

# EUROPEAN PARLIAMENT

2004



2009

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*Committee on Petitions*

**2008/2126(INI)**

17.10.2008

## **AMENDMENTS**

### **1 - 34**

**Draft report**  
**Simon Busuttil**  
(PE408.026v01-00)

on combating misleading advertising by business-directory companies  
(Petitions 0045/2006, 1476/2006, 0079/2003, 0819/2003, 1010/2005,  
0052/2007, 0306/2007, 0444/2007, 0562/2007 and others)  
(2008/2126(INI))

AM\_Com\_NonLegReport

**Amendment 1**  
**Diana Wallis**

**Motion for a resolution**  
**Citation 9 (new)**

*Motion for a resolution*

*Amendment*

*– having regard to the study entitled "Misleading practices of 'directory companies' in the context of current and future internal market legislation aimed at the protection of consumers and SMEs" (IP/A/IMCO/FWC/2006-058/LOT4/C1/SC6), commissioned by its Committee on the Internal Market and Consumer Protection,*

Or. en

**Amendment 2**  
**Marian Harkin**

**Motion for a resolution**  
**Recital A**

*Motion for a resolution*

*Amendment*

A. whereas Parliament has received more than 400 petitions, ***mainly from*** small businesses, who claim to have fallen victim to misleading advertising by business-directory companies and consequently suffered financial loss,

A. whereas Parliament has received more than 400 petitions, ***reflecting only a fraction of*** small businesses, who claim to have fallen victim to misleading advertising by business-directory companies and consequently suffered ***psychological stress, feelings of guilt, embarrassment, frustration and*** financial loss,

Or. en

**Amendment 3**  
**Marian Harkin**

**Motion for a resolution**  
**Recital B**

*Motion for a resolution*

B. whereas these complaints reflect a widespread practice of misleading business practices applied by some business directory companies affecting thousands of businesses in the European Union and beyond, with a significant financial impact on businesses,

*Amendment*

B. whereas these complaints reflect a widespread ***and concerted*** practice of misleading business practices ***amounting to fraud*** applied by some business directory companies affecting thousands of businesses ***that are organised across frontiers and thus involve activity in two or more Member States (with the companies having different legal identities, therefore avoiding liability)*** in the European Union and beyond, with a significant financial impact on businesses, ***and whereas there is no administrative mechanism or legal instrument enabling the national law-enforcement agencies to work together across borders,***

Or. en

**Amendment 4**  
**Marie Panayotopoulos-Cassiotou**

**Motion for a resolution**  
**Recital B a (new)**

*Motion for a resolution*

***Ba. whereas the misleading character of these practices becomes more obvious when they are of an electronic nature and are spread using the Internet (see Petition No 0079/2003),***

Or. en

**Amendment 5**  
**Marian Harkin**

**Motion for a resolution**  
**Recital D a (new)**

*Motion for a resolution*

*Amendment*

***Da. whereas neither specific EU legislation nor national legislation exists in Member States (except in Austria where contractual and criminal remedies are available) concerning directory companies in business-to-business relationships, and whereas Member States have a discretion to introduce more comprehensive and far-reaching legislation,***

Or. en

**Amendment 6**  
**Marian Harkin**

**Motion for a resolution**  
**Recital E**

*Motion for a resolution*

*Amendment*

E. whereas Directive 2006/114 also applies to business-to-business transactions and defines “misleading advertising” as “any advertising which in any way, including its presentation, deceives or is likely to deceive the persons to whom it is addressed or whom it reaches and which by reason of its deceptive nature, is likely to affect their economic behaviour or which, for those reasons, injures or is likely to injure a competitor”,

E. whereas Directive 2006/114 also applies to business-to-business transactions and defines “misleading advertising” as “any advertising which in any way, including its presentation, deceives or is likely to deceive the persons to whom it is addressed or whom it reaches and which by reason of its deceptive nature, is likely to affect their economic behaviour or which, for those reasons, injures or is likely to injure a competitor”; ***whereas, however, different interpretations of what is "misleading" seem to be a major practical impediment in combating such practices of directory companies in business-to-business relationships,***

**Amendment 7**  
**Simon Busuttil**

**Motion for a resolution**  
**Recital F**

*Motion for a resolution*

F. whereas Directive 2005/29/EC on unfair business-to-consumer commercial practices does not apply business-to-business misleading practices and therefore, in its current form, cannot be relied upon to help the petitioners,

*Amendment*

F. whereas Directive 2005/29/EC on unfair business-to-consumer commercial practices ***prohibits the practice of "including in marketing material an invoice or similar document seeking payment which gives the consumer the impression that he has already ordered the marketed product when he has not";*** whereas, however, that Directive does not apply ***to*** business-to-business misleading practices and therefore, in its current form, cannot be relied upon to help the petitioners,

**Amendment 8**  
**Richard Corbett**

**Motion for a resolution**  
**Recital F**

*Motion for a resolution*

F. whereas Directive 2005/29/EC on unfair business-to-consumer commercial practices does not apply business-to-business misleading practices and therefore, in its current form, cannot be relied upon to help the petitioners,

*Amendment*

F. whereas Directive 2005/29/EC on unfair business-to-consumer commercial practices does not apply ***to*** business-to-business misleading practices and therefore, in its current form, cannot be relied upon to help the petitioners,

**Amendment 9**  
**Marian Harkin**

**Motion for a resolution**  
**Recital F**

*Motion for a resolution*

F. whereas Directive 2005/29/EC on unfair business-to-consumer commercial practices does not apply business-to-business misleading practices and therefore, in its current form, cannot be relied upon to help the petitioners,

*Amendment*

F. whereas Directive 2005/29/EC on unfair business-to-consumer commercial practices does not apply business-to-business misleading practices and therefore, in its current form, cannot be relied upon to help the petitioners;  
***whereas, however, that Directive does not preclude a system of national rules on unfair commercial practices that is equally applicable under all circumstances to consumers and enterprises, of the kind implemented in Austria,***

Or. en

**Amendment 10**  
**Simon Busuttil**

**Motion for a resolution**  
**Recital F a (new)**

*Motion for a resolution*

***Fa. whereas Directive 2005/29/EC does not preclude Member States from extending its application also to businesses through national law; whereas, however, this leads to differing levels of protection for businesses which are victims of misleading business directories in different Member States,***

Or. en

**Amendment 11**  
**Marian Harkin**

**Motion for a resolution**  
**Recital G**

*Motion for a resolution*

G. whereas Regulation (EC) 2006/2004 on co-operation between national authorities responsible for the enforcement of consumer protection laws defines “intra-Community infringement” as “any act or omission contrary to the laws that protect consumers’ interests ... that harms, or is likely to harm, the collective interests of consumers residing in a Member State or Member States other than the Member State where the act or omission originated or took place, or where the responsible seller or supplier is established, or where evidence or assets pertaining to the act or omission are to be found”;

*Amendment*

G. whereas Regulation (EC) 2006/2004 on co-operation between national authorities responsible for the enforcement of consumer protection laws defines “intra-Community infringement” as “any act or omission contrary to the laws that protect consumers’ interests ... that harms, or is likely to harm, the collective interests of consumers residing in a Member State or Member States other than the Member State where the act or omission originated or took place, or where the responsible seller or supplier is established, or where evidence or assets pertaining to the act or omission are to be found”, ***and whereas Directive 2006/114/EC provides for the possibility of administrative fines and cross-border cooperation in relation to unfair practices by directory companies,***

Or. en

**Amendment 12**  
**Simon Busuttil**

**Motion for a resolution**  
**Recital G**

*Motion for a resolution*

G. whereas Regulation (EC) 2006/2004 on co-operation between national authorities responsible for the enforcement of consumer protection laws defines “intra-Community infringement” as “any act or omission contrary to the laws that protect consumers’ interests ... that harms, or is likely to harm, the collective interests of

*Amendment*

G. whereas Regulation (EC) 2006/2004 on co-operation between national authorities responsible for the enforcement of consumer protection laws defines “intra-Community infringement” as “any act or omission contrary to the laws that protect consumers’ interests ... that harms, or is likely to harm, the collective interests of



consumers residing in a Member State or Member States other than the Member State where the act or omission originated or took place, or where the responsible seller or supplier is established, or where evidence or assets pertaining to the act or omission are to be found”,

consumers residing in a Member State or Member States other than the Member State where the act or omission originated or took place, or where the responsible seller or supplier is established, or where evidence or assets pertaining to the act or omission are to be found”; ***whereas, however, that Directive does not apply to business-to-business misleading practices and therefore, in its current form, cannot be relied upon either to help the petitioners,***

Or. en

**Amendment 13**  
**Marian Harkin**

**Motion for a resolution**  
**Recital H**

*Motion for a resolution*

H. whereas most petitioners name the business directory known as “European City Guide”, which is based in Valencia, Spain, but other business-directory companies such as “Construct Data Verlag”, “Deutscher Adressdienst GmbH” and “NovaChannel” are also mentioned, whereas, however, other business-directory companies engage in legitimate business practices,

*Amendment*

H. whereas most petitioners name the business directory known as “European City Guide”, which is based in Valencia, Spain ***(the activities of which directory have been the subject of legal and administrative action)***, but other business-directory companies such as “Construct Data Verlag”, “Deutscher Adressdienst GmbH” and “NovaChannel” are also mentioned, whereas, however, other business-directory companies engage in legitimate business practices ***and should not be prevented or discouraged from exercising their right to engage in the business of directories by the incompatibility or complexity of legal and administrative systems in the Member States,***

Or. en

**Amendment 14**  
**Richard Corbett**

**Motion for a resolution**  
**Recital I**

*Motion for a resolution*

I. whereas the targets of these misleading business practices are, in the main, small businesses but also include professionals and even non-profit making entities, such as schools, libraries and local social clubs, such as band clubs,

*Amendment*

I. whereas the targets of these misleading business practices are, in the main, small businesses but also include professionals and even non-profit making entities, such as ***non-governmental organisations, charities,*** schools, libraries and local social clubs, such as band clubs,

Or. en

**Amendment 15**  
**Marian Harkin**

**Motion for a resolution**  
**Recital J**

*Motion for a resolution*

J. whereas the business-directory companies are often established in a Member State other than the victim's, making it difficult for the victims to seek protection from national authorities, whereas victims also often find no redress from national consumer protection authorities because they are told that the law is intended to protect consumers and not businesses, whereas being small businesses, most victims often lack the resources to pursue an effective remedy,

*Amendment*

J. whereas the business-directory companies are often established in a Member State other than the victim's, making it difficult for the victims to seek protection from national authorities ***due to the existence of different interpretations in Member States of what is considered misleading,*** whereas victims also often find no redress from national ***legislative frameworks and*** consumer protection authorities because they are told that the law is intended to protect consumers and not businesses, whereas being small businesses, most victims often lack the resources to pursue an effective remedy ***through litigation, and self-regulatory mechanisms for directories are of little relevance as they are disregarded by those that engage in misleading advertising,***

**Amendment 16**  
**Marian Harkin**

**Motion for a resolution**  
**Recital M**

*Motion for a resolution*

M. whereas a number of Member States have adopted initiatives, notably of an awareness-raising nature, to tackle this problem,

*Amendment*

M. whereas a number of Member States have adopted initiatives, notably of an awareness-raising nature, ***among potentially affected companies and whereas this includes information sharing, advice, alerting state enforcement authorities and in some cases maintaining a complaints register in order*** to tackle this problem,

Or. en

**Amendment 17**  
**Marie Panayotopoulos-Cassiotou**

**Motion for a resolution**  
**Recital O**

*Motion for a resolution*

O. whereas such practices have been applied for a number of years, creating a large number of victims and a significant financial impact across ***the*** internal market,

*Amendment*

O. whereas such practices have been applied for a number of years, creating a large number of victims and a significant financial impact across ***an*** internal market ***that is being damaged and distorted in many ways by these practices,***

Or. en

**Amendment 18**  
**Marian Harkin**

**Motion for a resolution**  
**Paragraph 2**

*Motion for a resolution*

2. Considers that the cross-border nature of this problem places **responsibility** on the Community institutions to provide **an adequate** remedy to victims, **such that** the validity of contracts concluded on the basis of misleading advertising **could** be effectively contested **and** annulled and that victims **could** be able to obtain a reimbursement of the money that they paid;

*Amendment*

2. Considers that the cross-border nature of this problem places **a duty** on the Community institutions to provide **a reasonable** remedy to victims **so as to allow for bona fide commercial operations to continue through advertising between SMEs, in tandem with allowing** the validity of contracts concluded on the basis of misleading advertising **and inducements to** be effectively **and efficiently** contested, annulled **or terminated**, and that victims **should** be able to obtain a reimbursement of the money that they paid;

Or. en

**Amendment 19**  
**Marian Harkin**

**Motion for a resolution**  
**Paragraph 3**

*Motion for a resolution*

3. Urges victims to report cases of business scams to national authorities **and to** seek appropriate advice before they settle fees demanded from them by misleading business-directory companies;

*Amendment*

3. Urges victims to report cases of business scams to national authorities, **and calls on Member States to provide SMEs with the "know-how" needed in order to enable them to file complaints with governmental and non-governmental authorities, by ensuring that communication pathways are open and that victims are aware that advice is available so that they can** seek appropriate advice before they settle fees demanded from them by misleading business-directory companies; **urges Member States to set up and maintain a centralised database of these complaints;**

**Amendment 20**  
**Marie Panayotopoulos-Cassiotou**

**Motion for a resolution**  
**Paragraph 4**

*Motion for a resolution*

4. Regrets that, despite the widespread nature of these practices, EU and national legislation does not appear to be adequate in providing an effective remedy or is not being adequately enforced at national level; regrets that national authorities also seem to be unable to provide a remedy;

*Amendment*

4. Regrets that, despite the widespread nature of these practices, EU and national legislation does not appear to be adequate in providing **a significant means of protection and** an effective remedy or is not being adequately enforced at national level; regrets that national authorities also seem to be unable to provide a remedy;

**Amendment 21**  
**Marian Harkin**

**Motion for a resolution**  
**Paragraph 5**

*Motion for a resolution*

5. Welcomes the efforts made by European and national business organisations to raise awareness among their members and calls on them to intensify their efforts so that fewer people become victims of misleading business directories in the first place;

*Amendment*

5. Welcomes the efforts made by European and national business organisations to raise awareness among their members and calls on them to intensify their efforts **in collaboration with grass-roots organisations** so that fewer people become victims of misleading business directories in the first place;

**Amendment 22**  
**Diana Wallis**

**Motion for a resolution**  
**Paragraph 5**

*Motion for a resolution*

5. Welcomes the efforts made by European and national business organisations to raise awareness among their members and calls on them to intensify their efforts so that fewer people become victims of misleading business directories in the first place;

*Amendment*

5. Welcomes the efforts made by European and national business organisations to raise awareness among their members and calls on them to intensify their efforts so that fewer people become victims of misleading business directories in the first place; ***expresses concern that some of these organisations have consequently been pursued through the courts by the misleading business directories specified in their awareness-raising activities on the basis of alleged defamation or similar accusations;***

Or. en

**Amendment 23**  
**Marie Panayotopoulos-Cassiotou**

**Motion for a resolution**  
**Paragraph 6**

*Motion for a resolution*

6. Welcomes the action taken by certain Member States such as Italy, Spain, Netherlands, Belgium and the United Kingdom, but most notably by Austria, in trying to prevent business-directory companies from following misleading practices; considers, however, that these efforts remain insufficient;

*Amendment*

6. Welcomes the action taken by certain Member States such as Italy, Spain, Netherlands, Belgium and the United Kingdom, but most notably by Austria, in trying to prevent business-directory companies from following misleading practices; considers, however, that these efforts remain insufficient ***and that there is still a need for the coordination of control at an international level;***

Or. en

**Amendment 24**  
**Marian Harkin**

**Motion for a resolution**  
**Paragraph 8**

*Motion for a resolution*

8. Calls on the Commission to address the problem of business scams in the context of its “Small Business Act” initiative;

*Amendment*

8. Calls on the Commission to address the problem of business scams in the context of its “Small Business Act *for Europe*” initiative, *as proposed in its communication entitled "A Single Market for 21st Century Europe", and to engage with the Enterprise Europe Network, the SOLVIT network and the relevant DG portals as a further means of delivering information and assistance regarding these problems;*

Or. en

**Amendment 25**  
**Diana Wallis**

**Motion for a resolution**  
**Paragraph 9**

*Motion for a resolution*

9. Regrets that Directive 2006/114/EC concerning misleading and comparative advertising which applies to business-to-business transactions as in this case, appears to be either insufficient in providing an effective remedy or inadequately enforced by Member States;

*Amendment*

9. Regrets that Directive 2006/114/EC concerning misleading and comparative advertising which applies to business-to-business transactions as in this case, appears to be either insufficient in providing an effective remedy or inadequately enforced by Member States; *requests the Commission to report by December 2009 on the feasibility and possible consequences of amending Directive 2006/114/EC in such a way as to include a "black" or "grey" list of practices that are to be regarded as misleading;*

**Amendment 26**  
**Marie Panayotopoulos-Cassiotou**

**Motion for a resolution**  
**Paragraph 10**

*Motion for a resolution*

10. Recalls that, whereas the Commission has no power to enforce the Directive directly against individuals or companies, it does have the duty, as the guardian of the Treaty, to ensure that the Directive is adequately implemented by Member States;

*Amendment*

10. Recalls that, whereas the Commission has no power to enforce the Directive directly against individuals or companies, it does have the duty, as the guardian of the Treaty, to ensure that the Directive is adequately ***and effectively*** implemented by Member States;

**Amendment 27**  
**Marian Harkin**

**Motion for a resolution**  
**Paragraph 10**

*Motion for a resolution*

10. Recalls that, whereas the Commission has no power to enforce the Directive directly against individuals or companies, it does have the duty, as the guardian of the Treaty, to ensure that the Directive is adequately implemented by Member States;

*Amendment*

10. Recalls that, whereas the Commission has no power to enforce the Directive directly against individuals or companies, it does have the duty, as the guardian of the Treaty, to ensure that the Directive is adequately implemented by Member States; ***therefore calls on the Commission to ensure that Member States fully and effectively transpose Directive 2005/29/EC so that protection is guaranteed in all Member States, and to influence the shape of the legal and procedural tools available, as in the case of Directive 84/450/EC, which provided tools to Austria, Spain and the Netherlands, thereby fulfilling its duty as guardian of***



*the Treaty in terms of protection for businesses whilst ensuring that the right of establishment and freedom to provide services are not impaired;*

Or. en

**Amendment 28**  
**Richard Corbett**

**Motion for a resolution**  
**Paragraph 11**

*Motion for a resolution*

11. Calls on the Commission to step up its monitoring of the implementation of this Directive, most notably in those Member States where misleading business-directory companies are known to be based, but in particular in Spain, where the business-directory company that is most often named by petitioners is established, and in the Czech Republic where a court judgement has been delivered against victims in a manner which calls into question the implementation of this Directive in that country; calls on the Commission to report back to Parliament on its findings;

*Amendment*

11. Calls on the Commission to step up its monitoring of the implementation of this Directive, most notably in those Member States where misleading business-directory companies are known to be based, but in particular in Spain, where the business-directory company that is most often named by petitioners is established, and in the Czech Republic *and Slovakia* where a court judgement has been delivered against victims in a manner which calls into question the implementation of this Directive in that country; calls on the Commission to report back to Parliament on its findings;

Or. en

**Amendment 29**  
**Diana Wallis**

**Motion for a resolution**  
**Paragraph 12**

*Motion for a resolution*

12. Regrets that Directive 2005/29/ECon unfair practices does not cover business-to-business transactions and that Member

*Amendment*

12. Regrets that Directive 2005/29/EC on unfair *commercial* practices does not cover business-to-business transactions and that

States appear reluctant to extend its scope; notes, however, that Member States may unilaterally extend the scope of their national consumer legislation to business-to-business transactions and actively encourages them to do so;

Member States appear reluctant to extend its scope; notes, however, that Member States may unilaterally extend the scope of their national consumer legislation to business-to-business transactions and actively encourages them to do so; ***requests the Commission to report by December 2009 on the feasibility and possible consequences of extending the scope of Directive 2005/29/EC to cover business-to-business contracts with specific regard to point 21 of Annex I thereto;***

Or. en

**Amendment 30**  
**Marian Harkin**

**Motion for a resolution**  
**Paragraph 12**

*Motion for a resolution*

12. Regrets that Directive 2005/29/EC on unfair practices does not cover business-to-business transactions and that Member States appear reluctant to extend its scope; notes, however, that Member States may unilaterally extend the scope of their national consumer legislation to business-to-business transactions and actively encourages them to do so;

*Amendment*

12. Regrets that Directive 2005/29/EC on unfair practices does not cover business-to-business transactions and that Member States appear reluctant to extend its scope; notes, however, that Member States may unilaterally extend the scope of their national consumer legislation to business-to-business transactions and actively encourages them to do so ***and also to ensure cooperation between Member States' authorities as provided for in Regulation (EC) No 2006/2004 in order to make it possible to track down cross-border activities of this kind engaged in by actors established within the EU or third-country actors;***

Or. en

**Amendment 31**  
**Simon Busuttil**

**Motion for a resolution**  
**Paragraph 13**

*Motion for a resolution*

13. Welcomes the example set by Austria which has introduced a specific prohibition in its national legislation on misleading business directories, and calls on the Commission *to consider*, in the light of the cross-border nature of this problem, *a new legislative initiative*, based on the Austrian model, *which* specifically prohibits advertising in business directories unless prospective clients are unequivocally and by clear graphical means informed that such advertisement is solely an offer for a contract against payment;

*Amendment*

13. Welcomes the example set by Austria which has introduced a specific prohibition in its national legislation on misleading business directories, and calls on the Commission, in the light of the cross-border nature of this problem, *to propose legislation to extend the scope of Directive 2005/29/EC*, based on the Austrian model, *in a way that* specifically prohibits advertising in business directories unless prospective clients are unequivocally and by clear graphical means informed that such advertisement is solely an offer for a contract against payment;

Or. en

**Amendment 32**  
**Simon Busuttil**

**Motion for a resolution**  
**Paragraph 15**

*Motion for a resolution*

15. Regrets that Regulation (EC) 2006/2004 on co-operation between national authorities responsible for the enforcement of consumer protection laws *has not been sufficiently used*, and calls on the Commission to *step up its monitoring of the implementation of this Regulation and to ask national authorities to make more frequent use of this legal instrument which could provide a remedy in cases of intra-Community infringements*;

*Amendment*

15. Regrets that Regulation (EC) 2006/2004 on co-operation between national authorities responsible for the enforcement of consumer protection laws *is not applicable to business-to-business transactions and therefore cannot be relied upon as a means of combating misleading business directories*; calls on the Commission to *propose legislation to extend its application accordingly*;

**Amendment 33**  
**Marie Panayotopoulos-Cassiotou**

**Motion for a resolution**  
**Paragraph 15**

*Motion for a resolution*

15. Regrets that Regulation (EC) 2006/2004 on co-operation between national authorities responsible for the enforcement of consumer protection laws has not been sufficiently used, and calls on the Commission to step up its monitoring of the implementation of this Regulation and to ask national authorities to ***make more frequent use*** of this legal instrument which could provide a remedy in cases of intra-Community infringements;

*Amendment*

15. Regrets that Regulation (EC) 2006/2004 on co-operation between national authorities responsible for the enforcement of consumer protection laws has not been sufficiently used, and calls on the Commission to step up its monitoring of the implementation of this Regulation and to ask national authorities to ***monitor the application*** of this legal instrument which could provide a remedy in cases of intra-Community infringements;

**Amendment 34**  
**Diana Wallis**

**Motion for a resolution**  
**Paragraph 16 a (new)**

*Motion for a resolution*

***16a. Notes that the Austrian experience shows that the right of victims to have collective legal action taken against directory companies by trade associations or similar bodies appears to be an effective remedy which could be replicated in the initiatives currently being contemplated by DG COMP in relation to actions for damages for breach of the EC competition rules and DG SANCO on European-level collective redress for***

*consumers;*

Or. en