



Consumer Voice

Newsletter on food safety, health and consumer policy
From the European Commission's Health and Consumer Protection Directorate-General

Special Edition, July 2003



David Byrne
Commissioner for
Health and Consumer
Protection

Editorial

Our proposal on unfair commercial practices is the culmination of two years' consultation. The evidence produced during this time convinces me it will boost the EU's internal market and help both business and consumers.

A constant theme in consumer opinion surveys has been that consumers feel better protected in their own country. This perception needs to be changed if consumers are ever to take full advantage of the EU's Internal Market. What this directive will do is reassure Europe's consumers that, whether they buy from their local corner shop or from a website in another EU country, they will enjoy the same high level of protection from unfair practices.

Meanwhile companies, particularly smaller ones, trying to do business EU-wide are daunted by the prospect of having to comply with the current tangled web of 15 different sets of national rules on practices like advertising and marketing. Our studies show that many do not even attempt to sell to consumers in other EU countries.

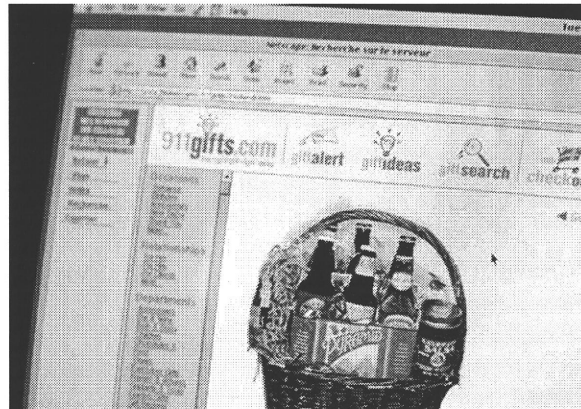
EU-wide rules will galvanise cross-border consumers, cut red tape for business and boost the EU's internal market. Just as importantly, they will stop rogue traders exploiting legal loopholes to fleece consumers cross-border and steal trade from companies who play by the rule. So, if a trader sells a miracle product that claims to make your hair grow back or that you'll lose 10 kilos in a week (with no harmful side effects!), he'll need to have evidence to back up those claims – wherever he is in the EU.

IN THIS EDITION

Unfair Commercial Practices
Special Edition

Commission proposes EU-wide rules on unfair commercial practices

The draft EU law, adopted by the Commission on 18 June, will ban unfair business-to-consumer commercial practices throughout the EU and establish a common set of rules to define 'unfairness'. The Commission wants to have the directive in place by 2005.



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Consumers' rights will be clearer, and cross-border trade made simpler as EU-wide rules replace the current 15 (soon to be 25) sets of national rules and regulations on unfair commercial practices.

Making the Internal Market work for consumers and businesses

Commercial practices include, for example, advertising and marketing. Unfair practices cheat consumers and can deter them from taking advantage of the internal market. They also undermine confidence in the market, penalising honest traders and holding back the economy. The European Advertising Standards Alliance concluded in its 2002 annual report that "cross-border complaints overwhelmingly concern the activities of 'rogue traders' and other fringe operators, who deliberately set out to exploit the loopholes between national regulatory systems". At the same time, nearly one in two businesses (47%) cite the need for compliance with different national regulations on commercial practices, advertising and other consumer protection regulations as important obstacles to legitimate cross-border advertising and marketing.

Benefits of the Directive

Independent economic studies predict the directive will increase consumer choice, stimulate competition and enlarge the horizons of small and medium-sized businesses in Europe. Articles in this special edition of *Consumer Voice* explore these benefits from both a consumer and a business perspective, and answer your questions about what the Unfair Commercial Practices Directive will mean.

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General ban on 'unfair' practices

The directive starts from the assumption that business practices are fair, unless the contrary is shown. Innovative marketing techniques can only be challenged if they harm consumers' economic interests - not just because they are new and unfamiliar. An unfair practice is one that falls below the usual standards of skill and care expected of a trader, and which is likely to materially impair the average consumer's ability to take an informed decision.

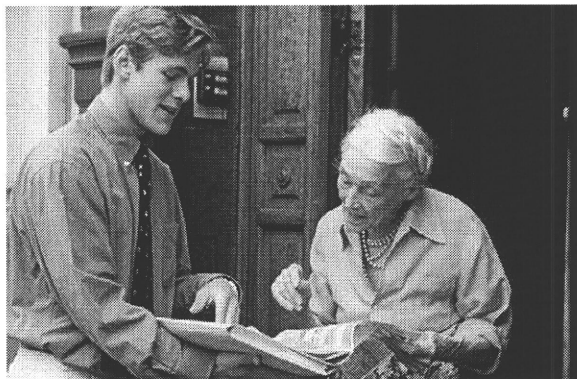


Photo: Audiovisual Library European Commission

Undue influence

A consumer contacts a plumber to fix a faulty radiator. She is initially told that the job will cost €80. However instead, the bill comes to €450.90. When she refuses to pay the additional amount, the plumber disconnects her hot water supply.

How will the Directive help?

The directive would class this behaviour as an 'aggressive' practice. Action could be taken against the plumber for using undue influence to exploit a position of power over the consumer.

Aggressive selling

The directive's aim is to set out how to define which practices are unfair. Some practices will always be unfair and these are prohibited EU-wide. Two types of sharp practice are specifically targeted: aggressive practices and misleading practices. In concrete terms, this means that pressure-selling ploys, such as those described in the article *Timeshare or 'Holiday club'?* on page 4 of this edition, will be banned Europe-wide. Other types of aggressive selling targeted by the directive include:

- Conducting prolonged and/or repeated personal visits to the consumer's home, ignoring the consumer's request to leave.
- Making persistent and unwanted solicitations by telephone, fax, e-mail or other remote media.
- Targeting consumers who have recently suffered a bereavement or serious illness in their family in order to sell a product which bears a direct relationship with the misfortune.

Action against misleading scams

Scams that mislead consumers into buying a product will also be banned throughout the EU. So, no matter which EU country they are based in, businesses will be forbidden to use:

- 'Bait advertising' scams (advertising a product as a special offer without actually having it in stock, or having only a token stock of the product).
- The expression 'liquidation sale', or equivalent, when the trader is not about to cease trading.
- 'Advertorials' (media coverage that has been paid for) to promote a product, without making clear the 'advertorial' is an advertisement.

Consultations and studies support Directive

Formal consultation began in October 2001 when the Commission published a Green Paper on EU Consumer Protection. This set out a range of options for improving cross-border business-to-consumer commerce in the EU, and invited comments from consumers, business and governments. Some 169 organisations responded. The Commission published a Follow-up Communication analysing these responses in June 2002 and held a public workshop in January 2003. The Commission also carried out an extended Impact Assessment, drawing on a study by independent consultants and analysis by a network of legal experts. This is one of the first pilot assessments produced by the Commission as it implements its commitment to better regulation. All the evidence gathered during consultations and assessment convinced the Commission that EU legislation was needed to realise the potential for business-to-consumer commerce in the Internal Market. For more information on this evidence see: http://europa.eu.int/comm/consumers/cons_int/safe_shop/fair_bus_pract/index_en.htm



Directive boosts Internal Market

Once the directive's EU-wide rules on unfair practices are in place, traders will only have to comply with the laws of their country of origin. If they do so, then regulators in other parts of the EU will not be able to impose additional regulation.

Barriers to small businesses

Irish company *Aran Products* has four staff members and produces a range of soaps, lotions and spa products based on extracts of local plants. Its products are popular with French and German tourists, who often ask for more to be posted over to them. The Director would like to market his products directly in France and Germany, perhaps by developing his website, but is not familiar with their national laws and so worries about potential legal problems.

How will the Directive help?

EU-wide rules and 'country of origin' control under the directive mean that as long as *Aran Products* is operating lawfully in Ireland, other national authorities cannot challenge its marketing as 'unfair'. This means businesses of all sizes can spend less on legal advice about how to comply with unfamiliar advertising and marketing rules and will be better able to sell their products on a Europe-wide basis.

Businesses benefit from simplification

Different national rules and regulations can be a major obstacle to perfectly legitimate companies trying to market their products in other EU Member States. In 2002 when the Commission conducted a survey of businesses' experience of consumer protection laws in the EU, 68% of businesses said that harmonising these requirements would be an effective way of making advertising easier throughout the EU. It creates the conditions for mutual recognition to work, inclusion of which in the proposal has been welcomed by the Federation of European Direct Marketing (FEDMA), one of the trade associations directly affected by the directive.

Alex Tandberg, FEDMA Director of Government Affairs, said "This will ensure that a direct marketer will not have to learn the rules of each Member State in order to be able to communicate with consumers in the other Member States."

For further case studies see:

http://europa.eu.int/comm/consumers/cons_int/safe_shop/fair_bus_pract/directive_en.htm

European Consumers' Organisation welcomes the Directive



Jim Murray, Director, BEUC

The European Consumers' Organisation (BEUC) has welcomed the Commission's adoption of the Draft Proposal on Unfair Commercial Practices. BEUC Director, Mr. Jim Murray, said:

"Potentially, the proposed directive on unfair commercial practices will help to fill important gaps in consumer protection in Europe and should help in responding to new problems that may arise in the future. The proposal is for a horizontal piece of framework legislation and this is important. We cannot, especially in an enlarged EU, have one piece of vertical legislation to deal with abuses in one sector and then another piece of legislation to deal with the same abuses in another sector. If it is wrong to put unfair pressure on consumers to buy timeshare, it is also wrong to put unfair pressure on them to buy expensive furniture, or anything else.

We also need legislation that will stand the test of time and that can adapt to changing conditions in the market. It is neither possible nor desirable to keep coming back to "Brussels" to amend legislation that has not kept pace with the market.

This is only a proposal for a directive. We welcome it, but we will also play our part in trying to improve and strengthen it on its way through the legislative process."

Business case for common rules

At a press conference on 18 June, Commissioner David Byrne gave some examples from case-law of barriers to trade caused by differing national rules on unfair practices:

- One Member State authority stopped the cosmetic company *Clinique* using its name because consumers might associate the product with medical services.
- In another EU country, *Estée Lauder* faced an objection to the word "lifting" on a face cream. One national authority claimed this word could give the impression that the cream would have the same effect as a surgical facelift.

These cases illustrate the business case for common rules EU-wide.



Another layer of EU regulation?

Not at all. Where there are already specific EU rules, for example on the content of pre-sale information about financial services products, these will take precedence and this directive will not add to them.

Where there are no specific EU rules, traders will need to check that they comply with the principles in the Unfair Commercial Practices Directive.

The directive will incorporate the parts of the existing Misleading Advertising Directive concerning advertising to consumers. But it will not replace existing, specific consumer protection directives, such as the Timeshare, Consumer Credit and Distance Selling Directives, which contain important protections for consumers who enter into certain contracts, or the Unfair Contract Terms Directive. Instead it will act as a 'safety net' ensuring that, whatever the product, and regardless of whether any particular consumer buys it, action can be taken against unfair practices.

Simplifying future legislation

The common principles on unfair commercial practices established by this Directive will mean that future sector-specific legislation can be simpler and better targeted.

Advertising aimed at children

The directive puts in place safeguards to ensure responsible advertising to children. In particular, the directive will ban as 'aggressive selling' advertising implying to children that they will not be accepted by their peers unless their parents buy them a particular product. Advertising or marketing targeted at children will have to be assessed for its effect on the average child to see whether it breaks the directive's rules on unfair practices. However, there is no general ban on advertising aimed at children.

For further information about the Unfair Commercial Practices Directive see:

http://europa.eu.int/comm/consumers/cons_int/safe_shop/fair_bus_pract/index_en.htm

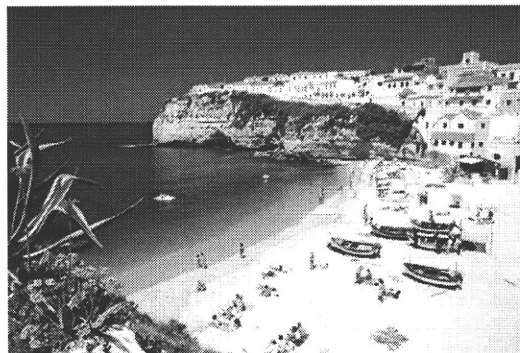
Consumer protection – a new approach

Until recently, EU consumer protection legislation tended to focus on specific areas where problems had arisen. For example, the growth of the credit card and consumer loan industry in the 1970s and 1980s led to the passing of an EU Consumer Credit Directive. The growth of the direct marketing and distance selling industries in the 1990s led to adoption of the 1997 Distance Selling Directive. The problem with this "sector by sector" approach is that it leaves loopholes. Also, the old approach of "minimum harmonisation" led to differing national rules that complicate cross-border shopping.

Timeshare or 'Holiday Club'?

The growth of the timeshare industry in the late 1980s was accompanied by misleading and aggressive selling practices by some companies. Holidaymakers visiting other EU countries were a particular target for 'timeshare touts', who would pressure them into signing a contract with a local holiday development. In 1994, the EU passed the Timeshare Directive. This directive gives consumers a 10 day 'cooling-off period' following signature of a timeshare contract, during which they can reconsider their decisions. It also gives them the right to a brochure about the property in a language they can understand and a translation of the timeshare contract.

Unfortunately, unscrupulous traders in some Member States simply turned their attention to pressure-selling other products. The scams have stayed the same: holidaymakers are told they have won a prize, but they have to go with the trader to collect it. They are driven to remote locations, with no means to get back to the town where they are staying, and subject to a lengthy sales presentation. However now, instead of being sold timeshare they are pressured to pay money into 'holiday clubs' - which are not covered by the directive.



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The Unfair Commercial Practices Directive will prohibit aggressive selling – whether of timeshare or 'holiday clubs'. Whatever the product, consumers must not be treated unfairly.

Enforcing the new rules

As with the existing EU consumer directives, Member States will have a responsibility to ensure the new directive is enforced but will retain some flexibility about how this is done. The Commission is developing a complementary, but separate, proposal for an EU Enforcement Co-operation Regulation. This would set up a network of public enforcers tasked with strengthening enforcement of all consumer protection rules and cracking down on all types of cross-border scams.

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