor. The said letter contains the provisions of the sixth and seventh paragraphs of Article L. 331-3 of the Consumer Code.

When the commission is informed by the debtor or the creditors that persons have stood surety for the repayment of one or more debts, the said persons are notified by recorded-delivery registered mail of the application that the debtor has made to the commission and are invited to prove, within thirty days, the amount of any sums which may have already been settled in fulfilment of their undertaking as guarantor and to provide any other relevant information within that same time limit.

In the light of all the items produced by the parties, the commission shall draw up a statement of liabilities and notify the debtor thereof by recorded-delivery registered mail. The letter shall reproduce the provisions of the first paragraph of Article L. 331-4 of the Consumer Code and state that any objection on the part of the debtor must be raised by means of a reasoned declaration handed in to the commission secretariat or sent there by recorded-delivery registered mail.

Article R331-10-1

(inserted by Decree No. 2004-180 of 24 February 2004 Article 1 III, IX, XII Official Journal of 25 February 2004)

The agreement of the debtor referred to in the penultimate paragraph of Article L. 331-3 is given in writing on a form provided to the party concerned by the commission secretariat.

The said form notifies the debtor that the personal re-establishment procedure is likely to result in a decision to liquidate and informs him of the provisions of Article L. 332-8.

Article R331-10-2

(inserted by Decree No. 2004-180 of 24 February 2004 Article 1 III, IX, XII Official Journal of 25 February 2004)

The application made by the debtor pursuant to Article L. 331-7-2 is examined in the manner and under the terms stipulated in Article R. 331-8.

Subsection 2
Admission of debts

Articles R331-11 to
R331-13

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Article R331-11

(Decree No. 99-65 of 1 February 1999 Article 8 Official Journal of 2 February 1999)

(Decree No. 2004-180 of 24 February 2004 Article 1 I, III, XIII Official Journal of 25 February 2004)

When it is necessary to verify one or more debts pursuant to Article L. 331-4, the letter from the commission referring the case to the judge specifies the surname, forenames, occupation and address of the debtor and those of the creditors involved, or, for legal entities, their corporate name and their registered office; it contains a statement of the facts of and grounds for the referral and indicates, where appropriate, that it is made at the debtor's request. The documents required to verify the debts are appended thereto.

The commission informs the creditors concerned and the debtor of the referral.

Article R331-12

(Decree No. 2004-180 of 24 February 2004 Article 1 I, III Official Journal of 25 February 2004)

The validity and amount of the debt are verified for procedural reasons and to enable the commission to carry out its mission. The verification seeks to establish the liquid and certain nature of the debt and the amount of the sums claimed in principal, interest and incidental expenses.

Any debt whose validity cannot be established is eliminated from the proceedings.

Article R331-13

The judge rules after having gathered or requested the parties' observations. The judge's decision is not open to appeal.

Subsection 3

Suspension of enforcement proceedings and postponement of

adjudication

Articles R331-14 to
R331-15

Article R331-14

(Decree No. 99-65 of 1 February 1999 Article 10 Official Journal of 2 February 1999)

(Decree No. 2004-180 of 24 February 2004 Article 1 I, III, XV, Article 4 Official Journal of 25 February 2004)

I. - The suspension, pursuant to the first paragraph of Article L. 331-5, of enforcement measures initiated against the debtor is requested by ordinary letter addressed to the clerk's office of the juge de l'exécution or, subsequent to publication of an order for seizure of immovable property, to the clerk's office of the judge ordering such seizure. Where the case is referred to the judge in an emergency at the behest of the chairman of the commission, his representative or the Bank of France's local representative, they shall inform the other members of the commission thereof.

The referral letter shall indicate the surname, forenames, occupation and address of the debtor and those of the creditors bringing proceedings, or, for legal entities, their corporate name and their registered office. A statement of the debtor's income, a summary of his assets and liabilities, a breakdown of his debts and a list of pending enforcement proceedings are appended thereto.

II. - In the event of the summons referred to in Article 689 of the (old) Code of Civil Procedure being served on the debtor, he shall inform the commission thereof without delay.

If the commission considers it appropriate to apply the third paragraph of Article L. 331-5, it shall refer the case to the judge by sending a request to postpone adjudication to the clerk's office of the Tribunal de grande instance, at least five days before the date set therefor in the aforementioned summons, containing the indications specified in the second paragraph of I above and specifying, in addition, the serious and duly justified causes invoked in support of the request.

The clerk's office shall make the request known to the debtor and the creditor bringing proceedings by recorded-delivery registered mail.

Article R331-15

(Decree No. 99-65 of 1 February 1999 Article 9, Article 11 Official Journal of 2 February 1999)

(Decree No. 2004-180 of 24 February 2004 Article 1 I, III, XVI, Article 4 Official Journal of 25 February 2004)

Orders suspending one or more enforcement proceedings are notified to the creditors bringing proceedings and the public servants responsible for enforcement by the clerk's office by recorded-delivery registered mail.

A copy of the order through which the judge rules on applications for suspension of enforcement proceedings and that which determines applications for retraction is sent by the clerk's office by ordinary letter to the commission which then informs the debtor thereof.

The clerk's office notifies the applicant creditor and the public servants responsible for enforcing the order retracting the decision to suspend by ordinary letter and notifies orders rejecting applications for retraction by recorded-delivery registered mail.

The orders referred to in the preceding paragraphs are unappealable.

Judgements ruling on postponement of adjudication are notified by recorded-delivery registered mail to the commission, the debtor and the creditor bringing proceedings by the clerk's office of the Tribunal de grande instance.

The notification states that the judgement is neither open to appeal nor to objection.

Subsection 4

Contractual recovery plan

Articles R331-16 to
R331-17

Article R331-16

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(Decree No. 2004-180 of 24 February 2004 Article 1 I, III, XX Official Journal of 25 February 2004)

The contractual recovery plan is signed and dated by the parties; a copy thereof is sent to them.

Article R331-17

(Decree No. 2004-180 of 24 February 2004 Article 1 I, III, XVII, XX Official Journal of 25 February 2004)

The contractual recovery plan states that it shall automatically become null and void if a notice to perform sent to the debtor remains ineffective when fifteen days have elapsed, without prejudice to exercise of the rights provided for in Articles R. 331-7-3 and R. 331-14.

Subsection 5

Measures recommended by the commission

Articles R331-18 to

R331-20

Article R331-18

(Decree No. 99-65 of 1 February 1999 Article 12 Official Journal of 2 February 1999)

(Decree No. 2004-180 of 24 February 2004 Article 1 I, III, XX Official Journal of 25 February 2004)

Should the commission find it impossible to secure the interested parties' agreement to a contractual plan, it shall notify the debtor by recorded-delivery registered mail and the creditors by ordinary letter.

The said letters shall state that the debtor may, within fifteen days of the notification referred to in the previous paragraph, submit the case to the commission for it to recommend the measures provided for in Article L. 331-7 or the first paragraph of Article L. 331-7-1, the provisions of which shall be reproduced in full in the letters.

When, pursuant to Article L. 331-5, the juge de l'exécution has ordered the suspension of one or more enforcement proceedings brought against the debtor, the said letters shall also state that such suspension shall continue either until expiry of the period referred to in the previous paragraph, or, if the debtor avails himself of the right referred to in Article L. 331-7, until the judge has rendered the commission's recommendations enforceable or has ruled on any objection raised against them.

Article R331-19

(Decree No. 2004-180 of 24 February 2004 Article 1 I, III, XX Official Journal of 25 February 2004)

The debtor's application, made pursuant to the first paragraph of Article L. 331-7, shall take the form of a declaration signed by him and handed or sent to the secretariat of the commission with which it is registered.

The commission shall inform the creditors of the application by recorded-delivery registered mail.

Article R331-19-1

(Decree No. 2004-180 of 24 February 2004 Article 1 I, III, XX Official Journal of 25 February 2004)

Thirty days before the expiry of the moratorium provided for in the first paragraph of Article L. 331-7-1, the commission shall inform the creditors and the debtor by recorded-delivery registered mail that the debtor's situation shall be re-examined upon expiry of the moratorium.

The said letter shall reproduce the provisions of Articles L. 331-7 and L. 331-7-1 and state that the debtor has thirty days in which to inform the commission of his financial position and of any change in his personal circumstances. The letter also states that the commission shall make a decision on the information already available to it if this time limit is not respected.

Article R331-20

(Decree No. 99-65 of 1 February 1999 Article 14 Official Journal of 2 February 1999)

(Decree No. 2004-180 of 24 February 2004 Article 1 I, III, XVIII, XX Official Journal of 25 February 2004)

The commission issues its decision within two months of the referral or the expiry of the deadline provided for in article R. 331-19-1, as applicable, having gathered or requested the parties' observations.

In the event of 3 and 4 of Article L. 331-7 or the first or second paragraph of Article L. 331-7-1 being applied, a reasoned explanation therefor shall be given.

The commission's decision is communicated to the parties by recorded-delivery registered mail. The said letter shall refer to the provisions of the first paragraph of Article L. 332-2.

CHAPTER II

Supervision by the judge of the measures recommended by the Commission for
private overindebtedness

Articles R332-1 to

R332-10

Section 1

Acquisition of court enforcement

Articles R332-1 to

R332-3

Article R332-1

(Decree No. 99-65 of 1 February 1999 Article 15 Official Journal of 2 February 1999)

(Decree No. 2004-180 of 24 February 2004 Article 1 XIX Official Journal of 25 February 2004)

(Decree No. 2004-180 of 24 February 2004 Article 2 I, II Official Journal of 25 February 2004)

The competent juge de l'exécution is the one having jurisdiction over the debtor's domicile, even for application of Article R. 331-14. However, in the case referred to in Article L. 333-3-1, the competent judge is the one having

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jurisdiction over the registered-office location of the commission to which the case was referred.

Article R332-1-2

(Decree No. 2004-180 of 24 February 2004 Article 2 II Official Journal of 25 February 2004)

(Decree No. 2004-836 of 20 August 2004 Article 38, Article 54 Official Journal of 22 August 2004 effective 1 January 2005)

I. - The juge de l'exécution issues a judgement or, by virtue of a special provision, an order.

II. - When he issues a judgement, he either summons the interested parties or invites them to submit their observations by recorded-delivery registered mail. The procedure followed is that provided for in Articles 11 to 14 of Decree No. 92-755 of 31 July 1992.

Judgements are rendered without appeal, except as otherwise provided.

III. - Appeals against orders may be lodged at the clerk's office of the juge de l'exécution by hand or by post by any interested party who was not given an opportunity to oppose the claim.

A copy of the order shall be attached to the application for retraction.

IV. - The appeal is entered, prepared and judged pursuant to the rules of the procedure without obligation to appear provided for in Articles 931 to 949 of the New Code of Civil Procedure.

Article R332-2

(Decree No. 99-65 of 1 February 1999 Article 16 Official Journal of 2 February 1999)

(Decree No. 2004-180 of 24 February 2004 Article 2 I, III, IV Official Journal of 25 February 2004)

In the light of the documents received from the commission, the juge de l'exécution verifies that its recommendations conform to the provisions of Articles L. 331-7 and L. 331-7-1 and are formulated in accordance with the procedure provided for in Articles R. 331-18 to R. 331-20. It ensures, moreover, that any measures recommended pursuant to the second paragraph of Article L. 331-7-1 are well-founded.

He shall neither supplement them nor alter them.

Article R332-3

(Decree No. 99-65 of 1 February 1999 Article 17 Official Journal of 2 February 1999)

(Decree No. 2004-180 of 24 February 2004 Article 2 I, III, V, VI, Article 4 Official Journal of 25 February 2004)

If no objection is raised within the period allotted by the first paragraph of Article L. 332-2, the judge shall make an order.

When the recommendations are enforceable, they are appended to the decision.

The clerk's office draws up as many enforceable copies of the order as there are parties and sends them to the commission along with the documents supplied. The commission then sends an enforceable copy of the order to each of the parties by recorded-delivery registered mail.

If the recommendations should prove to be illegal or the proceedings irregular, or if the measures recommended pursuant to the second paragraph of Article L. 331-7-1 are unfounded, the judge shall send the commission a copy of his order and return the documents inviting it to comply with the provisions of Article R. 331-20; the clerk's office shall inform the parties thereof by ordinary letter.

Section 2

Contesting recommended measures

Articles R332-4 to
R332-10

Article R332-4

The objection provided for in article L. 332-2 is formed by declaration submitted or sent to the secretariat/clerk of the juge de l'exécution.

The declaration states the name, forenames, profession and address of the interested party and is signed by said party.

The commission's recommendations are attached thereto.

The secretariat/clerk invites the commission to forward the case file.

Article R332-5

The application for provisional enforcement for one or more of the measures recommended by the commission presented in application of the second paragraph of article L. 332-2 is formed by declaration signed by its author and sent to the secretariat/clerk for the juge de l'exécution.

Article R332-6

(Decree No. 2004-180 of 24 February 2004 Article 2 I, III, VIII Official Journal of 25 February 2004)

The judgement ordering provisional enforcement of one or more of the recommended measures referred to in the second paragraph of Article L. 332-2 may be referred to the first presiding judge of the court of appeal in the manner and under the terms stipulated in Article 31 of Decree No. 92-755 of 31 July 1992.

Article R332-7

(Decree No. 2004-180 of 24 February 2004 Article 2 I, III, IX, Article 4 Official Journal of 25 February 2004)

The call-up of creditors referred to in the third paragraph of Article L. 332-2 is published by the clerk's office of the juge de l'exécution as provided for in Article R. 331-9.

Should the parties fail to reach agreement, the juge de l'exécution shall make an unappealable order designating

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the party or parties who shall bear the cost of calling up the creditors.

Article R332-8

(Decree No. 2004-180 of 24 February 2004 Article 2 I, III, X, Article 4 Official Journal of 25 February 2004)

The clerk's office shall summon each of the parties by recorded-delivery registered mail at least fifteen days before the date it sets for hearing the objection.

Article R332-8-1

(Decree No. 2004-180 of 24 February 2004 Article 2 I, III, XI Official Journal of 25 February 2004)

The judge shall rule on the objection pursuant to either Article L. 331-7 or Article L. 331-7-1.

The judgement is appealable.

Article R332-9

The judgement ruling on the objection in application of article L. 332-2 is automatically enforceable, on a provisional basis.

Each of the parties is notified of this judgement by the secretariat/clerk by recorded delivery letter.

It is open to appeal.

Article R332-10

(Decree No. 2004-180 of 24 February 2004 Article 2 I, III, XIII, Article 4 Official Journal of 25 February 2004)

In the event of a debt corresponding to the full amount of a cheque without cover being written off in full to remedy an instance of non-payment pursuant to article L. 332-4, the account-holding institution shall notify the Bank of France of such remedy not later than the second working day following presentation by the debtor of an attestation confirming that the instance of non-payment has been resolved through the corresponding debt being written off in full.

When the measure to write off the debt was taken pursuant to Article L. 332-1, the attestation is drawn up by the commission, which sends it to the debtor together with the enforceable copy of the order referred to in the third paragraph of Article R. 332-3.

When the said measure has been taken pursuant to Article L. 332-2, the attestation is drawn up by the juge de l'exécution and sent to the debtor by the clerk's office together with the judgement referred to in the second paragraph of Article R. 332-8-1.

CHAPTER III

Common provisions

Articles R333-1 to
R333-4

Article R333-1

(Decree No. 2004-180 of 24 February 2004 Art. 6 I Official Journal of 25 February 2004)

(Decree No. 2005-331 of 6 April 2005 Art. 2 Official Journal of 8 April 2005)

The rules governing the effects that submission to the insolvency commission may have on applications made to the tax collection authorities for remission of, or exemption from, payment are as determined by Articles R. 247 A-1 and R. 247-18 of Book of Fiscal Procedures reproduced hereunder:

"Art. R. 247 A-1 - A submission to the insolvency commission referred to in Article L. 331-1 of the Consumer Code is treated as an application for remission of direct taxes subject to the submission meeting the conditions laid down in Article R. 331-7-3 of that same code".

"Art. R. 247-18 - Submissions to the insolvency commission referred to in Article L. 331-1 of the Consumer Code by third parties required to pay tax are treated as an application for exemption from payment within the meaning of Article R. 247-10 subject to the submission meeting the conditions laid down in Article R. 331-7-3 of the Consumer Code".

Article R333-2

Other than in the case provided for in article L. 333-3-1, the competent commission is that of the place in which the debtor is domiciled.

Article R333-3

The competent juge de l'exécution is that of the place where the debtor resides, including for the application of article R. 331-14. In the case provided for in article L. 333-3-1 however, the competent judge is the one with jurisdiction in the place where the commission meets.

Article R333-4

Rules relating to remissions that may be granted by provident and social security organisations are fixed by articles R. 243-20-3 and R. 741-39, second paragraph, of the French social security code, reproduced hereinafter:

"Art. R. 243-20-3:

For the application of article L. 333-1 of the French consumer code, the out-of-court appeals commission or the director of the organisation responsible for recovery of the debt, within the bounds of their respective jurisdiction, may grant a partial or total remission of the delay surcharges appertaining to outstanding contributions still unpaid by employers of domestic workers and child minders. This remission is not subject to prior payment of said contributions.

Where an application for out-of-court settlement is received from the personal debt commission, the debtor formulates the application for the remission of delay surcharges to the organisation responsible for recovery within fifteen days of the date of referral to the commission.

The commission and the debtor are notified of decisions appertaining to the remission of delay surcharges within

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one month of receipt of the remission application. Failure to respond on the part of the organisation responsible for recovery of the debt within this time is taken to mean that the application has been rejected.

Remission of delay surcharges is acquired where the contractual settlement plan has been agreed by the parties or where the judge has ordered measures aiming to guarantee recovery.”

“Art. R. 741-39, second paragraph:

For the application of article L. 333-1 of the French consumer code, the board of directors or the out-of-court appeals commission of the caisses de mutualité sociale agricole may grant, according to procedures provided for in article R. 243-20-3, a partial or total remission of delay surcharges appertaining to outstanding contributions not paid by persons affiliated with voluntary medical insurance who bear the cost of these contributions personally.

TITLE IV

Other provisions

Article R333-5

Article R333-5

Upon receipt of the notification provided for in the first paragraph of article R. 331-8, the debtor sends a copy of said notification to the huissier de justice instrumentaire by recorded delivery letter.

In this event, the remuneration paid by the debtor is equal to half of that laid down for documents of the same nature by decree no. 96-1080 of 12 December 1996 fixing the bailiff's tariff for civil and commercial matters.

BOOK IV

Consumer associations

Articles R411-1 to R422-10

TITLE I

Association approval

Articles R411-1 to R411-7

CHAPTER I

The associations

Articles R411-1 to R411-7

Article R411-1

The approval of consumer associations provided for in part I of volume IV of the Legislative part of this code may be granted to any association:

Which can prove on the date of request that it has been in existence for one year;

Which, during this period of existence, provides evidence of effective and public activity with a view to the protection of consumer interests, evaluated, in particular, in line with the circulation of publications relating to the holding of regular and information meetings;

Which brings together, on the date of the application for approval, a number of individually paid-up members:

at least 10,000 for national associations, this condition not being required for associations dedicated to research and analysis of a scientific nature;

an adequate number, in consideration of the territorial framework of their activity, for local, departmental or regional associations.

Where the association has a federal or confederal structure, the total number of paid-up members of all the component associations are taken into consideration.

Article R411-2

Approval of national organisations is granted by joint order of the minister for consumer affairs and the Keeper of the Seals. It is published in the Journal officiel de la République française.

Approval of local, departmental or regional associations is granted by order of the préfet of the department in which the association has its head office. It is published in the Recueil des actes administratifs.

The opinion of the ministère public provided for in article L. 411-1 is given by the procureur général at the court of appeal with jurisdiction in the place where the association has its headquarters.

The approval is granted for five years. It is renewable under the same conditions as the initial agreement.

Article R411-3

When several associations, at least one of which is approved, are converted into one single association, approval must be sought once again. In this case, the condition of seniority provided for in article R. 411-1 is not required.

Article R411-4

Applications for approval and renewal are sent to the departmental office for competition, consumer protection and fraud prevention of the department in which the association has its registered office.

The components of the case file and the screening procedure are fixed by joint order of the minister for consumer affairs and the Keeper of the Seals.

When the case file submitted to the administration is complete, it is submitted in return for a receipt.

Article R411-5

Notification of the decision to approve or refuse is given within six months of the issuing of the receipt. After this

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deadline, approval is considered to have been granted.

Refusals must be reasoned.

Article R411-6

Associations report on their activity on an annual basis in accordance with procedures fixed by order adopted in the forms provided for in article R. 411-4.

Article R411-7

The approval may be withdrawn upon the advice of the procureur général, where the association no longer has the number of members required for its approval, where it can no longer provide evidence of the activity defined in article R. 411-1, with the exception of associations issuing from the cooperative companies referred to in article L. 412-1. The association must be able to present its observations in advance.

TITLE II

Association's legal actions

Articles R422-1 to R422-10

CHAPTER I

Representative action

Articles R422-1 to R422-10

Article R422-1

Consumers who, on the basis of the provisions of article L. 422-1, intend to claim reparation for damages that they incurred due to the same professional and which have a common origin may give an approved consumer association the mandate to act on their behalf before civil courts, under the conditions fixed by this chapter.

Unless an agreement is reached to the contrary, the mandate determined in this way does not include duty of aid.

Article R422-2

The mandate must be in writing, must expressly state its purpose and must invest the approved national consumer association with the power to institute all procedural acts on the consumer's behalf.

The mandate may also provide for:

Advance payment by the approved national consumer association of all, or part, of the costs and expenses relating to the proceedings;

The payment of retainers by the consumer;

Renunciation by the national approved consumer association of the performance of the mandate subsequent to formal notification of the consumer by recorded delivery letter should the latter's inertia be likely to slow down the proceedings;

Representation of the consumer by the national approval consumer association during investigative measures;

The possibility for the national approved consumer association of instituting appeal procedures on the consumer's behalf, with the exception of pourvoi en cassation, without any further mandate.

Article R422-3

For the application of article L. 422-1, competence in respect of the amount of the claim and level of competence in the last resort re determined, for all claims, by the higher of the two.

Article R422-4

Summonses and notifications intended for the consumer for the advancement of the proceedings are sent to the national approved consumer association acting on its behalf.

Article R422-5

If the mandate is revoked, the party that issued the mandate may continue with the proceedings instituted as if it had instituted said proceedings direct.

The party that revokes its mandate must notify the judge and the opposing party as soon as possible.

Article R422-6

The national approval consumer association is obliged to inform its principals, by all appropriate means, of the court before which the case has been brought and, where appropriate, that to which it may have been referred, the date of the hearing and the date on which the ruling is likely to be given.

At the request of one of its principals, the national approved consumer association must issue, at its own expense, a copy of the document instituting the proceedings and, where appropriate, the submissions.

Article R422-7

In the event of dissolution of the national approved consumer association, change of company object or withdrawal of approval, consumers may give the mandate to another national approved consumer association to continue with the proceedings.

Article R422-8

The document instituting the proceedings contains, upon pain of invalidity, in addition to the statements provided for by law, the name of the national approved association, its registered office, the body that represents it legally and the name, forenames and address of each of the consumers on whose behalf it is acting.

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A copy of the certificate of approval issued in application of the provisions of article R. 411-2 is attached to the document instituting the proceedings.

Article R422-9

The acte d'appel and the declaration de pourvoi, subject to penalty of invalidity, in addition to the statements provided for by law, the name of the national approved consumer association, its registered office, the body representing it legally and the identity of the consumers on whose behalf it is acting.

Article R422-10

The national approved consumer association is notified of the decision and informs its principals without delay and, in any event, within the deadlines for appeal actions. The deadline for instituting appeal proceedings commences with notification of the association.

BOOK V

The institutions

Articles R512-1 to R551-1

TITLE I

Consultative bodies

Article R512-1

CHAPTER I

Departmental consumer committees

Article R512-1

Article R512-1

In each department an order issued by the préfet creates a consumer committee half of which is made up of consumer representatives and half of which is made up of representatives of economic activities. It is chaired by the préfet or his/her representative. An order issued by the minister for economic affairs and finance fixed regulations regarding its composition and operation.

The committee may issue opinions and wishes in respect of questions relating to consumer affairs, competition and pricing.

TITLE II

The Institut national de la consommation

Articles R531-1 to R533-5

CHAPTER I

Organisation and administration

Articles R531-1 to R531-10

Article R531-1

The Institut national de la consommation (INC) is a national public institution of an industrial and commercial nature, is a legal entity and is financially independent. It is placed under the protection of the minister for consumer affairs.

Article R531-2

(Decree no. 2001-300 of 4 April 2001 art. 1 Journal officiel of 8 April 2001)

The purpose of the Institut national de la consommation is to:

Supply technical support to consumer organisations;

Group together, produce, analyse and disseminate information, studies, inquiries and tests;

Implement training and education initiatives on questions of consumer affairs.

Article R531-3

(Decree No. 97-298 of 27 March 1997 Art. 1 Official Journal of 3 April 1997)

(Decree No. 2001-300 of 4 April 2001 Art. 1 Official Journal of 8 April 2001)

(Decree No. 2005-436 of 5 May 2005 Art. 19 Official Journal of 10 May 2005)

The National Consumers' Institute acts as follows in carrying out the missions referred to in Article R. 531-2:

1. For the consumers' organisations:

a) Creates and provides technical support services for the consumers' organisations including legal, economic and technical studies, educational and informational dossiers, summaries and analyses in preparation for the work of the National Consumers' Council, training actions, comparison tests, television broadcasts, and specialised publications. It provides access to its own databases.

The annual specification of the technical support services for consumers' organisations is drawn up by a committee specially created for that purpose which oversees its execution. The said committee is composed of a representative of each nationally approved consumers' organisation and the institute's director. The Government Commissioner and the member of the general economic and financial control body participate in its work as of right;

b) Provides the consumers' organisations with services whose nature and content are stipulated in agreements negotiated between the institute and one or more consumers' organisations;

c) Gathers information on matters relating to the defence of consumers' interests with a view, inter alia, to creating databases.

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2. For the public:

- a) Disseminates information, by any appropriate means, on questions relating to consumption and products and services likely to be used by consumers;
- b) Provides any product, study, comparison test or service associated with its missions.

Article R531-4

(Decree no. 2001-300 of 4 April 2001 art. 1 Journal officiel of 8 April 2001)

The Institut national de la consommation is administered by a board of directors made up of sixteen members with the right to vote:

Seven representatives of consumers and users appointed by the minister for consumer affairs;

Two government representatives, one appointed by the minister for economic affairs, the other by the minister for consumer affairs;

Two representatives elected by the staff of the Institut national de la consommation, under the conditions provided for by law no. 83-675 of 26 July 1983 relating to the democratisation of the public sector;

Five qualified persons appointed by the minister for consumer affairs for their skills.

Members are appointed by order of the minister for consumer affairs for a three year term of office, renewable only once.

Should a vacancy occur, for whatever reason, more than six months prior to the expiry of the term of office, another member is appointed by the minister for consumer affairs for the period still left to run. This counts as one of the two periods of office authorised by the previous paragraph if its is for eighteen months or more.

Article R531-5

(Decree no. 2001-300 of 4 April 2001 art. 1 Journal officiel of 8 April 2001)

The board of directors elects one of its own members as chair and vice-chair, for the same period of office as that held by the members, the vice-chair automatically replacing the chair when absent or unable to attend due to unforeseen difficulties. In the event of the termination of the office of chair or vice-chair during the course of the mandate, a successor is elected under the same conditions for the period still left to run.

Article R531-6

(Decree no. 2001-300 of 4 April 2001 art. 1 Journal officiel of 8 April 2001)

Board members perform their duties free of charge. Members are entitled to the travel and accommodation expenses provided for by decree no. 90-437 of 28 May 1990 fixing payment terms and procedures for expenses occasioned by civil personnel travelling throughout the metropolitan territory of France where these are charged to government budgets and those of public national institutions of an administrative nature and certain subsidised organisations.

Article R531-7

(Decree No. 97-298 of 27 March 1997 Art. 1 Official Journal of 3 April 1997)

(Decree No. 2001-300 of 4 April 2001 Art. 1 Official Journal of 8 April 2001)

(Decree No. 2005-436 of 5 May 2005 Art. 19 Official Journal of 10 May 2005)

The board of directors meets at least three times a year when convened by its chairman or at the request of a majority of its members or the Government Commissioner.

The chairman decides the agenda. He includes therein, inter alia, the items requested by a majority of the members of the board of directors, the director or the Government Commissioner.

In the event of occasional unavailability, a member of the board of directors may arrange to be represented by another member. Each member may nevertheless only represent one other member at most. The board of directors may only validly deliberate if a majority of its members are present or represented. If the quorum requirement is not met at the first meeting, the council may validly deliberate without a quorum requirement following a second convening, which must take place within fifteen days.

Resolutions are adopted on a majority vote of the members present or represented. In the event of a tied vote, the chairman has a casting vote.

The board of directors may hear experts to clarify an item on the agenda.

The director of the National Consumers' Institute, the Government Commissioner, the member of the general economic and financial control body and the accountant attend the board meetings in an advisory capacity. The director may be assisted by any colleague of his choice. He may arrange to be represented if he is unable to attend.

Article R531-8

(Decree No. 97-298 of 27 March 1997 Art. 1 Official Journal of 3 April 1997)

(Decree No. 2001-300 of 4 April 2001 Art. 1 Official Journal of 8 April 2001)

(Decree No. 2005-436 of 5 May 2005 Art. 19 Official Journal of 10 May 2005)

The board of directors deliberates on:

- 1 The institute's activities in general;
- 2 The institute's long-term contract with the State;
- 3 The annual or long-term action programmes;
- 4 The internal regulations of the committee referred to in 1 of Article R. 531-3 and the annual specification of the technical support services for consumers' organisations drawn up by that committee and presented by the manager;
- 5 The annual statement of revenue and expenditure forecasts and likewise the amending statements relating either

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to an increase in the total amount of the expenditure or to credit transfers between the capital transactions section and the operations section or between the equipment items and the staff items. The other amending statements are drawn up by the manager after obtaining approval from the member of the general economic and financial control body. He reports thereon to the board of directors at its next meeting;

- 6 The general conditions for determining the selling prices of the institute's products and services;
- 7 The annual activities report presented by the manager;
- 8 The financial accounts and the allocation of profits for the accounting period;
- 9 The borrowings;
- 10 The acquisition, extension or sale of participating interests by the institute;
- 11 The creation or transfer of subsidiary companies;
- 12 The acceptance or refusal of donations and bequests;
- 13 The general conditions of recruitment, employment and remuneration of the staff;
- 14 The institution of legal actions.

The board of directors draws up its internal regulations.

Article R531-9

(Decree no. 2001-300 of 4 April 2001 art. 1 Journal officiel of 8 April 2001)

The government commissioner attached to the Institut national de la consommation is the director general for competition, consumer affairs and fraud prevention.

For board meetings, he/she may be accompanied by any colleague or qualified person of his/her choice. He/she may be represented at said meetings.

Decisions taken by the board of directors are enforceable, unless the government commissioner requests that said enforcement be suspended within ten days of the decision being taken. In this event, the government commissioner submits this decision to the minister for consumer affairs, who makes a ruling within one month of the suspension request. Failing a decision of express and reasoned rejection on the part of the minister within this deadline, the decision is enforceable.

Decisions relating to loans, acquisitions, extensions and disposals of holdings and to creations or disposals of subsidiaries are only enforceable subsequent to approval by joint order of the minister with responsibility for the budget, the minister for consumer affairs and, where appropriate, the minister for economic affairs.

Decisions relating to the financial accounts and to the appropriation of profit or treatment of loss, to income and expenditure forecasts, to acceptance and refusal of donations and legacies, to general conditions for recruitment, employment and remuneration of personnel and to commercial policy are enforceable, unless an objection is raised by the minister for consumer affairs or the minister responsible for the budget, fifteen days after receipt of the summary of the decision by the government commissioner and the minister responsible for the budget.

Article R531-10

The director of the Institut national de la consommation is appointed by decree adopted on the report of the Prime minister and the minister for consumer affairs. He administers and manages the establishment.

The director:

- Prepares and enforces decisions taken by the board of directors;
- Is responsible for the organisation of the establishment as well as for its operation;
- Prepares activity programmes for the establishment and implements them;
- Recruits and manages personnel;

Represents the Institut national de la consommation at law and in all civil acts. To institute legal proceedings, he/she must have authorisation from the board of directors or, failing this, in an emergency, that of the chair of the board of directors. He/she reports to the board of directors;

Is authorising officer for income and expenditure.

CHAPTER II

Consultative bodies

Articles R532-1 to
R533-2

Article R532-1

(Decree No. 97-298 of 27 March 1997 Art. 1 Official Journal of 3 April 1997)

(Decree No. 2001-300 of 4 April 2001 Art. 1 Official Journal of 8 April 2001)

(Decree No. 2005-436 of 5 May 2005 Art. 19 Official Journal of 10 May 2005)

The board of directors may create advisory committees from within itself. The director is a member of such committees as of right. The Government Commissioner and the member of the general economic and financial control body participate in its work as of right.

Article R532-2

The comparative testing authority is made up of fifteen members divided as follows:

Six administrators representing consumers, appointed from within the Institut national de la consommation board of directors;

Six representatives of business, two of whom are representatives of distribution companies appointed by the minister for consumer affairs;

Two experts appointed by the minister for consumer affairs from the qualified persons mentioned in point 2 of article

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R. 531-3;

One administrator representing the personnel appointed by the Institut national de la consommation board of directors.

The comparative testing authority elects its chair from within. The chair informs the institute's board of directors about the work being carried out by the comparative testing authority and submits its proposals to said institute.

Members of the comparative testing authority have a three year term of office. In the event of a tie when it comes to decision making, the authority's chair has the casting vote.

The government commissioner attached to the Institut national de la consommation is represented in the work of the comparative testing authority. The director of the establishment or his representative assists in said work, as well as the chair of the board of directors if he is not a member of the comparative testing authority.

Article R532-3

The board of directors may create consultative technical committees that it regulates.

Article R533-2

(Decree No. 97-298 of 27 March 1997 Art. 1 Official Journal of 3 April 1997)

(Decree No. 2001-300 of 4 April 2001 Art. 1 Official Journal of 8 April 2001)

(Decree No. 2005-436 of 5 May 2005 Art. 19 Official Journal of 10 May 2005)

The National Consumers' Institute is subject to the economic and financial control of the State provided for in Decree No. 53-707 of 9 August 1953 relating to State supervision of national public enterprises and certain organisations having an economic and social corporate objective, and Decree No. 55-733 of 26 May 1955 relating to economic and financial supervision by the State. A member of the general economic and financial control body, placed under the authority of the Minister for Economic Affairs and Finance, provides supervision as determined in an order from that minister.

CHAPTER III

Financial and accounting provisions

Articles R533-1 to
R533-5

Article R533-1

(Decree no. 2001-300 of 4 April 2001 art. 1 Journal officiel of 8 April 2001)

The establishment's internal auditor is appointed by joint order of the minister responsible for the budget and the minister for consumer affairs.

Article R533-2

(Decree no. 2001-300 of 4 April 2001 art. 1 Journal officiel of 8 April 2001)

The Institut national de la consommation is subject to the government economic and financial control provided for by decree no. 53-707 of 9 August 1953 relating to government control in national public companies and certain organisations with an economic and social objects and by decree no. 55-733 of 26 May 1955 relating to government economic and financial control. A contrôleur d'Etat, placed under the authority of the minister for economic affairs and finance audits the establishment in accordance with the procedures fixed by order of said minister.

Article R533-3

(Decree no. 2001-300 of 4 April 2001 art. 1 Journal officiel of 8 April 2001)

The director of the Institut national de la consommation may create authorisations to receive funds and incur expenditure in accordance with the conditions provided for by decree no. 92-681 of 20 July 1992 relating to authorisations to receive funds and incur expenditure.

Article R533-4

(Decree no. 2001-300 of 4 April 2001 art. 1 Journal officiel of 8 April 2001)

The Institut national de la consommation is subject to the financial and accounting scheme applicable to public establishments of an industrial and commercial nature which have an internal auditor defined by decree no. 62-1587 of 29 December 1962 covering general regulations for public service accounting. He/she holds cost accounts.

Article R533-5

(Decree no. 2001-300 of 4 April 2001 art. 1 Journal officiel of 8 April 2001)

The establishment's resources comprise:

Income from its commercial operations, in particular, the sale of its publications;

Income from its training activities;

Grants or investment from government, local authorities or any other public or private entity;

Donations and legacies, gifts and contributions of any kind;

Generally speaking, any income that the establishment derives from its activity or to which it legally has access.

TITLE V

General commission for the unification of methods of analysis

Article R551-1

Article R551-1

A general commission for the unification of analysis methods whose members are appointed by joint order of the ministers for agriculture, justice, economic affairs and finance, industry, health, social security and maritime affairs is set

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up within the department of the minister for economic affairs and finance. It is consulted obligatorily in respect of fixing the methods of analysis to be imposed upon laboratories responsible for playing a part in the application of regulations relating to fraud prevention, as well as on the determination of physical conditions for sample taking.

With the participation of Henri TEMPLE, Director for the Consumer Law Research Centre – Montpellier University, Avocat à la Cour and Geoffrey WOODROFFE, Director for the Consumer Law Research Centre – Brunel's West London University, Solicitor

Regulatory Part – Simple Decrees

BOOK II

Quality of products and services

Articles D225-1 to
D225-2

TITLE II

Safety

Articles D225-1 to
D225-2

CHAPTER V

Other provisions

Articles D225-1 to
D225-2

Article D225-1

Scientific or technical organisations authorised to carry out the checks provided for in article L. 221-7 are as follows:

1. The Centre national d'études vétérinaires et alimentaires;
2. The Centre national du machinisme agricole, du génie rural, des eaux et des forêts;
3. The Centre scientifique et technique du bâtiment;
4. The Commissariat à l'énergie atomique;
5. L'Institut français de recherche pour l'exploitation de la mer;
6. L'Institut national de recherche chimique appliquée;
7. L'Institut national de l'environnement industriel et des risques;
8. L'Institut national de recherche et de sécurité ;
9. L'Institut national de la recherche agronomique;
10. L'Institut national de la santé et de la recherche médicale ;
11. The Institut Pasteur in Paris;
12. The Laboratoire central des industries électriques;
13. The Laboratoire central des points et chaussées;
14. The Laboratoire central de la préfecture de police;
15. The Laboratoire du Centre national de formation des techniciens des services Vétérinaires;
16. Government laboratories belonging to the directorate general for competition, consumer protection and fraud prevention;
17. Laboratories belonging to the directorate general for customs and indirect taxes;
18. The city of Paris hygiene laboratory;
19. The Laboratoire national d'essais;
20. The biomechanics and physiology laboratory belonging to the Institut national du sport et de l'éducation physique;
21. The Agence du médicament;
22. The central department for protection against ionising radiation;
23. Laboratories accredited by the Comité français d'accréditation (COFRAC).

Article D225-2

The minister who orders the checks selects the authorised body according to its competence and the nature of the product or service in question.

BOOK III

Endebtmnt

Articles D311-1 to
D313-9

TITLE I

Credit

Articles D311-1 to
D313-9

CHAPTER I

CONSUMER CODE

Consumer credit

Articles D311-1 to
D311-13

Section 1

Area of application

Articles D311-1 to
D311-3

Article D311-1

(Decree no. 2001-96 of 2 February 2001 art. 1 Journal Officiel of 3 February 2001 in force on 1 January 2002)

The amount referred to in point 2 of article L. 311-3 is fixed at EUR 21,500.

Article D311-2

(Decree no. 2001-96 of 2 February 2001 art. 1 Journal Officiel of 3 February 2001 in force on 1 January 2002)

The amount referred to in c of point 4 of article L. 311-3 is fixed at EUR 21,500.

Article D311-3

The amounts mentioned in articles D. 311-1 and D. 311-2 are fixed by decree adopted upon advice of the Conseil national de la consommation.

Section 6

Early settlement and debtor default

Articles D311-10 to
D311-13

Subsection 1

Early settlement

Article D311-10

Article D311-10

The amount below which the lender is entitled to refuse partial early repayment is fixed at three times the contractual amount of the first instalment not yet due.

Subsection 2

Debtor default

Articles D311-11 to
D311-13

Article D311-11

When the lender requires the immediate repayment of the capital still outstanding in application of article L. 311-30, it may ask for compensation equal to 8% of the capital still outstanding on the date of the default.

Article D311-12

Where the lender does not require the immediate repayment of the capital still outstanding, it may ask the defaulting borrower for compensation equal to 8% of the outstanding instalments due. Should, however, the lender agree to postpone future instalments, the compensation amount is reduced to 4% of the deferred instalments.

Article D311-13

In the event of default in the performance of a lease contract combined with an undertaking to sell or a hire-purchase undertaking the lessor is entitled to request, in application of article L. 311-31, compensation equal to the difference between, on the one hand, the residual value, exclusive of tax, of the property stipulated in the contract plus the current value, on the date when the contract is cancelled, of the sum, exclusive of tax, of the rental payments not yet due and, on the other hand, the market value, exclusive of tax, of the goods returned.

The current value of the rental payments not yet due is calculation using the compound interest method, taking as the annual rate of reference the average rate of return of bonds issued during the course of the six month period preceding the date on which the contract was concluded plus one half. The market value mentioned hereinabove is that obtained by the lessor if its sells the returned or repossessed goods.

The lessee does, however, have the right, within thirty days of the cancellation of the contract, to present the lessor with a purchaser making a written offer to buy. If the lessor does not accept this offer and if it subsequently sells at a lower price, the value to be deducted must be that of the offer refused by it.

If the rented goods are out of service, the market value is obtained by adding together the sale price and the amount of capital paid by the insurance company.

Failing sale or at the lessee's request, the market price can be assessed according to expert opinion. The lessee must be must be informed of this possible evaluation.

Where the lessor does not require the cancellation of the contract, it may ask the defaulting lessee for compensation equal to 8% of the outstanding instalments.

Should, however, the lessor agree to defer future instalments, the compensation amount is reduced to 4% of the deferred instalments.

Applicable taxes are added to the compensation amount.

CHAPTER III

CONSUMER CODE

Common provisions

Articles D313-6 to
D313-9

Section 1
Interest rate

Articles D313-6 to
D313-9

Subsection 2
Usury rate

Articles D313-6 to
D313-9

Article D313-6

The average effective rates that have been used throughout one quarter by credit institutions for the same types of categories with similar risks, as defined by the order issued by the minister for economic affairs and finance provided for by article L. 313-3, are calculated by the Banque de France. The minister for economic affairs and finance has these rates published in the official journal of the French republic in addition to the corresponding usury thresholds that will serve as a reference for the following quarter. Where appropriate, he makes corrections to the observed rates, in accordance with the provisions of the second paragraph of article D. 313-7.

Article D313-7

(Decree No. 2005-1007 of 2 August 2005 Art. 4 I Official Journal of 25 August 2005)

Each quarter, the Bank of France conducts an inquiry into the loans made in euros in order to gather from the credit institutions the data required to calculate the average percentage rates. The said calculation is made using a simple arithmetic mean of the annual percentage rates observed. Loans whose rates are regulated, administered or subsidised by the State are not taken into account. Loans taken out by companies are not taken into account for calculation of the average percentage rate if they exceed amounts stipulated by order of the Minister for Economic Affairs and Finance.

In the event of the cost of the credit institutions' resources varying to an exceptional extent, the average percentage rates observed by the Bank of France may be corrected to take account of such variation. The said rates are published within forty-five days of such variation being recorded.

Article D313-8

Lenders must inform borrowers of the usury thresholds corresponding to the loans that they are offering to them. Credit institutions make this information available to their customers as well as the general banking terms referred to in article 7 of the decree of 24 July 1984 relating to the activity and monitoring of credit institutions.

Article D313-9

The bank of issue for overseas departments is responsible, within these departments, for carrying out the missions conferred upon the Banque de France by virtue of articles D. 313-6 and D. 313-7.

BOOK V

The institutions

Articles D511-1 to
D541-7

TITLE I

Consultative committees

Articles D511-1 to
D511-17

CHAPTER I

The Conseil national de la consommation

Articles D511-1 to
D511-17

Section 1

Missions and powers

Articles D511-1 to
D511-4

Article D511-1

The Conseil national de la consommation is a consultative body placed before the minister for consumer affairs.

Its aim is to enable confrontation and dialogue between representatives of collective consumer and user interests and representatives of businesses, public services and public authorities, for everything to do with consumer problems.

Article D511-2

Agreements between businesses or providers of public and private services and consumers or users may be negotiated within the scope of the Conseil national de la consommation.

Article D511-3

(Decree No. 97-298 of 27 March 1997 Art. 1 Official Journal of 3 April 1997)

(Decree No. 2005-249 of 14 March 2005 Art. 1 Official Journal of 18 March 2005)

Whenever necessary, the public authorities consult the National Consumers' Council concerning the broad lines of

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their policy relating to consumers and users and, in particular, when Community discussions have an impact on French consumer law. The study conditions for such dossiers are specified in the order which contains the National Consumers' Council's internal regulations.

The National Consumers' Council is composed of colleges with speaking and voting rights which, jointly or separately, on their own initiative or at the behest of the Minister for Consumer Affairs, issue opinions on matters pertaining to the consumption of public or private goods and services, Government bills or private member's bills and regulations likely to have an impact on consumption, as well as the implementing provisions of such laws and regulations, including those passed pursuant to Article L. 410-2 of the Commercial Code and Article L. 113-3 of the present code.

Article D511-4

The minister for consumer affairs publishes the opinions of the Conseil national de la consommation and, where appropriate, different opinions.

If requested by at least one third of the panel members, details of the votes of said panel are also made public.

Each year the Conseil national de la consommation compiles a report on its activity which is made public.

Section 2

Composition and organisation

Articles D511-5 to
D511-12

Article D511-5

The Conseil national de la consommation is chaired by the minister for consumer affairs or his representative.

Article D511-6

The Conseil national de la consommation is made up of:

1. A panel of consumers and users the members of which are appointed for a three year period, upon the proposal of each of the consumer organisations approved, at national level, for the purposes of instituting legal proceedings, by order of the minister for consumer affairs.

2. A panel of businesses representing agricultural, industrial, craft and commercial activities as well as public and private services, the members of which are appointed for a three year period, upon advice from the interested ministers, by order of the minister for consumer affairs.

Article D511-7

Representatives of ministers comprising the interdepartmental consumer group defined in article D. 522-1 automatically take part in the work of the Conseil national de la consommation.

Representatives of other ministers may participate, either at their request, or at the request of the chair of the - Conseil national de la consommation, in meetings of the Conseil national de la consommation as defined in article D. 511-12.

Article D511-8

(Decree No. 97-298 of 27 March 1997 Art. 1 Official Journal of 3 April 1997)

(Decree No. 2005-249 of 14 March 2005 Art. 2 Official Journal of 18 March 2005)

The representatives of the organisations on a list drawn up by order of the Minister for Consumer Affairs participate in the National Consumers' Council's work as of right.

Article D511-9

(Decree No. 97-298 of 27 March 1997 Art. 1 Official Journal of 3 April 1997)

(Decree No. 2005-249 of 14 March 2005 Art. 3 Official Journal of 18 March 2005)

The chairman of the National Consumers' Council may, on his own initiative or that of the committee, as defined in Article D. 511-11, invite to its meetings any person and designate any expert whose presence is considered conducive to the proper progress of its business. Such experts are not entitled to speak or vote.

Article D511-10

Members of the consumers' and users' panel and the panel of professionals have voting rights. Substitute members are appointed under the same conditions as regular members and in the same number. Substitute members automatically replace absent members or those who have been prevented from attending.

Where a regular or substitute member, appointed for a three year period, terminates his duties, in particular, due to the fact that he has lost the authority by virtue of which he was appointed, a successor is appointed for the remaining period still to run, unless this is less than four months.

Article D511-11

(Decree No. 97-298 of 27 March 1997 Art. 1 Official Journal of 3 April 1997)

(Decree No. 2005-249 of 14 March 2005 Art. 4 Official Journal of 18 March 2005)

A National Consumers' Council committee is hereby constituted; the said committee is composed of members delegated by each of the colleges of consumers and users, and of professionals.

The committee meetings are chaired by the Minister for Consumer Affairs or his representative.

An order from the Minister for Consumer Affairs determines the committee's remit, the rules for its constitution and its operational conditions.

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Article D511-12

(Decree No. 97-298 of 27 March 1997 Art. 1 Official Journal of 3 April 1997)

(Decree No. 2005-249 of 14 March 2005 Art. 5 Official Journal of 18 March 2005)

Plenary sessions of the National Consumers' Council are convened by the Minister for Consumer Affairs on his own initiative or at the behest of a majority of the full members of one of the two colleges or of a majority of the full members of the committee. At least one plenary session is held each year.

A meeting of a single college is held when convened by the Minister for Consumer Affairs on his own initiative or at the behest of two thirds of the full members of either college.

A consultation of the National Consumers' Council or of a single college may take place:

- through the minister issuing a notice to attend at least two weeks before the date of the meeting;
- through an emergency procedure, without notice or a quorum;
- by written means.

Section 3
Operation

Articles D511-12 to
D511-17

Article D511-12

Plenary sessions of the Conseil national de la consommation are called by the minister for consumer affairs, on its own initiative or at the request of the majority of one of its two panels or the majority of the bureau. It holds at least for plenary sessions per year.

Individual panels are called by the minister for consumer affairs, on its own initiative or at the request of the majority of members of the panel in question.

For the application of article L. 113-3, the invitation to attend the council meeting is sent out at least two weeks prior to the date of the meeting.

In the case provided for by article 1 of order no. 86-1243 of 1 December 1986, this consultation is carried out according to an emergency procedure, without conditions in respect of deadlines or quorums.

Article D511-13

The minister for consumer affairs sets the agenda for each plenary session.

Proposals made by at least one third of the council members with a voting right are automatically listed.

Article D511-14

(Decree No. 97-298 of 27 March 1997 Art. 1 Official Journal of 3 April 1997)

(Decree No. 2005-249 of 14 March 2005 Art. 6 Official Journal of 18 March 2005)

At a plenary session, each college votes separately, using a global vote, on the work the National Consumers' Council has carried out during the year and which the committee has validated.

Article D511-15

Conseil national de la consommation secretarial staff are provided by the departments of the minister for consumer affairs.

Article D511-16

The practical operating procedures of the Conseil national de la consommation are specified in rules of procedure, ordered by the minister for consumer affairs on the advice of the Conseil national de la consommation.

Article D511-17

(Decree No. 97-298 of 27 March 1997 Art. 1 Official Journal of 3 April 1997)

(Decree No. 2005-249 of 14 March 2005 Art. 7 Official Journal of 18 March 2005)

The appointments of the consumers' associations' representatives made on a proposal or opinion of the National Consumers' Council shall be made on a proposal or opinion from the National Consumers' Council's college of consumers and users. The practical arrangements of such consultations are specified in the order containing the National Consumers' Council's internal regulations.

TITLE II

Administrative coordination bodies

Articles D521-1 to
D522-4

CHAPTER I

The Comité interministériel de la consommation

Articles D521-1 to
D521-2

Article D521-1

An interdepartmental consumer committee is created by the Prime minister and is responsible for examining proposals for actions of an interdepartmental nature made in favour of consumers or users by the minister for consumer affairs, after consultation of the interdepartmental consumer group as defined in article D. 522-1. It may also examine bills or decrees designed with the same objective in mind, on the initiative of the minister for consumer affairs.

Article D521-2

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The interdepartmental consumer committee is chaired by the Prime minister or, by delegation, by the minister for consumer affairs. It gathers together ministers represented by the interdepartmental consumer group and affected by the agenda.

It meets at least twice a year.

CHAPTER II

The Groupe interministériel de la consommation

Articles D522-1 to
D522-4

Article D522-1

An interdepartmental consumer group is set up.

The group's mission is to coordinate and direct consumer policy. In particular, it proposes to the interested ministers measures to improve consumer and user protection and information. It aims to provide greater coordination in the compilation of texts and in the performance of checks. At the request of one of its members, it is consulted on draft legislative and regulatory texts relating to consumer and user information and protection.

Article D522-2

The interdepartmental consumer group is chaired by the minister for consumer affairs or his representative.

The ministers responsible for the following departments are represented in said group:

- home office;
- foreign trade;
- transport;
- industry;
- research;
- social affairs;
- justice;
- defence;
- economy, finance and budget;
- national education;
- agriculture;
- trade and the craft industry;
- employment;
- health;
- tourism;
- town and country planning and housing;
- environment;
- postal and telecommunication services.

Representatives from other ministries are called upon to participate in the group's work for matters coming under their jurisdiction.

The group may, if necessary, call upon authorised entities for assistance.

Article D522-3

The interdepartmental consumer group has a secretariat provided by the departments of the minister for consumer affairs.

Article D522-4

The minister for consumer affairs may create, by order adopted upon the advice of the interdepartmental consumer group, specific temporary or permanent working parties. The order defines the mission assigned to said working parties as well as their composition.

TITLE IV

The Conseil national de l'alimentation

Articles D541-1 to
D541-7

Article D541-1

The Conseil national de l'alimentation is placed before the minister for agriculture, the minister for health and the minister for consumer affairs.

Article D541-2

This national council is consulted on the food policy definition by giving opinions on questions referred to it.

It may, in particular, be consulted, on major policy guidelines relating:

1. to the adaptation of consumption to dietary requirements;
2. to food safety for consumers;
3. to the quality of foodstuffs;
4. to consumer information in respect of these foodstuffs.

The Conseil national de l'alimentation does not replace qualified authorities on scientific matters, nor authorities on economic trends. It may consult these authorities on questions falling within the jurisdiction.

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Article D541-3

The Conseil national de l'alimentation is made up of the following members:

1. Nine representatives from consumer and user associations;
2. Nine representatives of agricultural producers;
3. Nine representatives from the processing industry, one of whom represents the craft industry;
4. Three representatives from the distribution sector;
5. Six representatives from institutional catering, including:
 - a) three representatives from commercial catering;
 - b) three representatives from the mass caterers' coordinating committee
6. Five representatives of agricultural/agri-food and food product distribution workers' associations;
7. The chair and the two vice-chairs of the food safety and the nutrition and healthy lifestyle section of the French Conseil supérieur d'hygiène publique;
8. The director of the Institut national de la recherche agronomique or his/her representative;
9. The director of the Institut national de la santé et de la recherche médicale or his/her representative;
10. The director of the scientific and technical institute for sea fishing or his/her representative;
11. The director of the Centre national de coordination des études et recherches sur la nutrition et alimentation or his/her representative;
12. The director of the Institut national de la consommation or his/her representative;
13. Six qualified scientific entities appointed jointly by the minister for agriculture, the minister for health and the minister for consumer affairs.

In addition, representatives of ministers responsible for the following departments are automatically entitled to attend council meetings:

- research;
- industry;
- agriculture;
- health;
- consumer affairs;
- national education;
- maritime affairs;
- commerce and the craft industry;
- economic affairs and finance;

Article D541-4

Authorised entities and consumer representatives, from institutional catering, agricultural producers, processors, distributors and employee associations are appointed for three years by joint order of the minister for agriculture, the minister for health and the minister for consumer affairs, upon advice from the ministers concerned, at the proposal of the representative organisations. Their term of office is renewable.

Should they not be able to complete their term of office, a replacement is appointed for the period left to run, unless this is less than four months.

The chair of the Conseil national de l'alimentation, at the proposal of the minister for agriculture, the minister for health or the minister for consumer affairs, may call upon any entity or government representative to attend council meetings, whose attendance is justified by the agenda.

Article D541-5

The chair of the Conseil national de l'alimentation is appointed by joint order of the minister for agriculture, the minister for health and the minister for consumer affairs. He/she is selected from amongst those members of the Conseil national de l'alimentation who are appointed by joint order of the minister for agriculture, the minister for health and the minister for consumer affairs. The chair remains in office for a three year period which can be renewed.

The Conseil national de l'alimentation meets at the request of one or more of the three ministers or at the request of two thirds of its members and is convened by the chair who orders the agenda for the meetings.

Article D541-6

The Conseil national de l'alimentation has a secretariat. Secretaries are appointed by joint order of the minister for agriculture, the minister for health and the minister for consumer affairs. They are placed under the joint authority of these three ministers and rely, in order to perform their duties, on the relevant departments of the three ministers.

Article D541-7

The Conseil national de l'alimentation sets up permanent or temporary working parties considered necessary for the proper performance of its work.

The minister for agriculture, the minister for health and the minister for consumer affairs, specify by joint order, the practical procedures for operating the council and publishing the conclusions of its work.