European Parliament: Approval of Unfair Commercial Practices Directive

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On 24 February, the European Parliament approved in second reading, subject to a number of amendments, the proposed Directive on Unfair Commercial Practices, which was put forward by the Commission in June 2003 (see IRIS 2003-8: 5 and IRIS 2004-7: 3). Parliament's amendments have been endorsed by both the Commission and the Council and the Directive should now be formally adopted at the Competitiveness Council in June 2005.

The aim of the Directive is to ensure a high level of consumer protection across Europe while contributing to the proper functioning of the internal market facilitating cross-border trade. In order to achieve this, the Directive sets out a common EC framework for regulating unfair commercial practices (such as advertising and marketing), which is to replace the maze of existing national laws and court judgments in this field. The Directive covers business-to-consumer commercial practices, which harm the economic interests of the consumer (it does not cover aspects of health and safety, taste or decency or contract law and does not cover business-to-business transactions).

The Directive lays down a general prohibition on unfair commercial practices and sets out the criteria for determining when a practice is to be regarded as unfair (the test is whether the practice is contrary to the requirements of professional diligence and whether it would unfairly distort the behaviour of the average consumer, although provision is also made to protect particularly vulnerable consumers, such as children). It then sets out more detailed provisions on two specific categories of unfair practices, misleading and aggressive practices, and in its Annex 1 lists a number of practices which are to be considered unfair in all cases and are therefore prohibited up-front. Following Parliament's latest amendments, one of the prohibited practices in Annex 1 covers “including in an advertisement a direct exhortation to children to buy or to persuade their parents or other adults to buy advertised products for them [this provision is without prejudice to Article 16 of the Television without Frontiers Directive]”.

It should be noted that Parliament has accepted the Council's amendment to delete the country of origin principle from the Directive, as it is satisfied that it is no longer necessary to include it in light of the high level of harmonization of consumer protection achieved in the Directive.

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Member States will have to adopt the necessary legislation to implement the Directive within 24 months of its entry into force. They will then be allowed to continue to apply for a further six years existing national provisions more restrictive than the Directive which implement previous directives containing minimum harmonization clauses.

European Parliament legislative resolution on the Council common position for adopting a directive of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ("Unfair Commercial Practices Directive") (11630/2/2004-C6-0190/2004-2003/0134(COD)), 24 February 2004

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2005:304E:0351:0351:EN:PDF

"Unfair commercial practices: Commission welcomes Parliament's approval of new law", Press Release of the European Commission IP/05/213, 24 February 2004

http://europa.eu/rapid/pressReleasesAction.do?reference=IP/05/213&format=HTML&aged=1&language=EN&guiLanguage=fr

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