Misleading advertisement practices

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The European Parliament adopted a resolution on misleading advertisement practices in response to the Commission communication on the subject.

Parliament recalled that it 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, it welcomed the Commission communication, but stressed that an additional effort was needed, especially with regard to enforcement. It asked 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: Parliament called 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.

It also called 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.

Members supported 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, Parliament called 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: Parliament emphasised 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 noted 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 called 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.

Parliament also stressed the need to introduce effective, proportionate and dissuasive penalties, recalling that **sanctions** can have a preventive effect. It also called 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 is also called upon 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. Parliament called on Members 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 called for national laws making it possible for the victims of misleading marketing practices **to act collectively in a case against a rogue company.**

In order to avoid abusive litigation, the victims should be represented by a qualified entity, as outlined in the Commission documents.

Parliament asked 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, in parallel to the consideration of a possible review of Directive 2006/114/EC in order to assess whether this would result in a more coherent approach since it would extend the concept of unfair commercial practices, together with the blacklist, to B2B relations.

International cooperation beyond the EU: lastly, Parliament stressed that misleading marketing practices constitute **an international problem** that extends beyond individual Member States as well as the EU. It called 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.