Council of the European Union: Adoption of a Directive on Unfair Commercial Practices

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On 11 May 2005 the European Parliament and the Council signed a Directive prohibiting unfair commercial practices (see IRIS 2005-4: 5, IRIS 2004-7: 3 and IRIS 2003-8: 5). In so doing, EU authorities have taken the protection of consumers' interests a step further. This Directive is an amending addition to several others covering the same field: the protection of consumers in respect of distance contracts (Directives 84/450/EEC and 97/7/EC), injunctions for the protection of consumers' interests (Directive 98/27/EC) and the distance marketing of consumer financial services (Directive 2002/65/EC).

The new Directive offers criteria to identify commercial practices which could be considered as unfair and in particular targets misleading and aggressive practices as unfair practices.

Annexed to the Directive is a blacklist of practices considered unfair in all circumstances, these are:

- Including in an advertisement a direct exhortation to children to buy advertised products or to persuade their parents or other adults to buy advertised products for them;

- Claiming that a product has been approved, endorsed or authorized by a public or private body when it has not;

- Falsely stating that the product will only be available for a very limited time, or that it will only be available on particular terms for a very limited time, in order to elicit an immediate decision and deprive consumers of sufficient opportunity or time to make an informed choice;

- Promoting a product similar to a product made by a particular manufacturer in such a manner as deliberately to mislead the consumer into believing that the product is made by that same manufacturer when it is not;

- Falsely claiming or creating the impression that the trader is not acting for purposes relating to his trade, business, craft or profession, or falsely representing oneself as a consumer;

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- Creating the false impression that after-sales service in relation to the product is available in a Member State other than the one in which the product is sold;

- Requiring a consumer who wishes to claim on an insurance policy to produce documents which could not reasonably be considered relevant as to whether the claim was valid, or systematically failing to reply to related correspondence;

- Creating the false impression that the consumer has won, is to win or will on doing a particular act win a prize, when in fact either there is no prize or taking any action in relation to claiming the prize is subject to the consumer paying money or incurring a cost;

The Directive is meant to eliminate barriers to cross-border trade in the Internal Market while protecting consumers' interests by establishing an EU framework for the regulation of unfair business-to-consumer practices (notably advertising and marketing).

Member States must ensure that this Directive is implemented within two and a half years of its publication in the Official journal of the European Union.

Directive 2005/29/EC of the European Parliament and of the Council on unfair commercial practices

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