



The Unfair Commercial Practices Directive



New laws to stop unfair behaviour towards consumers

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This booklet has been prepared by the Health and Consumer Protection Directorate-General of the European Commission as a guide for non-specialists. It does not have any legal value and does not bind the European Commission in any way.

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As the European Union develops, the potential for the internal market becomes ever greater. Many barriers to cross-border trading have already been brought down and new possibilities for businesses and consumers have opened up. And yet many Europeans still hesitate when it comes to cross-border transactions, worried that they will not be guaranteed the same level of protection they have in their own country or confused about the different laws in other Member States.

The Unfair Commercial Practices Directive has been adopted precisely to overcome this obstacle to the development of the internal market within Europe. Replacing the multitude of rules in the various countries with a common legislation, the Directive clarifies and simplifies the process of defining an unfair commercial practice. It provides both consumers and traders with a single European reference point, reassuring them of their rights and making it clear which commercial practices are – and are not – allowed. This brochure introduces the Directive and explains what is contained within it. It describes how the

Directive was brought into existence, from the start of the Consultation process in 2001 to its adoption on 11 May 2005. To ensure the pertinence of the new laws, stakeholders from every group implicated have been involved throughout the process.

Since it is essential that traders and consumers alike know what constitutes an unfair commercial practice, the brochure gives precise definitions, along with everyday examples. And for those who were not already aware of it, the “Black List” of commercial practices is introduced and its contents revealed.

I have every confidence in this Directive, designed as it is to bring advantages to businesses and consumers across the Community. By 12 December 2007, every Member State will be enforcing the new laws and citizens across Europe will be experiencing the benefits.

*Robert Madelin
Director-General
Health and Consumer Protection*

1 Time for clear legislation

The Directive on Unfair Commercial Practices was adopted in May 2005.⁽¹⁾ The new rules it details must be applied across the Member States by December 2007. But what is “unfair commercial practice” and why was a directive needed?

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Commercial practice refers to activities linked to the promotion, sale or supply of a product to consumers. It covers any act, omission, course of conduct, representation or commercial communication – including advertising and marketing – which is carried out by a trader. If it is unfair, this means it is deemed to be unacceptable with regards to the consumer, according to specified criteria.

■ Why is there a need for a Directive on unfair commercial practices?

The Directive has been passed to strengthen the confidence of European consumers in cross-border transactions. Evidence showed that citizens were

unsure if their rights would be adequately protected in international purchases and were therefore not **taking advantage of the European Internal Market**.

Following an extensive consultation process, the Directive on unfair commercial practices has been agreed on, replacing the existing multiple volumes of national legislation and court rulings with a single set of common rules. The **uniformity and transparency** this brings across the EU will serve to reassure consumers in their purchasing.

■ What are the aims of the Directive?

The Directive aims to **clarify consumers' rights** and to **simplify cross-border trade**. Common rules and

(1) Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive'), OJ L 149, 11.6.2005, p. 22. Text available at: http://eur-lex.europa.eu/LexUriServ/site/en/oj/2005/L_149/L_14920050611en00220039.pdf

principles will give consumers the same protection against unfair practices and rogue traders whether they are buying from their corner shop or purchasing from a website based abroad.

It will also mean that businesses will be able to advertise and market to all **450 million consumers** in the EU, in the same way as to their domestic customers.

Until the adoption of the unfair commercial practices Directive, each Member State had its own, distinct laws on unfair commercial practices, leading to discrepancies between countries. The Directive brings **harmonisation and mutual recognition** between states, bringing down internal market barriers.

1

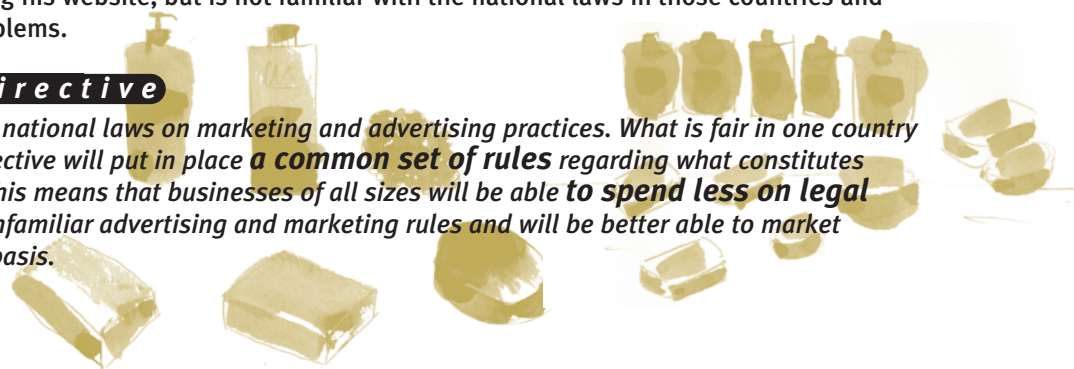
Promoting Irish well-being products on the continent

Aran Products, with a staff of four, specialises in a range of home-made natural well-being products (soaps, lotions, spa products, candles) based on extracts of local plants. The company, **based in the west of Ireland**, is especially popular among French and German tourists, who show great interest in the products and often ask for more to be posted over to them. The director would like to **market his products directly in France and Germany**, perhaps by developing his website, but is not familiar with the national laws in those countries and worries about potential legal problems.

Bringing in the Directive

*Currently, there are differences in national laws on marketing and advertising practices. What is fair in one country may be unfair in another. The Directive will put in place **a common set of rules** regarding what constitutes an 'unfair' commercial practice. This means that businesses of all sizes will be able **to spend less on legal advice** on how to comply with unfamiliar advertising and marketing rules and will be better able to market their products on a Europe-wide basis.*

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2

Unfair Commercial Practices

In the past, the notion of an “unfair commercial practice” was subject to variations between Member States. Now, practices across Europe will be assessed according to the same criteria. So how is the Directive structured and what types of behaviour will be prohibited?

The general clause contains the general ban on unfair commercial practices. This provision will replace Member States’ existing, divergent general clauses and thus remove internal market barriers.

In addition, two main categories of unfair commercial practices – “misleading” and “aggressive” practices – are described in more detail. In fact, the vast majority of practices which would be considered unfair would fall under these provisions.

When applying the above provisions, practices are assessed in light of the effect they have, or are likely to have, on the average consumer.

Finally, the Black List contains the list of those practices which shall, in all circumstances, be regarded as unfair and thus banned – without applying the average consumer test.

■ The average consumer

If a commercial practice is directed at a **particular group of consumers**, then an average member of that group is **the benchmark**. The fairness or unfairness of a commercial practice is then assessed against this benchmark.

The European Court of Justice refers to the “average consumer” in its case-law. The average consumer, as interpreted by the European Court of Justice, is **“reasonably well-informed and reasonably observant and circumspect”**, taking into account social, cultural and linguistic factors.

The structure of the Directive



What's average?

Advertising in a teenager's magazine promising excellent job opportunities following attendance of a modelling course: If the target group is unemployed youngsters, the average member of such a group is the benchmark.



In most EU countries, the national courts are already using the average consumer test. It is not a statistical test. **National courts and authorities** will have to exercise their own judgement, having regard to the case-law of the European Court of Justice, to determine the typical reaction of a reasonable consumer in a given case.

■ Business-to-business

The **Misleading and Comparative Advertising Directive**⁽²⁾ will remain applicable but its scope will be limited. It will cover business-to-business misleading advertising and comparative advertising which may harm a competitor but where there is no direct consumer detriment (e.g. denigration).

■ Misleading actions in commercial practice

Actions are the activities traders carry out in the promotion and sales of their products.

A commercial practice is misleading if it either:

- **Contains false information and is therefore untruthful, or**
- **in any way, including overall presentation, deceives or is likely to deceive *the average consumer*, even if the information is correct**

and

- **causes or is likely to cause him to take a transactional decision that he would have otherwise not taken.**
- The **criteria are objective** so that there is no need to prove that a consumer was actually misled. The possibility of deception alone can be considered misleading, if the other elements are present as well. There is no need to prove a financial loss.

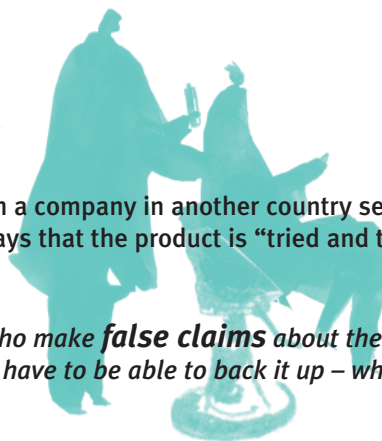
(2) Council Directive of 10 September 1984 relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising (84/450/EEC), OJ L 250, 19.9.1984, p. 17, as amended by Directive 97/55/EC of European Parliament and of the Council of 6 October 1997 amending Directive 84/450/EEC concerning misleading advertising so as to include comparative advertising, OJ L 290, 23.10.1997, p. 18.

Useless hair product

Mr Vinci receives a **direct mailing** from a company in another country selling a product that will help his hair to grow back in three weeks. The mailing says that the product is “tried and tested”. But the product doesn’t work.

Directive in action

*The Directive specifically tackles firms who make **false claims** about the effect of a product. A trader who makes a claim about the effect of a product will have to be able to back it up – wherever in the EU the trader is based.*



■ Misleading omissions in commercial practice

Omissions refer to the fact that consumers need information to make informed choices. A trader must provide material information that the average consumer needs.

It is misleading to:

- omit material information that the average consumer needs, according to the context, to take an informed transactional decision;
- hide or provide material information in an unclear, unintelligible, ambiguous or untimely manner;

- fail to identify the commercial intent of the commercial practice if not already apparent from the context.

When assessing practices for omissions, the following aspects are taken into consideration:

- What counts is the **effect of the commercial practice in its entirety**, including the presentation;
- Information must be **displayed clearly**: obscure presentation is tantamount to an omission to inform;

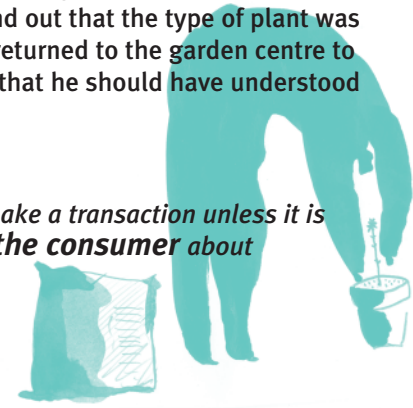
- The Directive does not include a list of all **material information**. The consumer protection authorities and courts will define on a case-to-case basis what information is material information that the average consumer needs, taking into account the context. Information requirements established in other EU Directives amount to material information. A non-exhaustive list in Annex II of the Directive includes **Community provisions** that contain material information requirements (e.g. the Distance Selling Directive obliges the trader to provide prior information and a written confirmation of such information);
- The medium used to communicate the commercial practices may impose limitations of space or time. Such limitations, and any measures taken by the trader to make the information available to the consumer by other means, shall be taken into account;
- A limited number of **core information items** are required for “invitations to purchase” (e.g. characteristics of the product, the address and the identity of the trader and the price inclusive of taxes). General brand or product awareness marketing would not need to include this information.

A garden plant dies

A small garden centre opened its doors selling foreign species of plants and shrubs for gardens. Mr Dunne purchased a certain type of plant in March but it died after one week. He then found out that the type of plant was actually a house plant that should not have been planted in the garden. When he returned to the garden centre to ask for a refund, he was **told that it was his fault** that the plant had died and that he should have understood what type of plant it was.

Directive in action

*The garden centre will have to give the consumer the key information needed to make a transaction unless it is apparent from the context. Here, the context in which the plant was sold **misled the consumer** about the product (e.g. a house plant being sold as a plant for gardens).*



■ Aggressive commercial practices

Regulating aggressive commercial practices is new at EU level.

A practice is considered aggressive if the **average consumer's freedom of choice or conduct is significantly impaired**.

The Directive contains a list of criteria to help determine whether a commercial practice uses harassment, coercion, including physical force, or undue influence.

“Undue influence” means **“exploiting a position of power in relation to the consumer so as to apply pressure, even without using or threatening to use physical force, in a way which significantly limits the consumer's ability to make an informed decision.”**

U n d u e i n f l u e n c e ?

YES: If a consumer is already indebted to a trader and behind with payments, the trader would be using undue influence if he said he would reschedule the debt on condition that the consumer bought another product.

NO: Offering an incentive to a consumer, such as a free bus to an out-of-town store, or refreshments while shopping, is not undue influence. The consumer's ability to make an informed transactional decision would not be impaired. In the same way, it would be acceptable to offer a sales promotion.

■ Identifying unfair commercial practices

The **general clause** in the Directive will replace the present, divergent general clauses that exist in the different Member States and will **enhance the working of the Internal Market**.

Some practices may emerge in the future that do not fall under the criteria of “misleading” or “aggressive” although they are unfair. The general clause will ensure that this new legislation withstands the test of time.

Two defining criteria are used to identify an unfair commercial practice which is not caught under the specifics of misleading or aggressive practices. In this instance, a commercial practice is regarded as unfair – and prohibited – if it meets the following two, cumulative criteria:

1. The practice is contrary to the requirement of professional diligence

Professional diligence is **“the special skill and care which a trader may reasonably be expected to exercise, commensurate with honest market practices and/or general principle of good faith in the trader's field of activity.”**

This notion corresponds to **good business conduct** found in many legal systems in the Member States. The concept of professional diligence mirrors the concept of honest market practices and good faith;

2. The practice materially distorts or is likely to materially distort the average consumer's economic behaviour

The criterion “to materially distort the economic behaviour of consumers” means using a commercial practice to appreciably impair the consumer's ability to make an informed decision, thereby causing the consumer to take a transactional decision that he would not have otherwise taken.

Scratchcard scam

Mr and Mrs Rosenow were on holiday abroad. They were given a scratchcard which said they had won a prize and agreed to go with the trader to collect the prize. They were driven to a remote building and had no means to get back to the town where they were staying. They were subjected to a lengthy presentation about a holiday club and **pressured to pay a deposit**, after which they were driven back to their apartment.

Directive in action

*The existing Timeshare Directive primarily protects consumers who do go ahead and buy a timeshare, but it does not cover 'holiday clubs'. And under the Unfair Commercial Practices Directive, this practice would be **aggressive, and therefore unfair**, even if Mr and Mrs Rosenow did not give in and part with their money.*

Aggressive plumber

Mr Sepe contracted a plumber to fix a faulty radiator. He was initially told that the job would cost €80. However instead, the bill came to €450.90. When he refused to pay the additional amount, the plumber **disconnected his hot water supply**.

Directive in action

*The Directive would class this behaviour as an aggressive practice. The plumber is using undue influence to **exploit a position of power** over the consumer.*

3

Who is concerned?

The Directive is to be applied in all Member States across the European Union. Its purpose is to regulate commercial practices and to bring significant improvements to citizens' lives. But who will be affected by the new legislation and how will they benefit?

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The Directive on unfair commercial practices applies to nearly all sectors, with some specific sectors excluded. It is technology neutral and thus applicable to unfair advertising in any media. However, if specific aspects of unfair commercial practices are regulated by other Community rules, the sector specific rules prevail.⁽³⁾

■ How will different groups benefit?

Consumers will feel more secure shopping across borders, with the knowledge that they retain the same level of protection throughout the EU.

Traders benefit from the simplicity of following one set of rules across Europe instead of having to take into

account 25 divergent national regimes. Harmonisation will considerably increase certainty and reduce legal costs.

In addition, the efficient control of rogue traders will also be **an advantage to legitimate business.**

■ Protecting vulnerable consumers

The Directive contains provisions that aim at **preventing exploitation** of vulnerable consumers.

The definition of a “vulnerable” consumer depends on the commercial practice in question. Consumers may be vulnerable to the practice because of their mental or

(3) E.g. the Labelling Directive contains a specific provision on misleading advertising of foodstuffs. Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs, OJ L 109, 6.5.2000, p. 29.

Impacting on the vulnerable

Lottery scams target consumers in general, but in practice only affect a group of vulnerable consumers.

The advertising of **magnetic bracelets** which can relieve pain may be targeted at the general public, only vulnerable consumers are affected by it.



physical infirmity, age or credulity, for example, children or the elderly, in a way which the trader could be reasonably expected to foresee.

Within the Directive, certain commercial practices are prohibited since they are considered unfair and are likely to affect especially vulnerable consumers in that case. Examples of such practices include:

- Claiming that products are able to **facilitate winning** in games of chance;
- Falsely claiming that a product is able to **cure illnesses**, dysfunction or malformation;

- Including in an advertisement a direct exhortation to children to buy advertised products or persuade their parents or other adults to buy advertised products to them (“**pester power**”).

There is a “**safeguard clause**” in the Directive to protect particularly vulnerable consumers: traders **cannot evade the unfairness rules** by specific practices that would only fool particularly vulnerable consumers even if those practices cannot be proven to target that group.

Vulnerable consumers can benefit from **the average consumer benchmark test**. Commercial practices which are likely to **materially distort the economic behaviour of only one clearly identifiable group of consumers who are particularly vulnerable** to the practice or the product because of their mental or physical infirmity, age or credulity in a way the trader could reasonably foresee, shall be assessed from the perspective of the average member of that group. This is without prejudice to the common and legitimate advertising practice of making exaggerated statements, or statements which are not meant to be taken literally (“Puffery”).

■ The scope of protection

The Directive only protects **the economic interest of the consumer** and not other interests such as health or safety. In addition, taste and decency are outside the scope of application of the Directive.

Acts which constitute unfair competition on some Member States but which do not directly harm the economic interest of consumers, such as slavish imitation (copying without the likelihood of consumer confusion) and denigration of a competitor are **outside the scope** of this Directive. They remain regulated by the Misleading and Comparative Advertising Directive. However, commercial practices which do harm consumers’ economic interest, such as confusion marketing, are within the scope.

Public health aspects

The Directive does not liberalise **national restrictions** on advertising of alcoholic beverages that are based on health concerns and are proportionate. This is equally true for restrictions on advertising food high in fat, sugar or salt to children.



The Directive does not deal with **competition law**, such as anti-competitive agreements, abuse of dominant position, mergers and acquisitions.

Contract law is also beyond the realm of the Directive and so it has no bearing on the conditions of formation, validity or effect of the contract.

The Directive applies only to commercial practices – between businesses and final consumers (B2C) – and thus does not cover commercial practices between businesses, such as boycotts and refusals to supply.

The Directive will apply where there are no specific provisions regulating unfair commercial practices in **sector specific legislation**. Where such specific provisions do exist, they will **take precedence** over the Directive.

Where a sector specific legislation regulates only some aspects of commercial practices, for example the content of information requirements, the Directive will come into play for other elements, for example, if the information required in the sector specific legislation is presented in a misleading way.

Taste and decency

Advertising showing topless women may be prohibited in some countries for reasons other than to protect consumers' economic interest (human dignity, taste and decency). The issue does not fall under the Directive. Therefore, such advertising could be prohibited by one Member State and allowed in another Member State. Questions of taste and decency are not harmonized across EU and differences may remain.



4 The Black List

Certain commercial practices across Europe are banned outright under the Directive. To ensure that traders, marketing professionals and customers are clear about what is prohibited, a Black List of unfair practices has been drawn up. Which types of commercial practices does it cover?

20

The commercial practices on the Black List are **unfair in all circumstances** and no case-by-case assessment against other provisions of the Directive is required. The list may only be modified at EU level, by revision of the Directive with the involvement of the European Parliament and the Council (representatives from Member States).

What is included?

● **Trust marks and codes**

“Claiming to be a signatory to a code of conduct when the trader is not.”

“Displaying a trust mark, quality mark or equivalent without having obtained the necessary authorisation.”

“Claiming that a code of conduct has an endorsement from a public or other body which it does not have.”

“Claiming that a trader (including his commercial practices) or a product has been approved, endorsed or authorised by a public or private body when he/it has not or making such a claim without complying with the terms of the approval, endorsement or authorisation.”

● **Bait advertising**

“Making an invitation to purchase products at a specified price without disclosing the existence of any reasonable grounds the trader may have for believing that he will not be able to offer for supply or to procure another trader to supply, those products or equivalent products at that price for a period that is, and in quantities that are, reasonable having regard to the product, the scale of advertising of the product and the price offered.”

S **t** **o** **c** **k** **s** **w** **o** **n** **'** **t** **l** **a** **s** **t**

Advertising a mobile phone at a very low price compared to other offers on the market, without having a reasonable stock in light of the demand that could be expected on the basis of the advertising.

- **Bait and switch**

“Making an invitation to purchase products at a specified price and then:

- a) refusing to show the advertised item to consumers;
- or
- b) refusing to take orders for it or deliver it within a reasonable time;
- or
- c) demonstrating a defective sample of it,

with the intention of promoting a different product.”

- **Limited offers: Special offer, today only!**

“Falsely stating that a product will only be available for a very limited time, or that it will only be available on particular terms for a very limited time, in order to elicit an immediate decision and deprive consumers of sufficient opportunity or time to make an informed choice.”

- **Language of after-sales service: Marketing in English, after-sales services in Swedish**

“Undertaking to provide after-sales service to consumers with whom the trader has communicated prior to a transaction in a language which is not an official language of the Member State where the trader is located and then making such service available only in another language without clearly disclosing this to the consumer before the consumer is committed to the transaction.”

- **Advertising products which cannot be legally sold**

“Stating or otherwise creating the impression that a product can legally be sold when it cannot.”

- **Misleading impression of consumers' rights: “Special for you”**

“Presenting rights given to consumers in law as a distinctive feature of the trader's.”

Not such a special offer

Advertising a product on the internet and stating “When you buy from *United Trade* we provide you with our special *United Trade* offer to cancel the contract within 10 days after receipt of the good and get your money back.” Such advertising is banned if such rights follow from legislation.

- **Advertorials: “Mixed messages”**

“Using editorial content in the media to promote a product where a trader has paid for the promotion without making that clear in the content or by images or sounds clearly identifiable by the consumer (advertorial).” This is without prejudice to Council Directive 89/552/EEC.

H i d d e n a d v e r t i s i n g

An article in a travel magazine on trekking in Norway includes descriptions on how excellent a certain brand of camping gear is for this kind of trip, for which the producer of the camping gear has contributed financially to the article, if the readers are not informed of this.

- **Security as marketing argument:**

- **Unduly playing on fear of security risks**

“Making a materially inaccurate claim concerning the nature and extent of the risk to the personal security of the consumer or his family if the consumer does not purchase the product.”

- **Decoy: “Reputable brand, or maybe not?”**

“Promoting a product similar to a product made by a particular manufacturer in such a manner as deliberately to mislead the consumer into believing that the product is made by that same manufacturer when it is not.”

- **Pyramid schemes**

“Establishing, operating or promoting a pyramid promotional scheme where a consumer gives consideration for the opportunity to receive compensation that is derived primarily from the introduction of other consumers into the scheme rather than from the sale or consumption of products.”

U n f a i r n e t w o r k i n g

Running a network marketing scheme selling beauty products, where persons who wish to join the network as distributors must pay an entry fee **disproportionate to the value** of the costs of educational material received (e.g. information about the products) or administrative costs for being included in the network, and where the main source of remuneration is achieved by recruiting other people into the network.

- **False claims regarding moving premises or cessation of business: “End of lease ! All stock must go!”**

“Claiming that the trader is about to cease trading or move premises when he is not.”

C a r p e t s t o r e s t a y s

A store selling carpets has big signs on the window stating “End of stock”, “Closing down sale”, “End of lease – all must go” and the trader is not moving or it is not the end of stock.

- **Facilitation of winning chances:**

- **How to win the lottery**

- “Claiming that products are able to facilitate winning in games of chance.”

- **False claims about curative capacity:**

- **“Trickium 24 cures disease”**

- “Falsely claiming that a product is able to cure illnesses, dysfunction or malformations.”

- **T o o g o o d t o b e t r u e**

- Stating that a certain product can cure allergies, when in fact it cannot.

- **Market information**

- “Passing on materially inaccurate information on market conditions or on the possibility of finding the product with the intention of inducing the consumer to acquire the product at conditions less favourable than normal market conditions.”

- **S c a r e t a c t i c s**

- A trader selling security products like alarms presents the statistics of burglaries in a certain district of a town, indicating that this part of town is at particular risk, when in fact it is not.

- **Prizes: “Congratulations! You have won a prize”**

- “Claiming in a commercial practice to offer a competition or prize promotion without awarding the prizes described or a reasonable equivalent.”

- **Falsely creating the impression of free offers:**

- **“Free sunglasses”**

- “Describing a product as “gratis”, “free”, “without charge” or similar if the consumer has to pay anything other than the unavoidable cost of responding to the commercial practice and collecting or paying for delivery of the item.”

- **S h a d y b e h a v i o u r**

- Advertising in a mail order catalogue stating that you will receive a free gift, e.g. a pair of sunglasses, when in fact, this only applies to persons ordering other products from the catalogue.

- **Products not ordered**

- “Including in marketing material an invoice or similar document seeking payment which gives the consumer the impression that he has already ordered the marketed product when he has not.”

- **Professional trader disguised as consumer**

“Falsely claiming or creating the impression that the trader is not acting for purposes relating to his trade, business, craft or profession, or falsely representing oneself as a consumer.”

Used-car salesman in disguise

A trader sells a used car (which is not his own private one) through an advertisement in the local shop billboard and not revealing that this sale is part of his second hand car business.

- **After sales services: “Europe-wide guarantees”**

“Creating the false impression that after-sales service in relation to a product is available in a Member State other than the one in which the product is sold.”

- **Pressure selling: “Yes, you can leave once the paperwork is done”**

“Creating the impression that the consumer cannot leave the premises until a contract is formed.”

- **Aggressive doorstep selling:**

- **“Yes, I will leave, once the paperwork is done”**

“Conducting personal visits to the consumer's home ignoring the consumer's request to leave or not to return except in circumstances and to the extent justified, under national law, to enforce a contractual obligation.”

- **Won't take “no” for an answer**

A trader selling vacuum cleaners has been let into a consumer's home to demonstrate the product and insists on continuing the sales presentation in spite of the consumer having stated that he or she is not interested.

- **Persistent and unwanted solicitations:**

- **“With the third phone call maybe a contract will be agreed...”**

“Making persistent and unwanted solicitations by telephone, fax, e-mail or other remote media except in circumstances and to the extent justified under national law to enforce a contractual obligation. This is without prejudice to Article 10 of Directive 97/7/EC and Directives 95/46/EC and 2002/58/EC.”

- **Insurance claims: No one picks up the phone**

“Requiring a consumer who wishes to claim on an insurance policy to produce documents which could not reasonably be considered relevant as to whether the claim was valid, or failing systematically to respond to pertinent correspondence, in order to dissuade a consumer from exercising his contractual rights.”

Unrealistic demands

Requesting that consumers who wish to claim compensation for theft of personal items from luggage present receipts for all items to which the claim is related.

- **Direct exhortations to children:**

“Go buy the book!”

“Including in an advertisement a direct exhortation to children to buy advertised products or persuade their parents or other adults to buy advertised products for them. This provision is without prejudice to Article 16 of Directive 89/552/EEC on television broadcasting.”

Easily manipulated

Advertising the release of the video of a popular children’s movie stating: “Alice and the magical book from Fondi is now out on video – tell your mum to get it from the local news agency”.

- **Inertia Selling**

“Demanding immediate or deferred payment for or the return or safekeeping of products supplied by the trader, but not solicited by the consumer except where the product is a substitute supplied in conformity with Article 7(3) of Directive 97/7/EC (inertia selling)”.⁽⁴⁾

- **Emotional pressure**

“Explicitly informing a consumer that if he does not buy the product or service, the trader’s job or livelihood will be in jeopardy.”

- **Prize Winning**

“Creating the false impression that the consumer has already won, will win, or will on doing a particular act win, a prize or other equivalent benefit, when in fact there is no prize or other equivalent benefit, or taking any action in relation to claiming the prize or other equivalent benefit is subject to the consumer paying money or incurring a cost.”

Nothing comes for free

Advertising leaflet distributed in the mail stating “You have won a free CD”, where the consumer will have to buy a product in order to claim the “prize”.

⁽⁴⁾ Requiring consumers to return unsolicited products generates costs for the consumers in question and must therefore be categorized as an aggressive commercial practice. In the distance selling sector, catalogues cover a long time frame; this is why Article 7 (3) of the Distance Selling Directive makes an exception from the ban in inertia selling.

5

Implementing the Directive

The Directive can only succeed through the effective implementation and enforcement of its laws across the European Union. Whilst the legislation comes from the European Parliament and Council (Member States), much of the power to act rests with national governments. So how will success be achieved?

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From conception to application



■ European guidance, national action

It is the duty of the Member States to implement the Directive effectively. **The Commission is working together with the Member States** to make sure that the Directive is transposed into national law in a timely and accurate manner. The Commission will verify that the national implementation measures comply with the Directive.

The Commission has no enforcement powers and cannot intervene in individual cases. Enforcement of the rules in practice remains the **task of national consumer protection authorities and courts**. The Directive requires Member States to put in place effective sanctions against traders who break the rules, curbing unfair commercial practices.

■ Enforcing the laws

The Enforcement Co-operation Regulation establishes **a network of public enforcers** to strengthen enforcement of all consumer protection rules.⁽⁵⁾ The network will start work in 2006. This system of co-operation will enhance the cross-border enforcement of the Unfair Commercial Practices Directive.

■ Importance of harmony

Member States **may not go beyond** the level of protection provided for in the Directive. Otherwise, the positive effects of having **a single set of rules** in the internal market will not be achieved. The Commission will pursue any deviations from the full harmonisation standards of the Directive that might occur at the national level.

Furthermore, remaining differences between national laws in the approximated field may not be enforced to counteract free movement of goods or services. The **mutual recognition** clause in the Directive will prevent the national enforcement authority or court from applying such national law to ban a cross-border commercial practice from another Member State which is in accordance with the Directive.

These mechanisms enhance **uniform implementation and application** as well as **legal certainty** – crucial for traders and consumers alike.

(5) Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws ('the Regulation on consumer protection cooperation'), OJ L 364, 9.12.2004, p. 1.

For more detailed information, please refer to the website below:

http://ec.europa.eu/consumers/cons_int/safe_shop/fair_bus_pract/index_en.htm

This booklet is also available in electronic form on the above website.

European Commission

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