

Consumer protection: unfair business-to-consumer commercial practices. 'Unfair Commercial Practices Directive'

2003/0134(COD) - 18/06/2003 - Legislative proposal

PURPOSE : to present a proposal for the Unfair Commercial practices directive and amending directives 84/450/EEC, 97/7/EC and 98/27/EC. **CONTENT** : the Commission's research has indicated that there are appreciable internal market barriers and distortions of competition which arise from unfair commercial practices as well as the barriers arising from their fragmented regulation across the Member States. The Green Paper on EU Consumer Protection first outlined the case for reform of EU consumer protection legislation to tackle barriers to cross-border provision of goods and services to consumers. It identified a framework directive containing a general duty in relation to unfair commercial practices as a possible basis for reform. The Commission has concluded that a framework directive setting out general principles supplemented by specific sectoral legislation was the most appropriate tool. This conclusion is subject to the directive being based on a full harmonisation approach and containing provisions for mutual recognition based on the country of origin. It was found that: - 38% of businesses expected to increase their cross-border advertising and marketing budget as a result of harmonisation; - 46% of companies expect the proportion of their cross-border sales to increase with complete harmonisation of all regulations on advertising, commercial practices and other consumer protection regulations; - 10 million consumers would buy a lot more cross-border if they were equally confident about making purchases from traders in another EU country, and a further 70 million might buy a little more; - the introduction of a general principle of fair commercial practices in a framework directive will result in a decrease of costs, as will the combination of an adequate level of harmonisation and the application of the principles of mutual recognition and country of origin. The directive has the following key elements: - It defines the conditions that determine whether a commercial practice is unfair; it does not impose any positive obligations which a trader has to comply with to show he is trading fairly. - It contains an internal market clause which provides that traders have to comply only with the requirements of the country of origin and prevents other Member States from imposing additional requirements on those traders who do so (i.e. mutual recognition). - It fully harmonises EU requirements relating to unfair business-to-consumer commercial practices and provides an appropriately high level of consumer protection. This is needed to address the internal market barriers caused by divergent national provisions and to provide the necessary support to consumer confidence to make a mutual recognition approach workable. Member States will not be able to use the minimum clauses in other directives to impose additional requirements in the field co-ordinated by this Directive. - It contains a general prohibition. The general prohibition is the essential element of the Directive which achieves the harmonisation necessary to overcome the internal market barriers and ensure that a high, common level of protection is provided. It will do this by replacing the existing national general clauses in relation to unfair commercial practices between business and consumers and establishing more precise criteria for determining what is unfair than any existing national general clause. If this general prohibition were not included, Member States would be able to continue to apply their divergent general clauses. - It establishes the concept of the "average consumer", rather than the vulnerable or atypical consumer as the benchmark consumer. - It elaborates two key types of unfair commercial practice; those which are 'misleading' and those which are 'aggressive'. This means that a practice which is either 'misleading' or 'aggressive' as under the corresponding provisions is automatically unfair; if the practice is neither 'misleading' nor 'aggressive' the general prohibition will determine whether it is unfair. - For clarity and simplicity, it incorporates the misleading advertising Directive's B2C provisions (i.e. provisions dealing with advertising reaching or directed at consumers) and limits the scope of the existing Directive to business-to-business advertising (i.e. provisions dealing with advertising reaching or directed at business) and comparative advertising which may harm a competitor (by denigration, for example) but where there is no consumer detriment.

