Basic information

2013/2116(INI) INI - Own-initiative procedure	Procedure completed
Implementation of the Unfair Commercial Practices Directive 2005/29/EC See also Directive 2005/29/EC 2003/0134(COD) **Subject** 3.70.17 European ecolabel and ecolabelling, ecodesign 4.60.02 Consumer information, advertising, labelling 4.60.06 Consumers' economic and legal interests 7.40.02 Judicial cooperation in civil and commercial matters	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
IMCO Internal Market and Consumer Protection	ROCHEFORT Robert (ALDE)	20/03/2013
	Shadow rapporteur BORISSOV Preslav (PPE) SEHNALOVÁ Olga (S&D) RÜHLE Heide (Verts/ALE) HARBOUR Malcolm (ECR) DE JONG Dennis (GUE/NGL) SALVINI Matteo (EFD)	

Committee for opinion	Rapporteur for opinion	Appointed
ENVI Environment, Public Health and Food Safety	The committee decided not to give an opinion.	
JURI Legal Affairs	BALDASSARRE Raffaele (PPE)	19/06/2013

European Commission

Commission DG	Commissioner
Justice and Consumers	REDING Viviane

Key events

Date	Event	Reference	Summary
14/03/2013	Non-legislative basic document published	COM(2013)0139	Summary
13/06/2013	Committee referral announced in Parliament		
17/12/2013	Vote in committee		
20/12/2013	Committee report tabled for plenary	A7-0474/2013	Summary
03/02/2014	Debate in Parliament		
04/02/2014	Decision by Parliament	T7-0063/2014	Summary
04/02/2014	Results of vote in Parliament		
04/02/2014	End of procedure in Parliament		

Technical information

Procedure reference	2013/2116(INI)
Procedure type	INI - Own-initiative procedure
Procedure subtype	Implementation
Amendments and repeals	See also Directive 2005/29/EC 2003/0134(COD)
Legal basis	Rules of Procedure EP 55
Other legal basis	Rules of Procedure EP 165
Stage reached in procedure	Procedure completed
Committee dossier	IMCO/7/12939

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE519.576	24/09/2013	
Amendments tabled in committee		PE521.835	23/10/2013	
Committee opinion	JURI	PE521.684	27/11/2013	
Committee report tabled for plenary, single reading		A7-0474/2013	20/12/2013	Summary
Text adopted by Parliament, single reading		T7-0063/2014	04/02/2014	Summary

European Commission

Document type	Reference	Date	Summary
Non-legislative basic document	COM(2013)0139	14/03/2013	Summary

Implementation of the Unfair Commercial Practices Directive 2005/29/EC

2013/2116(INI) - 14/03/2013 - Non-legislative basic document

PURPOSE: to provide a first assessment of the application of Directive 2005/29/EC on Unfair Commercial Practices (UCPD) in the Member States and evaluate its effects (Commission report).

CONTENT: the UCPD was adopted on 11 May 2005. It aims to contribute to the completion of the internal market by removing barriers that are due to differences in the national laws on unfair commercial practices and to provide a high level of consumer protection.

It seeks to ensure that consumers are not misled or exposed to aggressive marketing and that any claim made by traders in the EU is clear, accurate and substantiated, thus enabling consumers to make informed and meaningful choices. The Directive covers the totality of business-to-consumer ('B2C') transactions whether offline or online, involving both goods and services.

As announced in the Communication on the application of the Unfair Commercial Practices Directive accompanying this report, the Commission considers that it **does not seem appropriate to amend the Directive at this stage**. This outcome reflects the results of the consultation and the preliminary conclusions drawn from the experience on enforcement in Member States, which is significant but still too limited in time for such a comprehensive body of legislation.

The main points of the report are as follows:

Benefits of the Directive: the experience gained from the first few years of the application of the Directive demonstrates that the latter has helped to enhance consumer protection in Member States while protecting legitimate businesses from competitors who do not play by the rules:

- **national consumer** protection watchdogs have used the Directive to curb and penalise a wide variety of unfair business practices;
- the UCPD is the **only general instrument of EU legislation in place** to assess environmental claims or aggressive practices;
- the **'Black List'** has provided national authorities with an **effective tool** : (i) for tackling common unfair practices like bait advertising, fake free offers, hidden advertising and direct exhortations to children; (ii) for tackling unfair practices in the fields of financial services and immovable property;
- the legal framework provides a **prompt enforcement response** to abuses perpetrated by means of new commonly used tools such as price comparison and collective booking websites or in relation, for example, to the increasing involvement of advertising in social networks;
- actions taken under the **CPC-Network** (network on consumer protection) concerned infringements of the UCPD and several joint surveillance actions ('sweeps') have been carried out on the basis of UCPD provisions (websites selling airline tickets, online mobile phone services, websites selling consumer electronic goods) ;
- **cooperation with national enforcement authorities** and the implementation elements gathered in the UCPD Database reveal that the rules are mostly interpreted in a uniform manner.

Improve enforcement of the Directive: the report states that the concerns which have been raised by some stakeholders in relation to the application of the UCPD to certain specific unfair commercial practices can be addressed by **initiatives to improve enforcement** in the Member States.

In this connection, the Commission considers that **future efforts will need to concentrate on key thematic areas** where detriment and lost opportunities for consumers appear to be most frequently recurring and where the Single Market's growth potential is the biggest. These key areas are identified as **retail trade (including e-commerce), the transport sector, the digital economy and energy / sustainability**.

The report notes that more consumers are now interested in making cross-border purchases (52%, +19) and are willing to spend more money cross-border (18%, +5) than in 2006, when the Directive had not yet been transposed in Member States. Nevertheless, it has to be recognised that **growth in online cross border shopping lags far behind domestic growth**, making it clear that more needs to be done. This is why emphasis now needs to be placed on **correct and consistent application of the Directive**.

Accordingly, the Commission suggests that further efforts should be made in terms of strengthening UCPD enforcement, improving the deterrent value of **penalties** and increasing **cooperation in cross-border cases** within the scope of the CPC Regulation.

The Commission considers that it should take up a **more prominent role**, joining forces with Member States and supporting them in the application of the Directive across the EU, in particular with regard to unfair practices having a cross-border dimension such as those taking place in the online environment and which raise common questions for enforcers.

Implementation of the Unfair Commercial Practices Directive 2005/29/EC

2013/2116(INI) - 04/02/2014 - Text adopted by Parliament, single reading

The European Parliament adopted a resolution on the implementation of the Unfair Commercial Practices Directive 2005/29/EC.

Directive 2005/29/EC on unfair commercial practices is the European Union's main legislative tool regulating misleading advertising and other unfair practices in business-to-consumer transactions.

Effectiveness of the legislation: whilst laying stress on the effectiveness of the legislation established by the Directive, Parliament recalled that disparities in the application of the Directive risk impairing its effectiveness. It reasserted the importance and **absolute necessity** of the Directive being **fully and uniformly applied and properly implemented** by Member States in order to eliminate legal and operational uncertainties for businesses operating across borders.

Parliament regretted that despite provisions in Directive 2006/114/EC to combat misleading practices in business-to-business advertising, some of these practices, notably '**directory scams**', still persist.

It is the Commission's intention to propose shortly **amendments to Directive 2006/114/EC** focusing on business-to-business relations, in order to combat these practices more effectively. Members suggested that the Commission could, in this context, consider the merits of a **targeted black list of commercial practices** that are to be considered unfair in all circumstances in the field of business-to-business relations for Directive 2006/114/EC, similar to that which already exists for Directive 2005/29/EC.

They did not, however, consider it appropriate for the moment to extend the scope of Directive 2005/29/EC on business-to-consumer relations to include business-to-business unfair commercial practices.

Parliament called on the Commission to:

- clarify the relationship between Directives 2005/29/EC and 2006/114/EC, in order to guarantee a high level of protection for all economic operators in the Union, particularly consumers and SMEs, from fraudulent and unfair practices, thus boosting confidence within the Single Market;
- carry out research into **how Member States have transposed the Directive** and to submit within 2 years to Parliament and to the Council a new comprehensive report on its application;
- continue monitoring closely application of the Directive and, if necessary, to **bring proceedings against Member States which infringe the Directive** or fail to implement it or to apply it correctly;

- reinforce cooperation and coordination between the Commission and national authorities in order to promote converging practices in implementation, and to provide a rapid and efficient response (particular attention should be paid to dealing with cross-border online purchasing);
- examine thoroughly the scope, effectiveness and operational mechanisms of the Consumer Protection Cooperation Regulation (CPC Regulation), as it has committed itself to doing before the end of 2014;
- further develop 'sweeps' and strengthen them and broaden their scope.

Further efforts should be made to strengthen the enforcement of the Unfair Commercial Practices Directive in relation to **vulnerable consumers.**

Hidden advertising: Parliament called on the Commission and the Member States to ensure proper application of the Unfair Commercial Practices Directive especially regarding **misleading 'hidden' internet advertising** in the form of comments posted on social networks, forums or blogs, apparently emanating from consumers themselves while they are in reality messages of a commercial or advertising nature directly or indirectly generated or financed by economic operators. It insisted on the damaging effect of such practices on consumer confidence and competition rules.

Moreover, a suitable method for monitoring the protection of vulnerable groups of people, **especially children**, and their accessing by advertisers, needs to be developed. Members also stressed the need to investigate the frequency of **misleading practices in the airline price sector**.

Penalties: Parliament considered that the penalties imposed for failure to comply with the Directive ought never to be lower in value than the profit made through a practice deemed to be unfair or misleading.

Database on national legislation: Parliament welcomed the database on national legislation and case law concerning unfair commercial practices developed by the Commission and recognises it to be a useful means of adding to the information available to consumers. It regretted that it is only available in English. The Commission is asked to increase progressively the number of languages in which the database is available and to enhance its visibility, particularly for economic operators.

Redress: many consumers hesitate to ask for redress when it seems to them that the amount concerned is not very high. Consumers need to be made more aware of the support available to them from both consumer associations and the network of European Consumer Centres. It also stressed the importance for consumers of having effective, swift and inexpensive legal remedies. In this regard, Parliament asked for Member States to implement fully the Directive on alternative dispute resolution methods and out-of-court settlement of online disputes.

Members stressed the importance of agreeing to a **horizontal framework on collective redress** which would avoid the risk of uncoordinated sector-specific EU initiatives.

Implementation of the Unfair Commercial Practices Directive 2005/29/EC

2013/2116(INI) - 20/12/2013 - Committee report tabled for plenary, single reading

The Committee on the Internal Market and Consumer Protection adopted the own-initiative report by Robert ROCHEFORT (ALDE, FR) on the implementation of the Unfair Commercial Practices Directive 2005/29/EC.

Directive 2005/29/EC on unfair commercial practices is the European Union's main legislative tool regulating misleading advertising and other unfair practices in business-to-consumer transactions.

Effectiveness of the legislation: there have been **major differences in the implementation of Directive 2005/29/EC** from one Member State to another. The temporary derogations allowing Member States to continue to apply national provisions that were more restrictive or prescriptive than the Directive and that implemented minimum harmonisation clauses in other EU legislative instruments expired on 12 June 2013. Member States which so wish are free to extend application of the Directive to business-to-business relations. To date only four Member States have chosen to do so. These disparities in the application of the Directive risk impairing its effectiveness.

It regretted that despite provisions in Directive 2006/114/EC to combat misleading practices in business-to-business advertising, some of these practices, notably 'directory scams', still persist. It is the Commission's intention to propose shortly **amendments to Directive 2006/114/EC** focusing on business-to-business relations, in order to combat these practices more effectively. Members suggested that the Commission could, in this context, consider the merits of a **targeted black list of commercial practices** that are to be considered unfair in all circumstances in the field of business-to-business relations for Directive 2006/114/EC, similar to that which already exists for Directive 2005/29/EC.

They did not, however, consider it appropriate for the moment to extend the scope of Directive 2005/29/EC on business-to-consumer relations to include business-to-business unfair commercial practices.

Members reasserted the importance and absolute necessity of the Directive being **fully and uniformly applied and properly implemented by Member States** in order to eliminate legal and operational uncertainties for businesses operating across borders.

The Commission is called upon to:

- clarify the relationship between Directives 2005/29/EC and 2006/114/EC, in order to guarantee a high level of protection for all economic operators in the Union, particularly consumers and SMEs, from fraudulent and unfair practices, thus boosting confidence within the Single Market;
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Members stressed the importance of agreeing to a **horizontal framework on collective redress** which would avoid the risk of uncoordinated sector-specific EU initiatives.

Member States are called upon to follow the Commission Recommendations for the establishment of horizontal common principles, whose implementation in Member States would serve to assess whether further measures, including a legislative initiative, are needed, in particular for cross-border cases.