

Impact of advertising on consumer behaviour

European Parliament resolution of 15 December 2010 on the impact of advertising on consumer behaviour (2010/2052(INI))

The European Parliament,

- 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 market¹ (UCPD),
- having regard to Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising² (MCAD),
- having regard to Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive)³ ("AMSD"),
- 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 (Consumer Protection Cooperation Regulation)⁴,
- having regard to the Charter of Fundamental Rights of the European Union, in particular Articles 7 (respect for private and family life) and 8 (protection of personal data) thereof,
- having regard to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data⁵,
- having regard to Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector⁶,
- having regard to Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce in the Internal Market⁷,
- having regard to its resolution of 9 March 2010 on consumer protection⁸,

1. OJ L 149, 11.6.2005, p. 22.

2. OJ L 376, 27.12.2006, p. 21.

3. OJ L 95, 15.4.2010, p. 1.

4. OJ L 364, 9.12.2004, p. 1.

5. OJ L 281, 23.11.1995, p. 31.

6. OJ L 201, 31.7.2002, p. 37.

7. OJ L 178, 17.7.2000, p. 1.

8. Texts adopted, P7_TA(2010)0046.

- having regard to its resolution of 9 March 2010 on the Internal Market Scoreboard¹,
- having regard to its resolution of 13 January 2009 on the transposition, implementation and enforcement of Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market and Directive 2006/114/EC concerning misleading and comparative advertising²,
- having regard to its resolution of 18 November 2008 on the Consumer Markets Scoreboard³,
- having regard to its resolution of 3 September 2008 on how marketing and advertising affect equality between women and men⁴,
- having regard to the Commission communication of 28 January 2009 entitled ‘Monitoring consumer outcomes in the single market: Second edition of the Consumer Markets Scoreboard’ (COM(2009)0025) and the accompanying Commission staff working document entitled ‘Second Consumer Markets Scoreboard’ (SEC(2009)0076),
- having regard to the Commission staff working document of 29 March 2010 entitled ‘Consumer Markets Scoreboard – Consumers at Home in the Internal Market: Monitoring the integration of the retail Internal Market and Benchmarking the Consumer Environment in Member States’ (SEC(2010)0385),
- having regard to the report entitled ‘Consumer protection in the internal market’, published by the Commission in October 2008 (Special Eurobarometer 298),
- having regard to the analytical report entitled ‘Attitudes towards cross-border sales and consumer protection’, published by the Commission in March 2010 (Flash Eurobarometer 282),
- having regard to the European approach to media literacy in the digital environment (COM(2007)0833),
- having regard to the Commission guidelines on the application of the Unfair Commercial Practices Directive (SEC(2009)1666),
- having regard to Opinion 2/2010 on online behavioural advertising, adopted by the Article 29 Data Protection Working Party on 22 June 2010,
- having regard to Opinion 5/2009 on online social networking, adopted by the Article 29 Data Protection Working Party on 12 June 2009,
- having regard to the communication from the French National Commission for Information Technology and Civil Liberties (CNIL) of 5 February 2009 entitled ‘La publicité ciblée en ligne’ (‘*Targeted online advertising*’),
- having regard to Rule 48 of its Rules of Procedure,

1. Texts adopted, P7_TA(2010)0051.

2. OJ C 46 E, 24.2.2010, p. 26.

3. OJ C 16 E, 22.2.2010, p. 5.

4. OJ C 295 E, 4.12.2009, p. 43.

- having regard to the report of the Committee on the Internal Market and Consumer Protection and the opinion of the Committee on Women’s Rights and Gender Equality (A7-0338/2010),
- A. whereas advertising fosters competition and competitiveness, is likely to limit abuses of dominant positions and encourages innovation in the internal market, and consequently benefits consumers, particularly by increasing the range of choice, lowering prices and providing information on new products,
- B. whereas advertising constitutes an important and often crucial source of funding for a dynamic and competitive media landscape and actively contributes to a diverse and independent press in Europe,
- C. whereas some advertising practices may nevertheless have a negative impact on the internal market and on consumers (owing to unfair practices, intrusion into public spaces and the private arena, targeting of individuals, entry barriers and distortion of the internal market),
- D. whereas it is still necessary to combat unfair commercial practices in the advertising field, as Special Eurobarometer 29 makes it clear that they are still common,
- E. bearing in mind the significant impact on advertising of the development of communications media, particularly through development of the internet, social networks, forums and blogs, the rising mobility of users and the rapid growth of digital products,
- F. whereas in view of a degree of consumer fatigue at the proliferation of advertising messages there is a temptation today to use the new communications technologies to disseminate commercial messages even when they are not clearly designated as such and are thus likely to mislead consumers,
- G. whereas the development of new advertising practices online and via mobile devices is generating a range of problems that need dealing with in order to safeguard a high level of protection for users,
- H. whereas online advertising plays an important economic role, particularly by financing free services, and whereas it has grown exponentially,
- I. bearing in mind that the development of targeted (contextual, personalised and behavioural) advertising, supposedly tailored to internet users’ interests, constitutes a serious attack on the protection of privacy when it involves tracking individuals (through cookies, profiling and geolocation) and has not first been freely and explicitly consented to by the consumer,
- J. whereas the personalisation of advertising messages must not lead to the development of intrusive advertising infringing legislation on the protection of personal data and privacy,
- K. whereas groups of people who are particularly vulnerable because of their mental, physical or psychological infirmity, age or credulity – such as children, teenagers, the elderly or certain people made vulnerable by their social and financial situation (such as those with excessive debts) – need special protection,
- L. recognising that there is still a lack of information on the precise socio-psychological effects of new, more pervasive and more widespread forms of advertising, particularly in respect of

the position of those who cannot afford to buy the goods and services promoted by these advertisements,

- M. whereas the specific nature of certain products – such as tobacco, alcohol, medicines and online gambling – calls for proper regulation of internet advertising with a view to avoiding abuses, dependence and counterfeiting,
- N. bearing in mind that advertising can act as a powerful catalyst in combating stereotypes and prejudices based on racism, sexism and xenophobia,
- O. bearing in mind that advertising often transmits biased and/or derogatory messages which perpetuate stereotyped prejudices regarding gender, thereby undermining equality strategies aimed at eradicating inequalities,

Evaluation of the existing legislative and non-legislative framework

1. Maintains that the Unfair Commercial Practices Directive provides an essential legal framework for combating misleading and aggressive advertising, in relations between companies and consumers; recognises that although it is not yet possible to undertake a comprehensive evaluation, several difficulties with implementation and interpretation are already apparent (especially regarding the new, more pervasive forms of advertising), as demonstrated by European Court of Justice judgements ruling against existing national measures for going beyond the provisions of the Unfair Commercial Practices Directive, which may call into question the efficacy of the Directive;
2. Emphasises that differences in its interpretation and implementation at national level have precluded the desired level of harmonisation, creating legal uncertainty and undermining cross-border trade in the single market;
3. Calls on the Commission to update, clarify and strengthen its guidelines on the implementation of the Unfair Commercial Practices Directive on a very regular basis and ensure that they are translated into the EU's official languages, and calls on the Member States to take those guidelines into account as far as possible;
4. Welcomes the Commission's intention of finalising and publishing in November 2010 a database of national measures adopted to transpose the Unfair Commercial Practices Directive, the applicable case law and other relevant documents;
5. Recalls that the scope of the Unfair Commercial Practices Directive is limited to business-to-consumer relations while the Misleading and Comparative Advertising Directive deals with business-to-business relations; underlines that certain entities do not fall within the scope either of the Unfair Commercial Practices Directive or of the Misleading and Comparative Advertising Directive, such as NGOs or interest groups; therefore calls on the Commission to conduct a separate analysis of the impact of misleading advertising practices targeting those categories apparently not covered by either Directive; calls on the Member States to improve coordination between themselves and to provide adequate solutions for those categories that have been subjected to intra-EU cross-border misleading advertising practices;
6. Welcomes the joint investigations undertaken by the Member States ('EU sweeps'); calls for further such investigations, the scope of which should be broadened; calls on the

Commission to report to Parliament results of the sweeps and prepare, if necessary, further steps to improve the internal market for consumers;

7. Calls on the Member States to provide the competent national authorities with the necessary financial, human and technological means and resources for their effective action; urges the Commission, on the basis of the Consumer Protection Cooperation network experience, to further facilitate the cooperation between national authorities and improve the effectiveness of their control;
8. Asks the Commission to prepare an analysis of the obligations and control functions of the national consumer authorities and to share best practices so as to improve the effectiveness of their work;
9. Calls on the Commission to extend the scope of Regulation (EC) No 2006/2004 to include counterfeiting and illegal products, and to boost the exchange of information between Member States under that Regulation, so as to improve the fight against fraud connected with illegal advertising;
10. Considers the practice of self-regulation as a dynamic, flexible and responsible adjunct to the existing legislative framework; suggests that those Member States that do not yet have self-regulatory bodies should facilitate the establishment of such bodies, on the basis of best practices from other Member States, and/or grant them formal recognition;
11. Emphasises nevertheless the limits of self-regulation, which cannot in any case take the place of legislation, particularly as regards the establishment of rules to protect the personal data of consumers and the penalties applicable if such rules are not respected;
12. Calls on the Commission and the Member States to evaluate the implementation of national codes of conduct relating to the media and new information and communication technologies; calls on the Member States to assess the effectiveness of national self-regulatory bodies;
13. Underlines the societal responsibility that comes with the impact and reach of widespread and pervasive advertising, and emphasises the role of advertising companies in cultivating a culture of corporate awareness and responsibility;
14. Encourages consultation of the various stakeholders involved in legislative developments;
15. Calls on the Commission and the Member States to ensure by appropriate means that the media and advertising professionals guarantee respect for human dignity and that they oppose direct or indirect discriminatory or stereotyping images or any incitement to hatred based on sex, race, ethnic origin, age, religious or other beliefs, sexual orientation, disability and social status;
16. Calls on those Member States that have not yet implemented the Audiovisual Media Services Directive to do so immediately; awaits with interest the publication by the Commission of the report on the application of the Audiovisual Media Services Directive, and stresses the need to address the use of new technologies (such as IPTV);

Issues arising from the development of the internet and new technologies

17. Denounces the development of 'hidden' internet advertising that is not covered by the Unfair Commercial Practices Directive (consumer-to-consumer relationships), in the form of comments posted on social networks, forums and blogs, the content of which is difficult to distinguish from mere opinion; considers indeed that there is a risk that consumers will make wrong decisions in the belief that the information on which they are based stems from an objective source; denounces cases in which certain business operators finance directly or indirectly any action to encourage the dissemination of messages or comments appearing to emanate from consumers themselves when in reality these are messages of an advertising or commercial nature, and calls on the Commission and the Member States to ensure proper application of the Unfair Commercial Practices Directive in this regard;
18. Suggests that the Member States encourage the emergence of forum observers/moderators who are alert to the dangers of hidden advertising, as well as the development of information campaigns aimed at warning consumers of these 'hidden' forms of advertising;
19. Points out that the campaign at European level against this hidden advertising is of great importance for cleaning up the market and boosting consumer confidence, as to some professionals it may be a means of bending the competition rules and artificially over-valuing, without cost, their own company or even unfairly maligning a competitor;
20. Voices its concern about the routine use of behavioural advertising and the development of intrusive advertising practices (such as reading the content of e-mails, using social networks and geolocation, and retargeted advertising) which constitute attacks on consumers' privacy;
21. Emphasises the risk presented by companies that are both content providers and advertising sales houses (owing to the potential for cross-referencing data collected in the course of each of these activities); calls on the Commission and Member States to ensure that different levels of data collection are kept wholly separate;
22. Stresses that consumers must receive clear, accessible and comprehensive information about how their data are collected, processed and used and urges advertisers to work towards a standard use of the consumer-friendly opt-in format; notes that this personal data should be kept and used only with the explicit agreement of the consumer;
23. Stresses the need for consumers to be informed fully when they accept advertising in exchange for discounts based on behavioural marketing techniques;
24. Underlines the need to incorporate privacy issues as standard in future technological solutions which involve personal data; considers that developers of new technology must, from the very beginning of the development process, incorporate data security and protection in line with the highest standards and with reference to 'Privacy by Design';
25. Calls on the Commission to explore the various means (whether legislative or not) and ascertain the technical options at European Union level to effectively implement the following measures:
 - carry out an in-depth study of new advertising practices involving online communication or portable devices; report the results of the study to Parliament;
 - prohibit as soon as possible the systematic, indiscriminate sending of text message advertisements to all mobile phone users within the coverage area of an advertising

poster equipped with Bluetooth technology without their prior consent;

- ensure that advertising practices respect the confidentiality of private correspondence and legislation applicable in this area; prohibit as soon as possible the reading by a third party, particularly for advertising or commercial purposes, of the content of private e-mails;
- require as soon as possible advertisements sent by e-mail to contain an automatic link enabling the recipient to refuse all further advertising;
- ensure as soon as possible the application of techniques making it possible to distinguish advertising tracking cookies, for which free and explicit prior consent is required, from other cookies;
- ensure that the use of default settings for computer systems sold to the public and for social networking services is systematically established in accordance with the strictest data protection standards ('privacy by design');
- develop an EU website labelling system, modelled on the European Privacy Seal, certifying a site's compliance with data protection laws; considers that this should include a thorough impact assessment and must avoid duplication of existing labelling systems;
- pay particular attention, in cooperation with national advertising authorities and/or self-regulatory bodies, to misleading advertising, including online, in specific sectors such as the selling of food products, pharmaceuticals and medical care, where the health of consumers, on top of their economic interests, is likely to be affected, with potential serious consequences;
- modify the limited liability regime for information society services in order to make the sale by search engines of registered brand names as advertising keywords subject to prior authorisation from the owner of the brand name in question;

Protecting vulnerable groups

26. Calls on the Commission to conduct a detailed analysis of the impact of misleading and aggressive advertising on vulnerable consumers, in particular children and adolescents, by 2012, and to guarantee the proper application of the relevant laws on the protection of children and adolescents;
27. Calls on the Commission to carry out as a matter of priority an in-depth study on the precise socio-psychological effects of advertising, in view of the new refined techniques being deployed;
28. Stresses that children and adolescents are especially vulnerable categories of people in view of their great receptiveness and curiosity, lack of maturity, limited free will and high potential to be influenced, especially through the use of new means of communication and technologies;
29. Urges Member States to promote greater protection of vulnerable consumers, such as children, to encourage the media to restrict TV advertising addressed at children during TV

programmes watched mainly by the young (such as children's educational programmes, cartoons, etc.), given that similar measures are already being implemented in some Member States;

30. Calls for all children's specific interests to be free from targeted advertising;
31. Draws attention to the vulnerability of consumers to mimetism, which can lead to inappropriate behavioural attitudes, violence, tensions, disappointment, anxiety, harmful addictions (smoking, drugs), eating disorders, such as anorexia nervosa and bulimia, and disturbance of mental equilibrium; calls on all advertising agencies and media professionals to reconsider the promotion of extremely skinny models (men or women) in order to avoid harmful messages about appearance, body imperfections, age and weight, taking into account the influence and impact of advertising on children and young people;

Guaranteeing gender equality and human dignity in advertising

32. Calls on the Commission and Member States to take appropriate means to ensure that marketing and advertising guarantee respect for human dignity, without any discrimination based on gender, religion, convictions, disability, age or sexual orientation;
33. Takes the view that advertising can be an efficient tool in challenging and confronting stereotypes and a lever against racism, sexism and discrimination, essential in today's multicultural societies; calls on the Commission, Member States and advertising professionals to strengthen training and education activities as a way to overcome stereotypes, combat discrimination and promote gender equality, especially from a young age; urges the Member States in particular to introduce and develop close cooperation with existing schools of marketing, communication and advertising, so as to help provide sound training for the sector's future workforce;
34. Urges the Commission to promote comparative research and documentation among the Member States concerning the image of women being projected by advertising and marketing content and to identify good practices for effective and gender-friendly advertising;
35. Urges the Commission and Member States to consolidate the role and encourage the consultation of user and/or consumer organisations responsible for evaluating the impact of advertising on gender outlook and elsewhere;
36. Stresses that advertising often communicates discriminatory and/or undignified messages based on all forms of gender stereotyping, which hinder gender equality strategies; calls on the Commission, Member States, civil society and advertising self-regulatory bodies to cooperate closely to combat such practices, notably by using effective tools which guarantee respect for human dignity and probity by marketing and advertising;
37. Stresses that, since the advertising of consumer goods is associated directly with the press, radio and television media, of which it is an inseparable component, and indirectly with the film industry and television series in the form of product placement, it follows that reliable advertising and the promotion of healthy role models may have a positive influence on society's perceptions of issues such as gender roles and the human body image and normality; encourages advertisers to be more constructive in their advertisements, in order to promote the positive role of women and men in society, at work, in the family and in

public life;

Educating and informing the various stakeholders

38. Stresses the crucial importance of transparency and consumer information in the advertising field, and the need for consumers to develop a critical attitude to the quality of media content;

39. Calls on the Commission to:

- include some additional advertising-related indicators in the Consumer Markets Scoreboard (as well as the data already included on fraudulent or mendacious advertising); draws attention, however, in this connection to the terms of its resolution of 9 March 2010¹ stipulating that adding further indicators may be useful when the five basic indicators and the associated methodology have been developed to a sufficiently high level;
- devise information campaigns on consumers' rights in respect of advertising, including the use of their personal data, and to develop educational material explaining how they can protect their privacy on the internet and what they can do to put a stop to any situation that undermines their privacy or dignity;
- develop an EU programme designed to teach children to be wary of advertising, modelled on the United Kingdom's Media Smart initiative;
- require, as soon as possible, the insertion of the clearly readable words 'behavioural advertisement' into the relevant online advertisements, as well as a window containing a basic explanation of this practice;

40. Calls on the Commission to draft common guidelines for SMEs and on the Member States to encourage national authorities and/or self-regulatory bodies to provide advisory services for SMEs and conduct information campaigns designed to alert SMEs to their legal obligations in respect of advertising;

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41. Instructs its President to forward this resolution to the Council, the Commission and the governments and parliaments of the Member States.

1. Texts Adopted, P7_TA(2010)0051.