

Misleading directory companies

European Parliament resolution of 16 December 2008 on misleading 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))

The European Parliament,

- having regard to Petitions 0045/2006, 1476/2006, 0079/2003, 0819/2003, 1010/2005, 0052/2007, 0306/2007, 0444/2007, 0562/2007 and others,
 - having regard to previous deliberations of the Committee on Petitions on Petition 0045/2006 and others,
 - having regard to Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising (codified version)¹,
 - having regard to Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market (the “Unfair Commercial Practices Directive”)²,
 - having regard to Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection cooperation)³,
 - having regard to Directive 98/27/EC of the European Parliament and of the Council of 19 May 1998 on injunctions for the protection of consumers’ interests⁴,
 - 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,
 - having regard to Rule 192(1) of its Rules of Procedure,
 - having regard to the report of the Committee on Petitions and the opinion of the Committee on the Internal Market and Consumer Protection (A6-0446/2008),
- A. whereas Parliament has received more than 400 petitions from small businesses (reflecting only a fraction of their number) who claim to have fallen victim to misleading advertising by business-directory companies and to have suffered, in consequence, psychological stress, feelings of guilt, embarrassment, frustration and financial loss,

¹ OJ L 376, 27.12.2006, p. 21.

² OJ L 149, 11.6.2005, p. 22.

³ OJ L 364, 9.12.2004, p. 1.

⁴ OJ L 166, 11.6.1998, p. 51.

- B. whereas these complaints reflect a widespread and concerted pattern of misleading business practices on the part of certain business-directory companies affecting thousands of businesses that are organised across frontiers and thus involve activity in two or more Member States within the European Union and beyond, with a significant financial impact on such businesses, and whereas there is no administrative mechanism or legal instrument enabling the national law-enforcement agencies to work together across borders efficiently and effectively,
- C. 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),
- D. whereas the business practices complained of typically consist of an approach made, usually by mail, by a business-directory company to businesses inviting them to complete or update their business name and contact details and giving them the false impression that they will be listed in a business directory free of charge; whereas signatories later discover that they have, in fact, unintentionally signed up to a contract, normally binding them for a minimum of three years, to be listed in a business directory at a yearly charge of some EUR 1 000,
- E. whereas the forms used in such practices are usually ambiguous and difficult to understand, inducing the erroneous idea of a free listing in a business directory but in fact entrapping businesses into unwanted contracts for advertising in business directories,
- F. whereas neither specific EU legislation nor national legislation exists in Member States concerning directory companies in business-to-business relationships, and whereas Member States have a discretion to introduce more comprehensive and far-reaching legislation,
- G. whereas Directive 2006/114/EC 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,
- H. whereas Directive 2005/29/EC 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; 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,
- I. 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 practices by business-directory companies in different Member States,
- J. whereas Regulation (EC) No 2006/2004 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”; 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,

- K. whereas most petitioners name the business directory known as “European City Guide” (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,
- L. 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 and libraries and local social clubs such as band clubs,
- M. whereas the business-directory companies are often established in a Member State other than the victim's, making it difficult for victims to turn to national authorities for protection 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 whereas self-regulatory mechanisms for directories are of little relevance as they are disregarded by those that engage in misleading advertising,
- N. whereas victims of these practices are rigorously pursued to pay up by the business-directory companies themselves or even by debt-collection agencies engaged by them; whereas victims complain that they feel distressed and threatened by these approaches and many of them often end up paying unwillingly in order to avoid further harassment,
- O. whereas victims who refuse to pay have – with a few exceptions – seldom been pursued in court,
- P. 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,
- Q. whereas Austria has since 2000 changed its national Unfair Commercial Practices Law, and whereas Section 28a thereof now states: “It shall be prohibited to advertise, in the scope of business and for the purpose of competition, for registration in directories, such as yellow pages, telephone directory or similar lists, by way of payment form, money order form, invoice, offer of correction or similar manner or to offer such registrations directly without unequivocally and also by clear and graphic means pointing out that such advertisement is solely an offer for a contract”,
- R. whereas such practices have been applied for a number of years, creating numerous victims and significantly damaging and distorting the internal market,

1. Expresses its concern at the problem raised by the petitioners, which appears to be widespread and of a cross-border nature and which has a significant financial impact, notably on small businesses;
2. Considers that the cross-border nature of this problem imposes a duty on the Community institutions to provide an adequate remedy to victims, such that the validity of contracts concluded on the basis of misleading advertising can be effectively contested, annulled or terminated, and such that victims may obtain reimbursement of the money paid by them;
3. Urges victims to report cases of business scams to national authorities, and calls on Member States to provide small and medium-sized enterprises 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 guidance 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;
4. Regrets that, despite the widespread nature of these practices, EU and national legislation does not appear to be adequate when it comes to 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 unable to provide a remedy;
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-directory practices in the first place; expresses concern that some of these organisations have consequently been pursued through the courts by the misleading business-directory companies specified in their awareness-raising activities on the basis of alleged defamation or similar accusations;
6. Welcomes the action taken by certain Member States such as Italy, Spain, the Netherlands, Belgium and the United Kingdom, but most notably by Austria, in trying to prevent business-directory companies from engaging in 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;
7. Calls on the Commission and on Member States to step up their efforts, in full cooperation with national and European business representative organisations, to raise awareness of this problem so that more people are informed and empowered to avoid misleading advertising which can lure them into unwanted advertising contracts;
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;
9. Regrets that Directive 2006/114/EC, which applies to business-to-business transactions such as the one at issue in this case, appears to be either insufficient in terms of 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;

10. Recalls that, whereas the Commission has no power to enforce Directive 2006/114/EC directly against individuals or companies, it does have the duty, as the guardian of the Treaty, to ensure that that Directive is adequately and effectively 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/EEC, 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;
11. Calls on the Commission to step up its monitoring of the implementation of Directive 2006/114/EC, 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 judgment has been delivered against victims in a manner which calls into question the implementation of Directive 2006/114/EC in those countries; calls on the Commission to report back to Parliament on its findings;
12. Regrets that Directive 2005/29/EC 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 cover 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 business-directory companies established within the EU or in a third country; moreover, 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;
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 and graphic means informed that such advertisement is solely an offer for a contract against payment;
14. Notes that national legislation is often inadequate to pursue remedies against business-directory companies that are based in other Member States, and therefore urges the Commission to facilitate more active cross-border cooperation among national authorities in order to enable them to provide a more effective remedy to victims;
15. Regrets that Regulation (EC) 2006/2004 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;
16. Welcomes the example of Belgium, where all those affected by misleading practices are

able to take legal action in their country of residence;

17. 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 the Commission's 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;
18. Urges Member States to ensure that victims of misleading advertising have a clearly identifiable national authority to which they can make a complaint and from which they can seek a remedy even in cases, such as these, where the victims of misleading advertising are businesses;
19. Calls on the Commission to develop best-practice guidelines for national enforcement agencies which may be followed when cases of misleading advertising are brought to their attention;
20. Calls on the Commission to pursue international cooperation with third countries and with the competent international organisations so that misleading business-directory companies based in third countries do not cause harm to businesses based in the European Union;
21. Instructs its President to forward this resolution to the Council, the Commission and the governments and parliaments of the Member States.