

ELECTRONIC COMMERCE

Mémorial A no. 96 of 8 September 2000

Law of 14 August 2000 relating to electronic commerce, modifying the Civil Code, the New Code of Civil Procedure, the Commercial Code, the Penal Code, and transposing Directive 1999/93 of 13 December 1999 relating to a Community framework for electronic signatures, Directive 2000/31/EC of 8 June 2000 relating to certain legal aspects of information society services, and certain provisions of Directive 97/7/EC of 20 May 1997 concerning distance selling of goods and services other than financial services

“Only French version binding”

Summary

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I, JEAN, by the grace of God, Grand Duke of Luxembourg, Duke of Nassau;

Having heard my Council of State;

With the assent of the Chamber of Deputies;

Having regard to the decision of the Chamber of Deputies of 12 July 2000 and that of the Council of State of 21 July 2000 that there is no need for a second vote;

Have ordered and order as follows:

SECTION I. GENERAL PROVISIONS

Art. 1. Definitions

Within the meaning of this law, the following term shall bear the following meaning:

“Information society services” shall mean any service provided, normally for a fee, via an electronic means at a distance and at the individual request of a recipient of the services.

For the purposes of this definition, the following terms shall bear the following meanings:

“distance” means a service provided without the simultaneous presence of both parties;

“by electronic means” means a service sent from the place of origin and received at a destination by means of electronic processing equipment (including digital compression) and data storage equipment, and which is entirely transmitted, routed and received by wires, by radio, by optical methods or by other electromagnetic methods;

“at the individual request of a recipient of the services” means a service provided by data transmission upon an individual request;

“service provider” means any natural or legal person providing an information society service;

“established service provider” means a service provider who effectively pursues an economic activity using a fixed installation for an indefinite period. The presence and use of the technical means and technologies required to provide a service do not, in themselves, constitute an establishment of the provider;

“recipient of the service” means any natural or legal person who, for professional ends or otherwise, uses an information society service, in particular for the purposes of seeking information or making the same accessible.

Art. 2. Scope of application

(1) This law does not apply to:

- the field of taxation, without prejudice to the provisions of article 16 of this law;
- to agreements or practices governed by the legislation relating to cartels.

(2) The provisions of this law do not apply to the representation of a client and the defence of his interests before the courts.

(3) The provisions of this law apply without prejudice to the provisions relating to the protection of personal data.

(4) The law of the place at which the information society service provider is established applies to service providers and to the services which they provide, without prejudice to the freedom of the parties to choose the law applicable to their contract.

(5) Irrespective of the place at which the information society service provider is established, Luxembourg law applies to gambling activities which involve wagering a monetary stake in games of chance, including lotteries and transactions involving bets.

(6) The National Accreditation and Monitoring Authority referred to in article 17 may restrict the free movement of an information society service originating in another Member State when the said service represents a real and serious risk affecting public policy (ordre public), public security, public health or consumer protection, while also complying with the requirements imposed by Community law in the exercise of this option.

Art. 3. The use of cryptography

Cryptography techniques may be used freely.

Art. 4. Access to the activity of service providers

Without prejudice to the provisions of the law of establishment, access to the activity of a service provider is not, in itself, subject to prior authorisation.

Art. 5. General obligation of providing information to recipients

(1) The information society service provider shall render easily, directly and permanently accessible to the recipients of the service and the competent authorities, the following information:

- a) its name;
- b) the geographic address at which the service provider is established;
- c) details which allow him to be contacted rapidly and communicated with in a direct and effective manner, including his electronic mail address;
- d) where appropriate, his professional title and details of the professional body with which he is registered, his registration number on a trade register, his VAT number and the authorisation granted to him to exercise his activity, together with details of the authority granting such authorisation.

(2) Where information society services refer to prices and conditions of sale or performance of a service, these are to be indicated clearly and unambiguously. It should also be stated whether taxes and additional expenses are included in the price. These provisions apply without prejudice to consumer protection legislation.

SECTION II. CONCERNING PROOF AND ELECTRONIC SIGNATURE

Chapter 1. - Documentary evidence

Art. 6. Signature

After article 1322 of the Civil Code, an article 1322-1 has been added which states "The signature needed to complete a private deed identifies the person who has placed such signature demonstrates his compliance with the content of the deed.

It may be handwritten or electronic.

An electronic signature consists of a set of data, inseparably associated with the document, which guarantees the integrity thereof and satisfies the conditions stated in the first paragraph of this article."

Art. 7. After article 1322 of the Civil Code, an article 1322-2 has been added which states: "An electronic private deed is valid as an original when there are reliable guarantees concerning the maintenance of its integrity from the time when it was created for the first time in its definitive form."

Art. 8. Article 292 of the New Code of Civil Procedure is modified as follows: the words "signed and initialled" are replaced by "signed and, in the case of a handwritten signature, initialled."

Art. 9. Article 1325 of the Civil Code is completed by the following paragraph: "This article does not apply to private deeds bearing an electronic signature."

Art. 10. Article 1326 of the Civil Code is modified as follows: "The legal act by which one party undertakes to another to pay him a sum of money or to deliver to him fungible goods must be established in a deed containing the signature of the person making the undertaking together with a statement of the sum or the quantity in words. This statement shall be written in his hand or shall specifically bear an electronic signature; if it is also given in figures, where there is a difference, the private deed shall be valid for the sum written in words unless it can be proved which of the two is in error."

Art. 11. In the first section of Chapter VI of the Civil Code, the heading of Paragraph III is replaced by the following heading: "Concerning copies of private deeds."

Art. 12. Article 1333 of the Civil Code is reintroduced with the following text: "When the original deed or a document reproducing the original in accordance with article 1322-2 exists, copies only authenticate what is contained in the deed or document, sight of which may always be required."

Art. 13. Article 1334 of the Civil Code is inserted in Paragraph III and is replaced by the following provision: "When the original deed or a document reproducing the original in accordance with article 1322-2 no longer exists, copies made from it, under the auspices of the person who is responsible for safekeeping of the same, have the same probative value as the private documents of which they are presumed to be a faithful copy, unless there is proof to the contrary, when such copies have been produced in the context of a properly-monitored procedure for issue and when they satisfy the conditions determined by Grand-Ducal regulation."

Art. 14. Article 1348 paragraph 2 of the Civil Code is deleted. The Grand-Ducal regulation of 22 December 1986, in implementation of article 1348 of the Civil Code, continues to apply on the basis of article 13 of this law.

Art. 15. The first two paragraphs of article 11 of the Commercial Code are replaced by the following paragraph: "With the exception of the balance sheet and the profit and loss account, the documents or information referred to in articles 8 to 10 may be stored in the form of a copy. These copies have the same probative value as the originals of which they are presumed to be a faithful copy, unless there is proof to the contrary, when they have been produced in the context of a properly-monitored procedure for issue and when they satisfy the conditions determined by Grand-Ducal regulation."

Art. 16. Any person who is obliged by law to deliver or communicate documents and data at the request of an agent of the tax administration must, when these documents and data only exist in electronic form, issue or communicate the same, at the request of an agent of the tax administration, in a legible and directly intelligible form, certified to be in accordance with the original, as hard copy or, by way of derogation, by means of any other technical procedure which the tax administration may determine.

Failure to comply with a request or instructions from the tax administration on the part of the person who is under a duty to issue or communicate such documents and data constitutes a failure in the duty of issue or communication.

Chapter 2.- Electronic signature and certification-service-providers

Section 1. Definitions and legal effect of electronic signature

Art. 17. Definitions

"Signatory" means any person who holds a signature-creation device and acts either on his own behalf or on behalf of the natural or legal person or entity he represents.

"Signature-creation device" means a device which meets the requirements defined in the Grand-Ducal regulation relating to the qualified certificate.

"Secure-signature-creation device" means a signature-creation device which meets the requirements laid down by Grand-Ducal regulation

"Signature-verification device" means a device which meets the requirements defined in the Grand-Ducal regulation relating to the certificate.

"Qualified certificate" means a certificate which meets the requirements determined on the basis of article 25 of this law.

"Certification-service-provider" means an entity or a legal or natural person who issues certificates or provides other services related to electronic signatures.

"Certificate holder" means an entity or a legal or natural person to whom a certification-service-provider has issued a certificate.

"Accreditation" means a procedure by which a body serving as an authority formally recognises that a body or an individual is competent to carry out specific tasks.

"Accreditation system" means a system having its own rules of procedure and management and competent to carry out accreditation.

"Voluntary accreditation" means any permission, setting out rights and obligations specific to the provision of certification services, to be granted upon request by the certification-service-provider concerned, by the National Accreditation and Monitoring Authority charged with the elaboration of, and supervision of compliance with, such rights and obligations, where the certification-service-provider is not entitled to exercise the rights stemming from the permission and until it has received the decision by the body.

"The National Accreditation and Monitoring Authority" is the Minister whose remit includes Economy:

- who, via his offices, organises and manages an accreditation system and who makes pronouncements on accreditation;

- who, via his offices organises and manages the supervision of electronic signature certification-service-providers, and more particularly of those who issue qualified certificates.

Art. 18. Legal effects of electronic signature

(1) Without prejudice to articles 1323 ff. of the Civil Code, an electronic signature created by a secure-signature-creation device which the signatory is able to keep under his own exclusive control and which is based upon a qualified certificate, constitutes a signature within the meaning of article 1322-1 of the Civil Code.

(2) An electronic signature may not be rejected by a judge for the sole reason that it is presented in electronic form, that it is not based upon a qualified certificate issued by an accredited certification-service-provider, or that it was not created by a secure-signature-creation device.

(3) No person may be required to sign electronically.

Section 2. Certification-service-providers

Sub-section 1. Common measures

Art. 19. Obligation of professional secrecy

(1) Directors, members of executive and supervisory bodies, managers, employees and other persons in the service of a certification-service-provider, together with all those who themselves exercise the functions of certification-service-provider, are obliged to keep strictly secret all information entrusted to them in the context of their professional activity, with the exception of information which the holder of the certificate has agreed may be published or communicated. Disclosure of such information shall be punished by the sanctions specified in article 458 of the Penal Code.

(2) The obligation of secrecy ceases when the disclosure of information is authorised or imposed by or on the basis of a legislative measure, even prior to this law.

(3) No obligation of secrecy exists with regard to the National Accreditation and Monitoring Authority acting within the framework of its legal powers.

(4) Any person exercising or having exercised an activity for the National Accreditation and Monitoring Authority, together with auditors appointed by the National Accreditation and Monitoring Authority, have an obligation of professional secrecy and are liable to the sanctions specified in article 458 of the Penal Code in the event of violation of secrecy.

(5) Subject to the rules applicable in penal matters, the information referred to in section 1, once disclosed, cannot be used except for the purposes for which the law has permitted it to be disclosed.

(6) Any person bound by the obligation of secrecy referred to in section 1 and who has legally disclosed information covered by this obligation, cannot incur any penal or civil liability from this fact alone.

Art. 20. Protection of personal data

(1) The National Accreditation and Monitoring Authority and certification-service-providers are obliged to comply with the legislative measures governing the processing of personal data.

(2) A certification-service-provider who issues certificates to the public may collect personal data only directly from the person requesting a certificate or, further to the explicit consent of the person requesting a certificate, from a third party. The service provider shall only collect data in so far as it is necessary for the purposes of issuing and maintaining the certificate. Data may not be collected or processed for any other purposes without the explicit consent of the data subject.

(3) When a pseudonym is used, the true identity of the holder may only be revealed by the certification-service-provider further to the consent of the holder or in the cases specified in article 19 section 2.

Art. 21. Obligations of the certificate holder

(1) From the time the signature-creation data is created, the holder of the certificate is solely responsible for the confidentiality and integrity of the data related to creation of the signature he uses. Unless proved otherwise, any use of such data is deemed to have been made by him.

(2) The certificate holder is required to notify the certification-service-provider as soon as possible of any changes made to the information contained in the certificate.

(3) If there is any doubt as to maintenance of the confidentiality of signature-creation data, or doubt that information contained in the certificate is still accurate, the holder is required to have the certificate revoked immediately in compliance with article 26 of this law.

(4) When a certificate has reached its expiry date or has been revoked, its holder can no longer use the corresponding signature-creation data to sign nor cause such data to be certified by another certification-service-provider.

Sub-section 2. Certification-service-providers issuing qualified certificates

Art. 22. Obligation of information

(1) Prior to any contractual relationship with a person applying for a qualified certificate or at the request of a third party who relies on such a certificate, the certification-service-provider shall procure the information needed for the proper and secure use of his services on a durable medium and in a readily comprehensible language.

The minimum information required is as follows :

- a) the procedure to be followed to create and verify an electronic signature;
- b) the specific modalities and conditions of use of certificates, including limits imposed on their use, provided that these limits may be discerned by third parties;
- c) the obligations which, by virtue of this law, are incumbent upon the certificate-holder and the certification-service-provider;
- d) the existence of a voluntary accreditation system;
- e) the contractual conditions for issuing a certificate, including any limitation on the liability of the certification-service-provider;
- f) the procedures by which complaints may be made and disputes settled.

(2) The certification-service-provider shall provide one copy of the certificate to the candidate holder.

Once the certificate has been accepted by the candidate holder, the certification-service-provider shall record the certificate in the electronic directory referred to in the Grand-Ducal regulation, provided that the certificate-holder has given their consent to such recording.

Art. 23. Obligation of verification

(1) Prior to the issue of a certificate, the service provider shall verify the complementary nature of the signature-creation and signature-verification data.

(2) When a qualified certificate is issued to a corporate entity, the certification-service-provider shall verify beforehand the identity and the authority to represent the natural person applying to him.

Art. 24. Acceptance of certificates

(1) The content and publication of a certificate is subject to the consent of its holder.

(2) The certification-service-provider shall keep an electronic directory which shall include the certificates he issues and their expiry date. As soon as the certificate has been accepted by the candidate holder, the certification-service-provider shall record the certificate in the electronic directory referred to in the Grand-Ducal regulation, provided that the certificate holder has given their consent to such recording.

Art. 25. Issue and content of qualified certificates

(1) In order to be able to issue qualified certificates, certification-service-providers must have adequate financial resources and material, technical and human resources to guarantee the security, reliability and durability of the certification services offered. These requirements may be specified by means of a Grand-Ducal regulation.

(2) All qualified certificates shall contain such information as is ordered by Grand-Ducal regulation.

(3) At the request of the holder, the certificate may contain other information, not certified by the certification-service-provider, specifying that such information has not been verified by the certification-service-provider.

(4) A qualified certificate may be issued both by an accredited certification-service-provider or by a non-accredited certification-service-provider provided the latter meets the conditions required by the law and by the regulations of the Grand Duke enacted by way of implementation.

Art. 26. Revocation of certificates

(1) The certification-service-provider shall immediately revoke the qualified certificate at the request of the holder, after his identity has been verified.

(2) The certification-service-provider shall also immediately revoke a certificate when:

a) after suspension, a more thorough examination shows that the certificate was based on incorrect or falsified information, that the information contained in the certificate is no longer accurate, or that the confidentiality of the signature-creation data has been violated or that the certificate has been used fraudulently;

b) when the certification-service-provider has been informed of the death of the natural person or the dissolution of the corporate entity holding the certificate.

(3) The certification-service-provider shall inform the holder that the certificate has been revoked as soon as possible, and give the reasons for his decision.

He shall advise the holder of expiry of the certificate at least one month in advance.

(4) The revocation of a qualified certificate is final.

(5) Immediately after a decision to revoke a certificate, the certification-service-provider shall enter a record of the revocation of the certificate in the electronic directory referred to in article 23.

The revocation shall become demurrable in relation to third parties as soon as it has been recorded in the electronic directory.

Art. 27. Liability of qualified certificate service providers

(1) Unless he can prove that he has not been negligent, a certification-service-provider who issues a qualified certificate to the public or who guarantees such a certificate to the public is liable for damage caused to any person who reasonably relies on:

- the accuracy at the time of issuance of the information contained in the qualified certificate;
- an assurance that at the time of issuance of the certificate, the signatory identified in the qualified certificate held the signature-creation data corresponding to the signature-verification data given or identified in the certificate;
- the assurance that the signature-creation device and the signature-verification device can be used in a complementary manner, where the certification-service-provider generates them both.

(2) Unless he can prove that he has not acted negligently, a certification-service-provider who has issued a qualified certificate to the public or who guarantees publicly such a certificate is liable for damage caused to any person who reasonably relies on the certificate for failure to register revocation of the certificate.

(3) The certification-service-provider shall not be liable for damage resulting from the improper use of a qualified certificate exceeding the limits set for its use or the limit value of transactions for which the certificate may be used, in so far as these limits are recorded in the certificate and are recognisable to third parties.

(4) The measures referred to in paragraphs 1 to 3 are without prejudice to the modified law of 25 August 1983 relating to consumer protection legislation.

Art. 28. Recognition of certificates by third countries

Certificates issued as qualified certificates by a certification-service-provider established in a third country within the European Union are legally equivalent in Luxembourg to those issued by a certification-service-provider established in Luxembourg:

- a) if the certification-service-provider fulfils the requirements laid down in this law and has been accredited under a voluntary accreditation scheme established by a Member State of the European Union; or
- b) if a certification-service-provider established in a Member State of the European Union guarantees such certificates; or
- c) if the certificate or the certification-service-provider is recognised under a bilateral agreement between Luxembourg and third countries or under a multilateral agreement between the European Union and third countries or international organisations.

Art. 29. Supervision

(1) The National Accreditation and Monitoring Authority shall ensure that service-providers issuing qualified certificates comply with the requirements contained in articles 19 to 27 of this law and in the regulations of the Grand Duke implementing the same.

(2) All service providers issuing qualified certificates are required to notify the National Authority that his activities comply with the requirements of this law and the regulations enacted in execution hereof.

(3) The National Authority shall keep a register of notifications, which will be published at the end of each calendar year in the *Mémorial, Recueil administratif et économique*, without prejudice to the option of the National Authority to publish striking-off from the register at any time, either in the *Mémorial*, or in one or more foreign or national newspapers, if such publicity is required in the public interest.

(4) The National Authority may, either ex officio or at the request of any interested party, verify or arrange for verification that the activities of a certification-service-provider comply with the provisions of this law or the regulations enacted in execution hereof.

The Authority may make use of registered external auditors for such verification. A Grand-Ducal regulation shall determine the procedure for approval, such approval to be issued by the Minister whose remit includes Economy. The subject of such approval may be persons holding an adequate professional qualification and who have knowledge and specialist experience in the domain of electronic-signature technology, and who can offer guarantees of professional repute and independence in relation to the certification-service-providers whose activities they are called on to verify.

(5) In carrying out their mission of verification, once their credentials have been verified, the agents of the National Authority and registered external auditors shall be entitled to access to any establishment and to have any information and documents which they feel to be useful or necessary in accomplishing their mission communicated to them.

Any refusal by a certification-service-provider to co-operate actively shall be punished by a fine of between 10,001 and 800,000 francs. In such a case, the Authority may also strike service-providers off the notification register.

(6) If, upon a report by its agents or the appointed external auditor, the National Authority becomes aware that the activities of the certification-service-provider do not comply with the provisions of this law or the regulations adopted in execution hereof, it shall invite the service provider to comply with the said provisions within a time which it shall determine. If the service provider has not complied at the end of this period, the National Authority will remove the service provider from the notification register.

(7) If a serious violation by a certification-service-provider of the provisions of this law or the regulations adopted in execution hereof is determined, the National Authority may appropriately notify the same to, in particular, the administrative authorities competent in matters of the right of establishment. Reports produced for the attention of the National Authority may be sent to these authorities, provided that the certification-service-provider has been made aware of them in the context of its links with the National Authority.

Sub-section 3. Accredited certification-service-providers

Art. 30. Accreditation

(1) Certification-service-providers are free to apply for accreditation or not.

(2) Accreditation covers the issue of certificates relating to identity; it may include the professional or any other durable attribute of the certificate holder, together with any other information which can be certified.

(3) The certification-service-provider may apply for accreditation for one or more of these elements and for one or more categories of holder.

Art. 31. Conditions for obtaining accreditation

(1) The conditions for obtaining and keeping accreditation are determined by a Grand-Ducal regulation.

(2) A Grand-Ducal regulation shall lay down:

- a) the procedure for the issue, extension, suspension and withdrawal of accreditation;
- b) the costs of examining and monitoring dossiers;
- c) time-frames for examination of applications;
- d) amounts and modalities in respect of financial guarantees;
- e) the conditions intended to ensure interoperability of certification systems and the interconnection of certificate registers;
- f) the rules relating to the information which the certification-service-provider must retain concerning its services and the certificates it has issued;
- g) the guarantees of independence which certification-service-providers must offer to users of the service;
- h) the period for which data must be kept.

(3) Further conditions may be determined by Grand-Ducal regulation before a certification-service-provider may issue certificates to persons who wish to use an electronic signature in their exchanges with the public authorities.

(4) A decision to suspend or withdraw accreditation may be brought before the Administrative Court within one month, failing which the matter shall be statute-barred. The Court shall rule on the merits of the case.

Art. 32. Cessation and transfer of activities

(1) An accredited certification-service-provider shall inform the National Accreditation and Monitoring Authority within a reasonable time of its intention to cease its activities or, if appropriate, of its inability to continue its activities. It shall ensure that these activities are continued by another accredited certification-service-provider, under the conditions described in section 2 of this article, or, failing this, it shall take the measures required in section 3 of this article.

(2) An accredited certification-service-provider may transfer all or part of its activities to another service provider. Certificates shall be transferred under the following conditions:

- a) the certification-service-provider shall notify all holders of a certificate still in force at least one month before the planned transfer of the fact that it intends to transfer the certificates to another certification-service-provider;
- b) the certification-service-provider shall specify the identity of the certification-service-provider to whom it is planned to transfer these certificates;
- c) the certification-service-provider shall inform all certificate holders of their right to refuse the planned

transfer, together with the times within which and modalities by which they may refuse it. If the certificate holder does not expressly accept the transfer within the time allowed, the certificate is revoked.

(3) All accredited certification-service-providers who cease their activities without the same being taken up by another accredited certification-service-provider shall revoke certificates one month after they have notified the holders and shall take the measures required to ensure that data is preserved in accordance with article 25.

(4) The death, incapacity, bankruptcy, voluntary winding-up or liquidation, or any other involuntary reason for cessation of activities, shall be deemed cessation of activity within the meaning of this law.

Art. 33. Control

(1) When the National Accreditation Authority becomes aware that an accredited certification-service-provider is not complying with the specifications of this law and with the regulations, it shall determine a time by which the situation must be regularised and, if necessary, shall suspend the accreditation.

(2) If, after the time limit has expired, the accredited certification-service-provider has not regularised his situation, the authority will withdraw his accreditation.

(3) The certification-service-provider shall be under a duty to immediately record the withdrawal of accreditation in his electronic directory and inform certificate holders thereof without delay.

Sub-section 4. Electronic recorded delivery

Art. 34. A message signed electronically on the basis of a qualified certificate for which the time, date, despatch and, if necessary, receipt are certified by the service provider in accordance with the conditions determined by Grand-Ducal regulation, shall constitute recorded delivery.

SECTION III. SANCTIONS

Art. 35. Article 196 of the Penal Code is modified as follows: "Imprisonment of between five and ten years shall be the penalty imposed upon other persons who have committed forgery of authentic and public texts, and all persons who commit forgery of commercial, banking or private documents, including electronic private deeds,

Either by false signatures,

Or by counterfeiting or alteration of text or of signatures,

Or by fabrication of agreements, provisions, obligations or discharges, or by the insertion thereof after the event in the documents in question,

Or by the addition or alteration of clauses, declarations or facts which it was the object of such deeds to receive and record."

Art. 36. Article 197 of the Penal Code is modified as follows: "In all the cases expressed in this section, a person who has made use of a forgery shall be punished as if he were the author of the forgery."

Art. 37. Article 487 of the Penal Code is modified as follows: "The following are classified as false keys: all picklocks, master keys, copied keys, counterfeit keys or altered keys, including electronic keys;

Keys which have not been designated by the owner, tenant, landlord or lodger, to the locks, padlocks or closures of any kind for which the offender has employed them;

Keys which have been lost, mislaid or removed, including electronic keys, which have been used to commit theft.

However, the use of false keys shall only constitute an aggravating circumstance if such use occurred in order to open objects, the accessing of which would result in a heavier sentence."

Art. 38. Article 488 of the Penal Code is modified as follows: "Whoever shall have fraudulently counterfeited or altered keys, including electronic keys, shall be sentenced to imprisonment of between three months and two years and to a fine of between 10,001 francs and 80,000 francs."

Art. 39. Article 498 of the Penal Code is modified as follows: "A person who has deceived a buyer shall be punished by imprisonment of between one month and one year and by a fine of between 20,000 francs and 400,000 francs, or by one of these sanctions only, where deception relates to the following:

The identity of the goods sold, by fraudulently delivering an item other than the specified item which was the subject of the transaction;

The nature or origin of the item sold, by selling or delivering an item similar in appearance to the one which the buyer bought or believed he had bought.

The preceding provisions apply to movables, including intangible assets and real property."

Art. 40. Article 505 of the Penal Code is modified as follows: "Whoever shall have handled, in whole or in part, objects or intangible assets removed, misappropriated or obtained by means of a crime or misdemeanour shall be punished by imprisonment of between fifteen days and five years and by a fine of between 10,001 francs and 200,000 francs.

Their sentence may also include loss of civil rights, in accordance with article 24.

The fact of having knowingly benefited from the result of a crime or a misdemeanour also constitutes handling."

Art. 41. Article 509-1 of the Penal Code is modified as follows: "Whoever shall fraudulently have accessed or kept wholly or in part a system for the processing or automatic transmission of data, shall be punished by imprisonment of between two months and two years and by a fine of between 20,000 francs and 1,000,000 francs or by one of these two sanctions.

When data contained in the system shall have been deleted or modified as a result, the period of imprisonment shall be from four months to two years and a fine from 50,000 francs to 1,000,000 francs."

Art. 42. Article 509-2 of the Penal Code is modified as follows: "Whoever shall, intentionally and in disregard of the rights of others, interfered with or disturbed the operation of a system for the processing or automatic transmission of data, shall be punished by imprisonment of between three months and three years and by a fine of between 50,000 francs and 500,000 francs or by one of these two sanctions."

Art. 43. Article 509-3 of the Penal Code is modified as follows: "Whoever shall, intentionally and with disregard of the rights of others, directly or indirectly, have introduced data into a processing or automatic data transmission system or have deleted or modified the data it contains or the method of processing or transmission, shall be punished by imprisonment of between three months and three years and by a fine of between 50,000 francs and 500,000 francs or by one of these two sanctions."

Art. 44. Article 509-4 of the Penal Code is repealed.

Art. 45. Article 509-5 of the Penal Code is repealed.

SECTION IV. CONCERNING COMMERCIAL COMMUNICATIONS

Art. 46. Definition

"Commercial communication" means any form of communication designed to promote, directly or indirectly, the goods, services or image of a company, organisation or person pursuing a commercial, industrial or craft activity or profession.

The following do not in themselves constitute commercial communications:

- information allowing direct access to the activity of the company, organisation or person, in particular a domain name or an electronic-mail address;
- communications relating to the goods, services or image of the company, organisation or person compiled in an independent manner, particularly when this is without financial consideration.

Art. 47. Transparency requirements

A commercial communication shall comply with the following conditions:

- a) a commercial communication shall be clearly identifiable as such;
- b) the natural or legal person on whose behalf the commercial communication is made shall be clearly identifiable;
- c) promotional competitions or games shall be clearly identifiable as such and their conditions of participation shall be easily accessible and be presented clearly and unambiguously.

Art. 48. Unsolicited commercial communications

(1) An unsolicited commercial communication sent by electronic mail shall be identifiable clearly and unambiguously as such as soon as it is received by the recipient.

(2) Commercial communications may only be sent by electronic mail by an information society service provider to a recipient if there is no clear opposition to this by the recipient.

(3) Service-providers who send unsolicited commercial communications by electronic mail shall regularly consult the "opt out" registers established by Grand-Ducal regulation in which natural persons not wishing to receive such communications can register themselves, and comply with the wishes of these persons. Natural persons may enter their names on one or more opt out registers without cost to themselves.

Any service provider who has not complied with the wishes of persons entered on one or more opt out

registers shall be punished by a fine of between 10,001 and 200,000 francs.

SECTION V. CONCERNING CONTRACTS CONCLUDED BY ELECTRONIC MEANS

Chapter 1. - Common measures

Art. 49. Definitions

“Durable medium” means any instrument which allows the consumer to store information addressed personally to him in a manner allowing him to refer easily to it in the future over a period of time which is appropriate for the intended purposes of the information and which allows identical reproduction of the information stored.

“Financial service” means any service provided by a credit establishment, another financial sector professional or an insurance and reinsurance company.

Art. 50. Scope of application

(1) This section applies to contracts concluded by electronic means between professionals, and between professionals and consumers, with the exception of the following contracts:

- contracts that create or transfer rights in real estate, except for rental rights;
- contracts requiring by law the involvement of courts, public authorities or professions exercising public authority;
- contracts of suretyship and guarantees furnished by persons acting for ends outside their trade, business or profession;
- contracts governed by family law or by the law of succession.

(2) The provisions of articles 53 to 59 apply only between professionals and consumers.

Art. 51. General technical information to be provided

(1) Without prejudice to the general obligation of information of article 5 of this law and, unless the parties are professionals and have agreed otherwise, the procedures for conclusion of a contract by electronic means shall be transmitted by the service provider clearly and unambiguously and prior to the conclusion of contract. The information to be provided should in particular include:

- a) the different technical steps to follow to conclude the contract;
- b) whether or not the concluded contract will be filed by the service provider and whether it will be accessible;
- c) the technical means for identifying and correcting input errors prior to conclusion of the contract;
- d) the languages offered for conclusion of the contract.

(2) The contractual clauses and general terms and conditions must be provided to the recipient in such manner as allows him to store and reproduce the same.

(3) Paragraphs 1 and 2 of this article shall not apply to contracts between persons not acting for purposes within the framework of their trade, business or profession concluded exclusively by exchange of electronic mail or by equivalent individual communications.

Art. 52. Time when the contract is concluded

(1) Except where otherwise agreed by parties who are professionals, in cases where a recipient of the service has been asked to give their consent by using technological means in order to accept the offer of the service provider, the contract is concluded when the recipient of the service has received from the service provider, by electronic means, an acknowledgement of receipt of the acceptance from the recipient of the service.

a) the acknowledgement of receipt of acceptance is deemed to be received when the recipient of the service is able to access it;

b) the service provider must send the acknowledgement of receipt of acceptance immediately.

(2) The provisions of the first paragraph of this article only apply to contracts between persons not acting for the purposes of their trade, business or profession concluded exclusively by exchange of electronic messages or by equivalent individual communications.

Chapter 2.- Contracts concluded with consumers

Art. 53. Prior information to be given to the consumer

(1) Without prejudice to the general obligation of information of article 5 of this law and the obligations of

information which are specific to financial services, the service provider is obliged to provide the consumer, within sufficient time before conclusion of the contract, the following information in a clear and comprehensible manner:

- details of the certification-service-provider, who may or may not be accredited, from whom the service provider has obtained a certificate;
- the main characteristics of the product or service offered;
- the currency in which bills will be made out;
- the period for which the offer and price remain valid;
- payment terms and methods, the consequences of poor performance or non-performance of undertakings by the service provider;
- if appropriate, the conditions of credit proposed;
- whether or not there is a right of withdrawal;
- how sums which may have been paid by the consumer will be reimbursed in the event of his withdrawal;
- the cost of using an information society service when this is calculated on a basis other than the basic tariff;
- conditions of existing commercial guarantees and after-sales service;
- the lack of confirmation of information, if appropriate;
- for contracts concerning long-term or periodic supply of a product or service, the minimum duration of contract.

(2) This information must be provided by any method appropriate for the information society service used, and accessible at all stages of the transaction.

When he is able to do so, the service provider must put in place an information society service allowing the consumer to conduct a dialogue directly with him.

(3) For products and services which are not subject to a right of withdrawal in accordance with article 55 section 4, the following further information should be provided to the consumer:

- details of the operating system or equipment required to use in an effective manner the product or service ordered;
- the approximate time and cost of any downloading of a product or service, and any procedures and conditions relating to the licence contract.

Art. 54. Confirmation and recording of information

(1) The consumer must receive, at the latest at the time of delivery of the product or of the performance of the service provided, on a durable medium available to him and to which he has access, confirmation of the information mentioned in article 53 and, where appropriate, conditions for exercising the right of withdrawal.

(2) Section 1 does not apply to services for which the performance itself takes place by means of an information society service, if these services are provided on a single occasion and are billed by the service provider.

(3) The service provider must allow the consumer to obtain on a durable medium, as soon as possible after conclusion of the contract, the content of the transaction, specifying in particular the date and time of conclusion of the contract.

Art. 55. Consumer's right of withdrawal

(1) For any contract concluded by electronic means, the consumer shall have a period of seven days in which to withdraw, without penalty and without giving any reason.

However, if the consumer has not received the confirmation laid down in article 54, the period of withdrawal is three months.

The period of withdrawal shall be increased to 30 days for contracts relating to insurance policies except for policies laid down in section 4 g) of this article, and to pension operations.

These periods shall run:

- in the case of services, from the day of conclusion of the contract;
- in the case of goods, from the day of receipt of the goods.

(2) If this confirmation is received during the three-month period laid down in section 1, the period of seven days shall recommence, to run from the day of receipt of the information by the consumer.

(3) The consumer shall exercise his right of withdrawal on any durable medium.

In addition, the consumer must be reimbursed within 30 days in respect of any sums which he may have paid.

(4) Unless agreed otherwise, the consumer may not exercise the right of withdrawal provided for in section 1 in respect of the following contracts:

a) for the provision of services if performance has begun, with the consumer's agreement, before the end of the seven-day withdrawal period referred to in section 1;

b) for the supply of goods made to the consumer's specifications or clearly personalised or which, by their nature, cannot be returned or are likely to deteriorate or expire rapidly;

c) for the supply of audio or video recordings or computer software which were unsealed or downloaded by the consumer;

d) for the supply of newspapers, periodicals and magazines;

e) for gaming and lottery services;

f) for financial services, the price of which depends on financial market fluctuations outside the control of the service provider, which may take place during the withdrawal period, such as services relating to:

- foreign exchange operations;

- money market instruments;

- transferable securities and other tradable securities;

- UCITS and other collective investment systems;

- futures contracts and options;

- interest-rate guarantee contracts (FRA)

- swaps on interest rates, currencies or exchange contracts on flows related to equities or equity indices (equity swaps);

- options on the purchase or sale of any instrument included in this list, including futures contracts and options;

g) insurance policies lasting for less than one month.

(5) If the price of the service is fully or partly covered by credit granted to the consumer by the service provider or by a third party, on the basis of an agreement concluded between the third party and the service provider, the credit agreement shall be cancelled, without penalty, if the consumer exercises his right of withdrawal.

Art. 56. Payment for a financial service provided before withdrawal

(1) When the consumer exercises his right of withdrawal in accordance with article 55, he may only be held liable for payment of that part of the price proportional to the financial service actually provided by the service provider.

(2) The service provider may not ask the consumer for payment on the basis of section 1 if he has not fulfilled his obligation of information as laid down in article 53, nor if he has begun to execute the contract before the end of the withdrawal period without the consumer having expressly given his consent to such execution.

(3) As soon as possible, and at the latest within 30 days, the service provider shall return to the consumer all sums that he has received from the latter in accordance with the contract concluded, except the sum to be paid under section 1 of this article. This period runs from the day when the service provider has received notification of withdrawal by the consumer.

(4) The consumer shall return to the service provider any sum or property which he has received from the service provider, as soon as possible and at the latest within 30 days. This period runs from the date of despatch of notification of withdrawal by the consumer.

Art. 57. Unsolicited supplies

(1) Without prejudice to the rules applying in the matter of renewal of contracts by tacit agreement, the supply of an unsolicited product or service to the consumer is prohibited when it is accompanied by a request for payment.

(2) The consumer is not bound by any undertaking relating to supplies of goods or services which he has not expressly requested, the absence of a response not constituting consent.

Art. 58. Responsibility for proof

Proof of the existence of prior information, confirmation of information, compliance with deadlines and the consent of the consumer is the responsibility of the service-provider. Any clause to the contrary is regarded as improper within the meaning of article 1 of the modified law of 25 August 1983 relating to the legal protection of

the consumer.

Art. 59. Exemptions

Articles 53, 54 and 55 do not apply to the following:

- contracts for the supply of foodstuffs, beverages or other household goods for everyday use supplied to the consumer's domicile, residence or place of work;
- contracts for the supply of services of accommodation, transport, catering or leisure, when the service provider undertakes, at the time the contract is concluded, to supply the services on a specific date or for a specified period.

SECTION VI. LIABILITY OF INTERMEDIATE SERVICE PROVIDERS

Art. 60. Mere conduit

(1) An information society service provider who transmits over a communication network information provided by the recipient of the service or who provides access to a communication network shall not be liable for the information transmitted, on condition that the provider:

- a) does not initiate the transmission;
- b) does not select the receiver of the transmission; and
- c) does not select or modify the information contained in the transmission.

(2) The acts of transmission and provision of access referred to in paragraph 1 include the automatic, immediate and transient storage of the information transmitted in so far as this takes place for the sole purpose of carrying out the transmission over the communication network, and provided that the information is not stored for any period longer than is reasonably necessary for the transmission.

Art. 61. Caching

A service provider who provides an information society service that consists of the transmission in a communication network of information provided by a recipient of the service shall not be liable for the automatic, intermediate and temporary storage of that information, performed for the sole purpose of making more efficient the information's onward transmission to other recipients of the service on demand, on condition that:

- a) he does not modify the information;
- b) he complies with conditions on access to the information;
- c) he complies with rules regarding the updating of the information, specified in a manner widely recognised and used by industry;
- d) he does not interfere with the lawful use of technology, widely recognised and used by industry, to obtain data on the use of the information; and
- e) he acts expeditiously to remove the information which he has stored or to disable access to the same as soon as he actually gains knowledge of the fact that the information has been removed from its initial source on the network, or of the fact that access to the information has been disabled, or of the fact that a court or an administrative authority has ordered removal of the information or prohibited access thereto.

Art. 62. Hosting

(1) Without prejudice to the provisions of article 63 section 2, a service provider who provides an information society service that consists of the storage of information provided by the recipient of the service, shall not be liable for the information stored at the request of a recipient of the service, on condition that:

- a) the service provider does not have actual knowledge that the activity or information is illegal and, as regards claims for damages, that he is not aware of facts or circumstances from which the illegal activity or information is apparent; or
- b) the service provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.

(2) Paragraph 1 shall not apply when a recipient of the service is acting under the authority or the control of the service provider.

Art. 63. Obligation to monitor

(1) When providing the services covered by articles 60 to 62, service providers do not have a general obligation to monitor the information which they transmit or store, nor a general obligation to seek facts or circumstances indicating illegal activity.

(2) When providing the services covered by article 62, service providers do however have a specific

obligation to monitor in order to detect possible infractions of articles 383, paragraph 2 and 457-1 of the Penal Code.

(3) Paragraphs 1 and 2 of this article are without prejudice to any activity of monitoring, targeted or temporary, requested by the judicial authorities of Luxembourg when this is necessary to protect the security, defence, public security and for the prevention, investigation, detection and prosecution of criminal offences.

SECTION VII. ELECTRONIC PAYMENTS

Art. 64. Definitions

For the application of this section :

(1) "electronic payment instrument" means any system making it possible to effect the following operations by wholly or partially electronic means:

- a) transfers of money;
- b) withdrawals and deposits of cash;
- c) remote access to an account;
- d) the loading and unloading of a reloadable electronic payment instrument.

(2) "reloadable electronic payment instrument" means any electronic payment instrument on which value units are stored electronically.

Art. 65. Scope of application

(1) The provisions of this law do not apply:

- a) to electronic transfers of money made by cheque and to the guaranteeing of transfers of money made by cheque;
- b) to electronic transfers of money made by means of reloadable instruments without direct access to an account for loading and unloading, and which can only be used for a single seller of products or services.

Art. 66. Proof of payments made

The issuer must keep an internal record of operations performed by means of an electronic payment instrument for a period of three years from performing the operations.

Art. 67. Responsibility for proof

In the event of a dispute concerning an operation performed by means of an electronic payment instrument, the issuer must provide proof that the operation was correctly recorded and accounted for, and has not been affected by a technical incident or other failure.

Art. 68. Risks related to the use of an electronic payment instrument

(1) The holder of an electronic payment instrument has an obligation to notify the issuer – or the body designated by him – as soon as he becomes aware of any loss or theft of this instrument or of ways in which it is possible to use it fraudulently, as well as any loss or theft of a reloadable electronic payment instrument.

The issuer of an electronic payment instrument must make available to the holder appropriate means by which to make this notification and to provide proof that he has done so.

(2) Unless he has been found guilty of fraud or gross negligence, the holder of an electronic payment instrument covered by article 64 section 1 a), b) and c):

- shall assume until the notification laid down in the previous paragraph the consequences related to the loss, theft or fraudulent use by a third party, up to a sum determined by Grand-Ducal regulation. This sum may not exceed 150 Euro.

By way of derogation from paragraph 1 of section 2 of this article, the issuer is not liable for loss of value stored on a reloadable electronic payment instrument, when this is a consequence of the use of such instrument by an unauthorised third party, even after the notification laid down in this article.

- is discharged from any liability for the use of an electronic payment instrument as covered by article 64 section 1a), b) and c) after notification.

(3) In any event, the use of an electronic payment instrument without physical presentation of the same or electronic identification does not entail the liability of the holder.

Art. 69. Irrevocability of payment instructions

The holder may not revoke an instruction that he has given by means of an electronic payment instrument, except an instruction for which the amount is not known at the time the instruction is given.

SECTION VIII. FINAL PROVISIONS

Art. 70. The Minister of Economy is authorised to appoint three senior civil servants for the requirements of the National Accreditation and Monitoring Authority, in permanent and full-time posts. Recruitment of personnel permanently employed in the service of the state will be made in excess of the total number of personnel and in addition to the number of additional posts determined in the law of 24 December 1999 concerning the state budget of revenue and expenditure for the financial year 2000.

Art. 71. (1) By Grand-Ducal regulation, an "electronic commerce" committee may be formed, consisting of users from both the public and private sectors. A Grand-Ducal regulation shall determine the composition of this committee.

(2) The aim of this committee will be to monitor the application of this law, to distribute information on electronic commerce, and to produce opinions for the competent Ministry.

Art. 72. In any future legal or regulatory provisions, reference may be made to this law in an abbreviated form using the terms of "Law of 14 August 2000 relating to electronic commerce".

We command and order that this law should appear in the *Mémorial* to be executed and observed by all those concerned by the matter.

The Minister of Economy,

Henri Grethen

Cabasson, 14 August 2000.

On behalf of the Grand Duke:

His Lieutenant and Representative

Henri

Heir to the Grand Duke