

## Summary

Article 41 of the Act on Market Practices and Consumer Protection (the 'Act') provides Belgian law with a unique sanction for the benefit of consumers who have fallen prey to unfair commercial practices. The main objective of this research was to ascertain how the Belgian sanction in Article 41 of the Act works in practice. In particular, the question needed to be answered whether it was effective in the sense of having a deterrent effect against traders and being inviting for consumers to take advantage of it.

The answers to these questions were obtained by analysing the remedies available under Dutch and Belgian law to consumers who have been victims of unfair commercial practices. The conclusion is that, specifically because of its punitive character, Article 41 of the Act differs from the existing Dutch law of obligations in which compensation and recovery are central. That is not to say that such a sanction would not be consistent with the Dutch law on obligations, but that it would add a new element.

The practical effect of Article 41 of the Act was examined through interviews and a review of the case law. A survey among all Belgian courts having jurisdiction to apply Article 41 (246 in total) did not reveal any decisions in this respect, nor were any published decisions found. Interviews with nine persons working in various sectors (the legal profession, businesses, consumer organizations, and the government) generated several possible explanations for the lack of case law.

The result of the research is that the sanction in Article 41 of the Act seems to be a dead letter. No case law could be found in which Article 41 has been applied, nor did the interviews suggest that this sanction is often invoked by or on behalf of consumers in connection with negotiations between consumers and businesses. Moreover, businesses do not appear to be deterred by Article 41 with regard to their conduct. Although the possibility cannot be excluded that the sanction in Article 41 is being invoked every now and then, it appears unlikely that this is common.

The reasons which might explain this are not related to the nature of the sanction as such. Rather, they are presumably attributable in large part to the wording of Article 41 of the Act (ambiguous conditions for application), the fact that disputes between consumers and businesses usually involve only a small amount of money in combination with the cost of litigation and the risk to have to pay part of the attorney's fees of the opposite party, a commercial incentive (reputation is of importance apart from any possible legal sanctions) for businesses to settle or to abstain from unfair commercial practices, enforcement by competitors and the Belgian Consumer Authority, and the relative obscurity of Article 41 of the Act, which is partly due to the illogical placement in the law.