

European Union: Commercial Communications - Latest Developments

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Recently the European Commission published its Follow-up to the Green Paper on Commercial Communications in the Internal Market (Brussels, 4 March 1998; COM (1998) 121 final). The Ligue Internationale du Droit de la Concurrence devoted its annual Colloquium to this subject (Brussels, 20 March); a summary will be published in the Ligue's International Review of Competition Law. A newsletter, Commercial Communications, The Journal of Advertising and Marketing Policy and Practise in the European Community, sponsored by DG XV, keeps interested parties informed of the developments in this field.

The problem of international commercial communications, as it is stated by the Commission, consists in the wide divergence of restrictions on advertising in the Member States. Regulations on sales promotions are always used as a striking example. The case law of the Court of Justice of the European Communities does not provide the Commission with sufficient tools to remove these obstacles to cross-border communications. The case of Keck (OJEC 24 November 1993, C-267/91 and C-268/91, ECR 1993, p. I-6097) shows that national authorities keep ample possibilities to create national restrictions on advertising. Therefore the Commission seeks new ways to secure the growth of cross-border commercial communications. In its primary approach, the Commission chose an economic assessment methodology, the objective of which was to set out a complete picture of the economic impacts of the measure. In its Followup, two further criteria have been added in recognition of cultural and social differences in the Member States and the need to ensure coherence across public interest objectives. On the basis of the economic assessment, a legal assessment will need to be made as to whether the measure is proportional. The Commission hopes that these two steps, even if their application is not made mandatory, will be helpfull in considering cases of alleged infringement and in discussions on the regulatory problems relating to crossborder commercial communications. According to the proposals of the Commission, these discussions will be formalised in a Commercial Communication Expert Group, chaired by an official of the Commission, its members consisting of two representatives appointed by each Member State. Furthermore the Commssion will make available a Commercial Communications' contact point and information network and will set up a database, which can all be accessed through a Web site on commercial communications, which is a complement to the existing newsletter.

Communication from the Commission to the European Parliament, the Council and the Economic and Social Committee. Follow-up to the Green Paper on Commercial Communications in the Internal Market. Brussels, 4 March 1998; COM (1998) 121 final

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:1998:0121:FIN:EN:PDF>

