

Misleading advertisement practices

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The Committee on the Internal Market and Consumer Protection unanimously adopted the own-initiative report by Cornelis de JONG (GUE/NGL, NL) on misleading advertisement practices in response to the Commission communication on the subject.

Members recall that Parliament has repeatedly expressed its concern over the problem of misleading marketing practices, which are often of a cross-border nature, and has called on the Commission and the Member States to step up their efforts in terms of raising awareness, strengthening cooperation, enforcement and legislation. For this reason, they welcome the Commission communication, but stresses that an additional effort is needed, especially with regard to enforcement. They ask the Commission to **clarify the scope** of [Directive 2006/114/EC](#) in order to allow better protection for businesses against misleading marketing practices.

Prevention and information: the report calls on all Member States to assign a **national focal point** to which businesses and other victims of misleading practices can report the latter and can obtain information on judicial and non-judicial means of redress. These focal points should play an active role in sharing information between public authorities, citizens and businesses, and should work together in order to warn each other of new misleading practices.

Members also call on national as well as international business organisations, and in particular SME organisations, to work closely together with the national focal points and welcome public-private cooperation.

They support the Commission's intention to investigate the possibility of introducing, on the basis of validated criteria, an **EU-wide blacklist of misleading marketing practices**, and, if practicable, of companies who have been repeatedly convicted for such practices. Such a blacklist should be coherent with that which already exists under the Unfair Commercial Practices Directive, should be exhaustive, and should include clear definitions of misleading marketing practices.

In addition, Members call for

- Europol to play a more active role in tackling these forms of fraud by collecting information regarding cross-border forms of misleading marketing practices;
- closer cooperation between national enforcement authorities with providers whose services have been used by perpetrators of misleading marketing practices, such as banks, telephone companies, postal services and collection agencies, in particular by stepping up the exchange of information;
- initiatives on education and information and exchanges of best practice on the dangers.

Enforcement and prosecution: the report emphasises that different levels of protection and public enforcement mechanisms among Member States are **proving to be obstacles to running advertising campaigns across national borders**, and that this leads to major legal and operative uncertainties for businesses. It also notes with concern that the investigative authorities in a number of Member States are extremely unwilling to take up cases of misleading marketing practices because of the **lack of clarity of the existing provisions**, and lack of confidence that the burden of proof can be sufficiently discharged. Members call on the Commission, therefore, to draw up **guidelines for national enforcement bodies on best practices regarding priorities for investigation and prosecution**.

Member States, for their part, are asked to boost the capacity of the relevant investigative and judicial authorities.

The report stresses the need to introduce effective, proportionate and dissuasive penalties, recalling that sanctions can have a preventive effect.

Members call on the Commission to establish a mutual cooperation network between national enforcement bodies to improve the implementation of the Directive in cross-border cases.

Furthermore, the Commission to examine, as a matter of priority, how any convictions for using serious and repeated misleading marketing practices could **affect the eligibility of the companies concerned for taking part in EU procurement procedures** and/or receiving EU funding. Members call on Member States to ensure that their tax authorities cooperate closely with national focal points by actively inspecting companies which have been reported to use misleading marketing techniques.

Noting that dispute resolution processes have proven inefficient, lengthy and costly, and that they offer no guarantee of adequate and timely compensation for the damage caused, Members call for national laws making it possible for the victims of misleading marketing practices **to act collectively in a case against a rogue company**.

They ask the Commission to evaluate Parliament's recommendation for a partial extension of the scope of the Unfair Commercial Practices Directive by having Annex I (the blacklist) cover business-to-business (B2B) contracts.

International cooperation beyond the EU: lastly, Members stress that misleading marketing practices constitute **an international problem** that extends beyond individual Member States as well as the EU. They call on the Commission and Member States, therefore, to pursue international cooperation on the matter, and to step up involvement in the International Mass Marketing Working Group, which consists of law enforcement, regulatory, and consumer agencies in the US, Australia, Belgium, Canada, the Netherlands, Nigeria, and the UK, and also includes Europol.