

# EUROPEAN PARLIAMENT

2004



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*Committee on the Internal Market and Consumer Protection*

**2008/2126(INI)**

7.10.2008

## **OPINION**

of the Committee on the Internal Market and Consumer Protection

for the Committee on Petitions

on the Misleading Directory Companies Report (Petition 45/2006)  
(2008/2126(INI))

Draftswoman: Diana Wallis

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## SUGGESTIONS

The Committee on the Internal Market and Consumer Protection calls on the Committee on Petitions, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

- having regard to the Treaty establishing the European Community, and in particular the provisions thereof establishing the internal market and guaranteeing undertakings the freedom to provide services in other Member States,
  - having regard to the Presidency Conclusions of the Tampere European Council of 15 and 16 October 1999 on the creation of an area of freedom, security and justice in the European Union, which state that individuals and businesses should not be prevented or discouraged from exercising their rights by the incompatibility or complexity of legal and administrative systems in the Member States,
  - having regard to the 393 petitions on misleading directory companies from 24 Member States and 19 third countries received by its Committee on Petitions,
- A. whereas the dubious activities of the European City Guides company (ECG) and other, similar companies stretch back over a number of decades (with the companies concerned relocating over time in order to continue their activities and avoid penalties), and whereas many businesses have been affected,
- B. whereas the activities of ECG have been the subject of legal and administrative action, such as that taken by the High Court and the regional government in Catalonia (Spain), which resulted in the temporary suspension of the company's activities and the imposition of a fine,
- C. whereas when a fraud such as this is organised across frontiers and thus involves activity in two or more Member States, there is no mechanism for the national law-enforcement agencies to work together across borders - nor any budget, nor even a telephone directory to discover police contacts across the border or in other distant Member States - and consequently national agencies understandably lose interest in pursuing the fraudsters because they are so well organised across borders which the national agencies themselves cannot cross,
1. Regrets that whilst the internal market brings new possibilities for bona fide commercial operations, it can give unwelcome opportunity to those who prey on SMEs; calls for action at EU level, in cooperation with the Member States, to prevent and limit this;
  2. Suggests that the Commission and Council ensure full implementation and enforcement of Council Directive 84/450/EEC of 10 September 1984 concerning misleading and comparative advertising<sup>1</sup> (the Misleading Advertising Directive), along with Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning

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<sup>1</sup> OJ L 250, 19.9.1984, p. 17.

unfair business-to-consumer commercial practices in the internal market<sup>1</sup> (the Unfair Commercial Practices Directive), with particular attention to be paid to the deliberate use of ambiguous language, in order to end the practices of misleading directory companies;

3. Highlights as a best practice §28a of the Austrian Gesetz gegen unlauteren Wettbewerb of 1984 (Statute against Unfair Commercial Practices - UWG), which prohibits the practices of misleading directory companies; urges the Member States to introduce similar provisions in their implementation of the Unfair Commercial Practices Directive in order to prevent harm to consumers and small businesses, and to ensure that competition prevails as it should, without detriment to the economic interests of legitimate competitors;
4. Taking into account the Study on the Misleading Practices of Directory Companies commissioned by its Committee on the Internal Market and Consumer Protection, which indicates as possible legislative options for dealing with the problem of misleading directory companies amending Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising<sup>2</sup> to include a "black" list of practices that are to be considered misleading and extending the scope of the Unfair Commercial Practices Directive to cover B2B contracts with specific regard to point 21 of Annex I thereto, requests the Commission to report by December 2009 on the feasibility and possible consequences of such amendment or extension;
5. Urges the Commission to consider the particular position of SMEs when defining the 'consumer' in its review of the consumer acquis; asks that this also form part of the work on the Common Frame of Reference on Contract Law, so that SMEs might benefit from a stronger protective regime in Community legislation on contractual issues;
6. Welcomes the Small Business Act's call for Member States to reinforce the SOLVIT network and to provide SMEs with advisory services and support to defend themselves against unfair commercial practices; calls for the Commission to become actively involved in the cooperation and provision of assistance to those who fall victim to the operators of misleading directory companies; calls further for the Commission and the Member States to cooperate on awareness raising campaigns regarding such misleading practices, with extensive use of the tools that the internet may offer and with the involvement of SME and consumer organisations, including the Enterprise Europe Network and the European Consumer Centres; looks forward to the Commission's proposed e-justice portal as a further means of delivering information and assistance regarding these problems;
7. Regrets that, whilst the European order for payment procedure rightly improves cross-border access to justice, unscrupulous debt-collecting bodies could use it to harass SMEs and individuals; advises that consideration be given to an EU-wide code of conduct for debt-collecting bodies;
8. Calls for Member States to cooperate actively to bring an end to the practices of misleading directory companies and any similar activities;

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<sup>1</sup> OJ L 149, 11.6.2005, p. 22.

<sup>2</sup> OJ L 376, 27.12.2006, p. 21.

9. Notes that where Member States are unwilling or unable to act, mechanisms should be devised to allow individual victims to seek joint redress through the courts on a cross-border basis; calls, therefore, on the Member States and the Commission to consider bringing into operation a coherent system of collective redress for the settlement of cross-border complaints, based on both extensive research drawing on experience around the world and a thorough examination of existing problems and the envisaged benefits for consumers, and dealing clearly with the question of an appropriate legal base for such an instrument at EU level;
10. Regrets the fact that the difficulties involved in tracking down activities of this nature distort the internal market and affect the way in which competition operates;
11. Urges the Member States to take action against all the fraudulent activities engaged in by ECG and other, similar companies, as a last resort by suspending their activities in order to prevent consumers and businesses from being harmed;
12. Calls upon the Member States' supervisory bodies – in accordance with their mandate and with the responsibilities conferred upon them pursuant to their country's domestic law and to EU legislation, in particular 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)<sup>1</sup> – to take joint action to prevent any further spread of directory companies' misleading practices and to introduce effective measures which will put directory companies out of business and enable those who run them to be punished;
13. Considers that directory companies' practices as described are not only inconsistent with decent behaviour and with standards of fair trading, but also for the most part bear the hallmark of fraud and of other criminal acts and offences, and hence calls upon the appropriate supervisory bodies, police forces and public prosecutor's offices in the Member States – and also upon Europol and Eurojust – to carry out a detailed investigation into the organisers' practices, possibly leading to the bringing of charges against guilty parties coming from the EU; should they come from third countries, calls upon the Commission to make every effort to conclude international agreements with the countries concerned pursuant to Article 18 of Regulation (EC) No 2006/2004;
14. Calls upon the Commission – with a view to outlawing directory companies' misleading practices – to consider carefully the following measures:
  - that the mandatory section of an order be standardised in such a way as to ensure that it contains agreements which are in accordance with decent behaviour and which transparently define basic legal relationships (including a clear statement of price); the content of that section could be verified by the appropriate bodies within the Member States (such as the trading standards inspectorate or the authorities responsible for protecting personal data);
  - that form-based contracts or orders, where the weaker party to the contract or order

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<sup>1</sup> OJ L 364, 9.12.2004, p. 1.

has no possibility of altering it and can only accept or reject it, be subject to similar rules as apply to unfair commercial practices, even if the weaker party to the contract or order is not a consumer;

- that form-based contracts or orders be subject to an ‘average consumer’ test similar to that which applies to unfair commercial practices, even if the weaker party to the contract or order is not a consumer;
  - that the principle be introduced whereby if a significant number of individuals is ‘misled’ by the text of a form-based contract or order, the burden of proof is reversed and the directory company bears the burden of proving that the text of the form-based contract or order would not mislead a ‘sound financial manager’;
15. Points out to the Commission that misleading practices of this nature on the part of directory companies are targeted not only at entrepreneurs but also at natural persons (including political representatives) who are not engaged in business practices but who receive offers concerning fictitious entries in biographical publications (such as ‘Who’s Who’, Personality of the Year in a given field, and so on), and are based on the same dishonesty, and that hence future measures must also outlaw misleading practices of this kind.

## RESULT OF FINAL VOTE IN COMMITTEE

<b>Date adopted</b>	7.10.2008
<b>Result of final vote</b>	+: 35 -: 0 0: 0
<b>Members present for the final vote</b>	Cristian Silviu Buşoi, Charlotte Cederschiöld, Gabriela Creţu, Mia De Vits, Janelly Fourtou, Evelyne Gebhardt, Małgorzata Handzlik, Christopher Heaton-Harris, Anna Hedh, Iliana Malinova Iotova, Pierre Jonckheer, Kurt Lechner, Toine Manders, Catiuscia Marini, Arlene McCarthy, Nickolay Mladenov, Catherine Neris, Zita Pleštinská, Karin Riis-Jørgensen, Zuzana Roithová, Heide Rühle, Leopold Józef Rutowicz, Christel Schaldemose, Andreas Schwab, Marianne Thyssen, Jacques Toubon, Barbara Weiler, Marian Złotea
<b>Substitute(s) present for the final vote</b>	Emmanouil Angelakas, Wolfgang Bulfon, Colm Burke, Giovanna Corda, José Ribeiro e Castro, Olle Schmidt, Diana Wallis