

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

2003/0134(COD) - 15/11/2004 - Council position

In general, the Council has followed the European Parliament Opinion and the Commission's position on such opinion. It has integrated in its common position 51 out of the 58 Amendments accepted by the Commission, either in whole or partly. It has also endorsed 4 amendments which the Commission had initially indicated it was unable to accept.

The common position represents a balance of concerns and interests with the main results of:

- maintaining the general prohibition of unfair commercial practices, with Annex I containing the list of those commercial practices which shall in all circumstances be regarded as unfair;
- retaining the proposed average consumer benchmark but with the inclusion of explicit provisions for the protection of the vulnerable consumer;
- deleting the country of origin clause originally proposed by the Commission;
- maintaining the clause of free circulation of services or goods whereby free circulation cannot be restricted for reasons falling within the field approximated by this Directive;
- temporarily allowing Member States to apply national provisions within the field approximated by this Directive which are more restrictive or prescriptive than this Directive and which implement directives containing minimum harmonization clauses;
- clarifying the scope of the Directive notably in relation to certain professions, products or activities;
- inserting a review clause.

Of Parliament's 94 amendments, the Council accepted 7 without amendment, 48 in part or with drafting modifications and did not include 39 amendments in the common position.

The Council also rejected 7 amendments accepted by the Commission.

The other innovations introduced in the common position are:

- the adjustment of several definitions and a new definition of "transactional decision" is inserted and the definitions of "average consumer" and of "Community level code" are deleted;
- adjustments to the criteria for misleading actions;
- clarification of the status and content of the Annexes.