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*****I**

REPORT

on the proposal for a European Parliament and Council regulation on sales
promotions in the Internal Market
(COM(2001) 546 – C5-0475/2001 – 2001/0227(COD))

Committee on Legal Affairs and the Internal Market

Rapporteur: Ward Beysen

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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PROCEDURAL PAGE

By letter of 4 October 2001 the Commission submitted to Parliament, pursuant to Article 251(2) and Article 95(1) of the EC Treaty, the proposal for a European Parliament and Council regulation on sales promotions in the Internal Market (COM(2001) 546 – 2001/0227(COD)).

At the sitting of 22 October 2001 the President of Parliament announced that she had referred this proposal to the Committee on Legal Affairs and the Internal Market as the committee responsible and the Committee on the Environment, Public Health and Consumer Policy for its opinion (C5-0475/2001).

The Committee on Legal Affairs and the Internal Market appointed Ward Beysen rapporteur at its meeting of 27 November 2001.

At the sitting of 17 January 2002 the President announced that he had also referred the proposal to the Committee on Economic and Monetary Affairs for its opinion.

At the sitting of 11 April 2002 the President announced that he had also referred the proposal to the Committee on Industry, External Trade, Research and Energy for its opinion.

The committee considered the Commission proposal and draft report at its meetings of 18 February, 19 March, 16 April, 22 May, 20 June and 2 July 2002.

At the last meeting it adopted the draft legislative resolution by 27 votes to 2, with 1 abstention.

The following were present for the vote: Giuseppe Gargani, chairman; Willi Rothley, Ioannis Koukiadis and Bill Miller, vice-chairmen; Ward Beysen, rapporteur; Paolo Bartolozzi, Brian Crowley, Bert Doorn, Janelly Fourtou, Marie-Françoise Garaud, Evelyne Gebhardt, Fiorella Ghilardotti, José María Gil-Robles Gil-Delgado, Heidi Anneli Hautala, The Lord Inglewood, Piia-Noora Kauppi (for Malcolm Harbour), Kurt Lechner, Klaus-Heiner Lehne, Neil McCormick, Toine Manders, Manuel Medina Ortega, Angelika Niebler, Béatrice Patrie (for Maria Berger), Carlos Ripoll i Martínez Bedoya (for Rainer Wieland), Imelda Mary Read (for Carlos Candal), Peter William Skinner (for Arlene McCarthy, pursuant to Rule 153(2)), Marianne L.P. Thyssen, Diana Wallis, Joachim Wuermeling and Stefano Zappalà.

The opinions of the Committee on Economic and Monetary Affairs, the Committee on Industry, External Trade, Research and Energy and the Committee on the Environment, Public Health and Consumer Policy are attached.

The report was tabled on 10 July 2002.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the proposal for a European Parliament and Council regulation on sales promotions in the Internal Market (COM(2001) 546 – C5-0475/2001 – 2001/0227(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council and the amendments to the proposal (COM(2001) 546¹),
 - having regard to the opinion of the Economic and Social Committee of 16 May 2002 (CES 1594/2001),
 - having regard to Article 251(2) and Article 95(1) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0475/2001),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the Internal Market and the opinions of the Committee on Economic and Monetary Affairs, the Committee on Industry, External Trade, Research and Energy and the Committee on the Environment, Public Health and Consumer Policy) (A5-0253/2002),
1. Approves the Commission proposal as amended;
 2. Asks to be consulted again should the Commission intend to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment 1
Entire text

A company, organisation or ***person***

A company, organisation or ***individual***

¹ OJ C 75E, 26.3.2002, pp. 11-16.

Justification

Improved legal drafting.

Amendment 2
Recital 1

(1) In accordance with Article 14 (2) of the Treaty, the internal market comprises an area without internal frontiers in which the free movement of goods, services and the freedom of establishment are ensured; the development of the use and commercial communication of sales promotions within the area without internal frontiers is vital to promote the development of cross-border activities.

(1) In accordance with Article 14 (2) of the Treaty, the internal market comprises an area without internal frontiers in which the free movement of goods, services and the freedom of establishment are ensured; the development of the use and commercial communication of sales promotions within the area without internal frontiers is vital to promote the development of cross-border activities ***provided that steps are taken to ensure a high level of consumer protection as well as SME protection.***

Justification

The objective of ensuring a high level of consumer protection and SME protection should be stressed in the first recital.

Amendment 3
Recital 2

(2) The use and communication of sales promotions ***are key*** to the growth and development of all businesses in the Community; they are particularly important tools for small and medium-sized enterprises who rely on such affordable practices as inputs and outputs to develop their cross-border activities; such promotions therefore stimulate competitiveness in the European economy and accordingly allow consumers

(2) The use and communication of sales promotions ***contribute*** to the growth and development of all businesses in the Community; they are particularly important tools for small and medium-sized enterprises who rely on such affordable practices as inputs and outputs to develop their cross-border activities; such promotions therefore stimulate competitiveness in the European economy and accordingly allow consumers

to benefit from greater choice and competitive prices.

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Justification

None needed.

Amendment 4
Recital 3

(3) Community law and the characteristics of the Community legal order are a vital asset to enable European citizens and operators to take full advantage, without consideration of borders, of the opportunities offered by the use and communication of sales promotions; this Regulation therefore has the purpose of ensuring a high level of Community legal integration in order to establish a real area without internal borders for the use and communication of sales promotions.

(3) Community law and the characteristics of the Community legal order are a vital asset to enable European citizens and operators to take full advantage, without consideration of borders, of the opportunities offered by the use and communication of sales promotions; this Regulation therefore has the purpose of ensuring a high level of Community legal integration in order to establish a real area without internal borders for the use and communication of sales promotions ***and ensuring a high level of consumer protection.***

Justification

Consumer protection is also one of the objectives of this regulation.

Amendment 5
Recital 5

(5) In the absence of uniform rules at Community level, obstacles to cross-border services and goods or the freedom of establishment might be justified in the light of the case-law of the Court of Justice as long as they seek to protect recognised public interest objectives and are proportionate to those objectives; in the

(5) In the absence of uniform rules at Community level, obstacles to cross-border services and goods or the freedom of establishment might be justified in the light of the case-law of the Court of Justice as long as they seek to protect recognised public interest objectives and are proportionate to those objectives; in the

light of Community objectives, of the provisions of the Treaty relating to free movement, of secondary Community law, and in accordance with the Commission's policy on commercial communications, such obstacles can only be eliminated by establishing uniform rules at Community level and by clarifying certain legal concepts at Community level to the extent necessary for the proper functioning of the Internal Market; other restrictions have been identified as requiring replacement by less restrictive measures; remaining restrictions relating to the use and communication of sales promotions should be submitted to the principle of mutual recognition of national legislation.

light of Community objectives, of the provisions, ***in particular Articles 43 and 49***, of the Treaty relating to free movement, of secondary Community law, and in accordance with the Commission's policy on commercial communications, such obstacles can only be eliminated by establishing uniform rules at Community level and by clarifying certain legal concepts at Community level to the extent necessary for the proper functioning of the Internal Market; other restrictions have been identified as requiring replacement by less restrictive measures; remaining restrictions relating to the use and communication of sales promotions should be submitted to the principle of mutual recognition of national legislation. ***By dealing only with those specific identified matters which give rise to problems for the Internal Market, this Regulation is fully consistent with the need to respect the principle of subsidiarity as set out in Article 5 of the Treaty.***

Justification

Improved legal clarity.

Amendment 6 Recital 6 a (new)

(6a) This Regulation covers sales promotions which are all 'temporary' in nature as against, for example, long-term price cuts. Its scope includes loyalty programmes and air-miles schemes.

Justification

Some loyalty programmes and air-miles schemes are valid for life. It has to be made clear that they fall under the scope of this regulation. Therefore, a part of the amendment by Ward Beysen should be deleted.

Amendment 7 Recital 6 b (new)

(6b) This Regulation does not cover or affect national rules that set conditions for seasonal, liquidity or clearance sales except in so far as such rules restrict the offer of discounts.

Justification

Clarifies that this Regulation does not cover or affect national regulations that fix seasonal sales periods or conditions for liquidity sales in so far as these do not restrict the use or commercial communication of sales promotions (notably discounts).

Amendment 8 Recital 7

(7) This Regulation covers promotional contests or games where the purpose is to encourage the sale of goods or services, other than gambling activities, and where ***payments, if they arise, serve only to acquire the promoted goods or services.*** This excludes gambling activities, such as games of chance, lotteries and betting transactions, which involves wagering a stake with monetary value, from the scope of application.

(7) This Regulation covers promotional contests or games where the purpose is to encourage the sale of goods or services, other than gambling activities, and where ***participation is possible without payment or obligation to purchase.*** This excludes gambling activities, such as games of chance, lotteries and betting transactions, which involves wagering a stake with monetary value, from the scope of application.

Justification

This wording makes it possible to draw a clearer distinction with State-run lotteries.

Amendment 9
Recital 7 a (new)

(7a) This Regulation applies without prejudice to Community and national competition law, which contains specific provisions concerning the press.

Justification

It needs clearly stating that the Regulation does not affect anti-trust law. This contains specific provisions for the press that take account of the special nature of the newspaper sales system.

Amendment 10
Recital 8

(8) By dealing only with those specific identified matters which give rise to problems for the Internal Market, this Regulation is fully consistent with the need to respect the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality and the Commission's policy on commercial communications, which through the work of the Expert Group on commercial communications, has sought to apply this principle in as transparent and precise a manner as possible, the measures provided for in this Regulation are strictly limited to the minimum needed to achieve the objective of the proper functioning of the internal market; where action at Community level is necessary, and in order to guarantee

(8) By dealing only with those specific identified matters which give rise to problems for the Internal Market, this Regulation is fully consistent with the need to respect the principle of subsidiarity as set out in Article 5 of the Treaty. ***In particular, the definition of what is included in, or associated with, a book for the purposes of this Regulation is of a subsidiary nature.*** In accordance with the principle of proportionality and the Commission's policy on commercial communications, which through the work of the Expert Group on commercial communications, has sought to apply this principle in as transparent and precise a manner as possible, the measures provided for in this Regulation are strictly limited to the minimum needed to achieve

an area which is truly without internal frontiers as far as sales promotions are concerned, the Regulation must ensure a high level of protection of objectives of general interest, in particular the protection of minors, consumer protection and in that context fair trading and the protection of public health.

the objective of the proper functioning of the internal market; where action at Community level is necessary, and in order to guarantee an area which is truly without internal frontiers as far as sales promotions are concerned, the Regulation must ensure a high level of protection of objectives of general interest, in particular the protection of minors, consumer protection and in that context fair trading and the protection of public health.

Justification

Clarification that the definition of what is included in or associated with a book is of a subsidiary nature.

Amendment 11 Recital 9

(9) This Regulation **complements** the Community acquis, which is applicable to the use and communication of sales promotions, which covers, in particular, Council Directive 84/450/EEC concerning misleading advertising and comparative advertising, Council Directive 89/552/EEC concerning the pursuit of television broadcasting activities Council Directive 92/59/EEC on general product safety, Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data, Directive 97/66/EC of the European Parliament and of the Council concerning the processing of personal data and the protection of privacy in the telecommunications sector Directive 98/6/EC of the European Parliament and of the Council on consumer protection in the indication of prices of products offered to consumers, Directive 98/27/EC of the European Parliament and of the Council on injunctions for the protection of consumers'

(9) This Regulation **leaves unaffected** the Community acquis, which is applicable to the use and communication of sales promotions, which covers, in particular, Council Directive 84/450/EEC concerning misleading advertising and comparative advertising, Council Directive 89/552/EEC concerning the pursuit of television broadcasting activities Council Directive 92/59/EEC on general product safety, Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data, Directive 97/66/EC of the European Parliament and of the Council concerning the processing of personal data and the protection of privacy in the telecommunications sector Directive 98/6/EC of the European Parliament and of the Council on consumer protection in the indication of prices of products offered to consumers, Directive 98/27/EC of the European Parliament and of the Council on injunctions for the protection of consumers'

interests , Council Directive 92/28/EEC on the advertising of medicinal products , Directive 1999/44/EC of the European Parliament and of the Council on certain aspects of the sale of consumer goods and associated guarantees , Council Recommendation “Drinking of alcohol by children and adolescents and Directive 2000/31/EC of the European Parliament and of the Council on electronic commerce .

interests , Council Directive 92/28/EEC on the advertising of medicinal products , Directive 1999/44/EC of the European Parliament and of the Council on certain aspects of the sale of consumer goods and associated guarantees , Council Recommendation “Drinking of alcohol by children and adolescents and Directive 2000/31/EC of the European Parliament and of the Council on electronic commerce .

Justification

It should be made clear that special Community law applicable in some areas takes precedence over this Regulation.

Amendment 12 Recital 11 a (new)

(11a) The requirement preventing Member States from imposing prohibitions on the use or commercial communication of a sales promotion may apply only to those prohibitions that relate to sales-promoting activities generally. It may not, in particular, apply to such prohibitions or limitations on advertising as are laid down in national law, such as the prohibition of aggressive advertising practices or the exertion of psychological buying pressure.

Justification

The amendment serves to clarify Article 3 paragraph 1, first indent.

Amendment 13 Recital 11 a (new)

(11a) This Regulation does not apply to:

(a) restrictions by Member States in relation to the use and commercial communication of sales promotions by members of regulated professions;

(b) restrictions by Member States in relation to the use and commercial communication of sales promotions for the marketing of pharmaceuticals, whether or not subject to a prescription.

Justification

These exemptions from the regulation appear to be in the interests of the necessary restrictions that are applied to sales promotion in some Member States, as well as of health protection.

Amendment 14 Recital 13

(13) Without verifiable prior consent this Regulation, in order to protect the **physical** health of children and consistent with Directive 92/59/EEC, prohibits promoters of free gifts or premiums from dispatching promotional products to children unless the promoters ensure that the products dispatched are not of a nature, ***in view of their intrinsic qualities or their packaging (notably through reliance on child-proof packaging)***, that they could harm a child's **physical** health.

(13) Without verifiable prior consent this Regulation, in order to protect the health of children and consistent with Directive 92/59/EEC, prohibits promoters of free gifts or premiums from dispatching promotional products ***or providing services*** to children unless the promoters ensure that the products dispatched ***or services provided*** are not of a nature that they could harm a child's health.

Justification

The original provision is difficult to apply in practice (consumers know nothing whatsoever about foreign law, it is difficult for a national judge to apply foreign law which conflicts with national law, etc), the principle of mutual recognition could well lead to deregulation that is harmful both to economic operators and consumers because operators who are subject to the law of Member States with legislation providing greater consumer protection will necessarily be discriminated against compared with foreign operators who are subject to less stringent provisions and will therefore be tempted to pressurise their governments to bring their national legislation into line with more liberal legislation. Intra-European relocation of

salespeople, attracted by a more flexible legal framework providing less consumer protection, could also be expected if the principle of mutual recognition were adopted in this case.

The new wording will allow only those national restrictions that are proportionate to the objective, in particular that of consumer protection and, consequently, will not give rise to purely protectionist measures.

Amendment 15
Recital 16 a (new)

(16a) Complainants may also make use of other out-of-court mechanisms (conciliation, mediation) to settle disputes, along the lines of the self-regulation arrangements applied in the advertising sector and based for example on working methods to be defined during the pilot stage of the European Extra-judicial Network (EEJ).

Justification

It seems essential to encourage consumers to use this type of instrument, which should help overcome the inefficiency of conventional procedures. Furthermore, the principle of mutual recognition cannot be applied effectively given the lack of sufficiently advanced and accessible systems for cross-border legal redress.

Amendment 16
Recital 16 b (new)

(16b) For purposes of achieving the Internal Market for commercial communications of which this Regulation is the first step, the work of the Expert Group on Commercial Communications will be accelerated in the other areas that the Commission recognised as requiring priority attention in its 1998 Communication.

Justification

It took the Expert Group two-and-a-half years to adopt its divided opinions in this field. Yet the Commission had set a target of six months for an opinion. There is no reason for such delays and the Member States' experts should now press ahead with the issue of sponsorship regulations that they are currently considering.

Amendment 17
Recital 16 c (new)

(16c) This instrument demonstrates how targeted and complete harmonisation can be achieved by reliance on a regulation that offers full legal security. In line with the object of achieving better regulation, harmonisation in this field should be targeted such that regulations rather than directives should be relied upon to maximise the benefits of the Internal Market for European citizens.

Justification

Support is needed for the Commission's declared position that harmonisation should be precisely targeted and, wherever possible, in the form of regulations to ensure a qualitative legal framework and full efficiency and security.

Amendment 18
Recital 16 c (new)

(16c) Neither consumers nor businesses are assisted by requiring excessive information in sales promotions.

Justification

By making excessive demands for information, businesses are unfairly burdened and the cost price of products is increased. And today's consumers are quite capable of making their purchasing decisions without exaggerated amounts of information.

Amendment 19

Article 1

1. This Regulation establishes rules concerning the use and commercial communication of sales promotions in order to ensure the proper functioning of the internal market.

1. This Regulation establishes rules concerning the use and commercial communication of sales promotions in order to ensure the proper functioning of the internal market ***and a high level of consumer protection.***

Justification

This regulation establishes rules concerning the use and commercial communication of sales promotions in order to ensure the proper functioning of the internal market and a high level of consumer protection.

Amendment 20

Article 2, paragraph (a), second indent a (new)

– the organisation of promotional contests or games when the promoter's real aim is not to promote, directly or indirectly, goods, services or the image of an undertaking, an organisation or a person with a commercial, industrial or craft activity or exercising a regulated profession, but to make a profit by running a gambling activity disguised as a sales promotion operation;

Justification

Promotional contests and games must be complementary to some other economic activity. The aim is to ban gambling activities that are disguised as sales promotions. For the same reason, permanent promotional games should not be allowed.

Amendment 21 Article 2, paragraph (b)

(b) ‘sales promotion’: a discount, a free gift, a premium or an opportunity to participate in a promotional contest or game;

(b) ‘sales promotion’: ***the offer of*** a discount, a free gift, a premium or an opportunity to participate in a promotional contest or game, ***unless it concerns an operation mentioned in the last subparagraph of paragraph (a) above;***

Justification

The real target should always be promotional offers. Promotional contests and games must be complementary to some other economic activity. The aim is to ban gambling activities that are disguised as sales promotions. For the same reason, permanent promotional games should not be allowed.

Amendment 22 Article 2, paragraph (c)

(c) ‘promoter’: a user of a sales promotion, meaning a company, organisation or person by whom or on whose behalf a sales promotion is undertaken;

(c) ‘promoter’: a user of a sales promotion, meaning a company, organisation or person by whom or on whose behalf a sales promotion is undertaken, ***unless the person is carrying out an operation mentioned in the last subparagraph of paragraph (a) above;***

Justification

Promotional contests and games must be complementary to some other economic activity. The aim is to ban gambling activities that are disguised as sales promotions. For the same reason, permanent promotional games should not be allowed.

Amendment 23
Article 2, paragraph (f)

(f) ‘free gift’: the temporary offer to provide free of charge a good or service independently of **an** obligation to purchase **a good or service of an identical type**;

(f) ‘free gift’: the temporary offer to provide free of charge a good or service independently of **any** obligation to purchase **whatsoever**;

Justification

Self-explanatory.

Amendment 24
Article 2, paragraph (i)

(i) ‘promotional game’: the temporary offer to participate in a game, in which the winner is designated primarily by chance and no fee is required to participate and where participation **may be** subject to a prior obligation to purchase. Such promotional games shall not include gambling activities which involve wagering a stake with monetary value in games of chance, including lotteries and betting transactions.

(i) ‘promotional game’: the temporary offer to participate in a game, in which the winner is designated primarily by chance and no fee is required to participate and where participation **may not be** subject to a prior obligation to purchase **or to order the provision of a service**. Such promotional games shall not include gambling activities which involve wagering a stake with monetary value in games of chance, including lotteries and betting transactions.

Justification

Making participation in a promotional game subject to purchasing a product or ordering a service should not be permitted. Games should only be used to attract consumers’ attention. They should not be used to induce consumers to purchase by making the game seem attractive to them.

Games can also be used to promote services.

Amendment 25

Article 2, paragraph (i)

(i) ‘promotional game’: the temporary offer to participate in a game, in which the winner is designated primarily by chance and no fee is required to participate and where participation **may be** subject to a prior obligation to purchase. Such promotional games shall not include gambling activities which involve wagering a stake with monetary value in games of chance, including lotteries and betting transactions.

(i) ‘promotional game’: the temporary offer to participate in a game, in which the winner is designated primarily by chance and no fee is required to participate and where participation **is not** subject to a prior obligation to purchase. Such promotional games shall not include gambling activities which involve wagering a stake with monetary value in games of chance, including lotteries and betting transactions.

(It concerns only certain linguistic versions, the French version is correct)

Justification

Removing free entry to games amounts to allowing any operator to organise Europe-wide gambling activities, and games of chance, without being subject to national supervisory arrangements, with the stake wagered being hidden in the price of the product or service. If this were to happen, the product or service promoted would become merely a pretext disguising a gambling activity as a promotional operation. It is therefore necessary to re-state the principle that entry to promotional games is free of charge.

Amendment 26

Article 2, paragraph (j)

(j) ‘child’: a person under the age of 14 years;

(j) ‘child’: a person under the age of 14 years, **unless other age-limits apply to the sale of specific products**;

Justification

It makes sense to recognise the age limits for certain products.

Amendment 27

Article 2, paragraph (n)

(n) ‘sale below cost’: a discount consisting of a sale of a product or service below the net invoice price inclusive of carriage, insurance and other delivery costs as well as tax.

(n) ‘sale below cost’: a discount consisting of a sale of a product or service **by a retailer** below the **retailer’s** net invoice price inclusive of carriage, insurance and other delivery costs as well as tax.

Justification

New Article 4a and national laws on sales below cost apply to promotions by large retailers.

Manufacturers’ loss-making strategies that are directly intended for consumers or sales between wholesalers and retailers must be permitted, as is the case today.

Amendment 28

Article 3, paragraph 1, first indent

– a general prohibition on the use or commercial communication of a sales promotion unless required by Community law;

– a general prohibition on the use or commercial communication of a sales promotion unless required by Community law, ***without prejudice to the possibility for Member States or regulatory bodies to adopt specific measures which, in the interests of protecting consumers, supplier companies and competition, partially restrict the use and commercial communication of particular sales promotions such as sales below cost,***

Justification

In the report accompanying its proposal for a regulation the Commission confirms that sales below cost are legitimate. The legitimacy of sales promotions of this kind is not in question, but we feel that, in addition to specific conditions on transparency (requirement that the organisers of the promotion state clearly that the offer of a product or a service with a major reduction represents a sale below cost) to protect the consumer or the company supplying the products or services, consideration should be given to a further and no less damaging aspect of sales below cost, namely that they distort the conditions of competition to the detriment of other commercial companies, particularly small ones, as well as consumers. It is therefore proposed to amend the provisions of Article 3(2), first indent, of the proposal for a regulation, preventing Member States from imposing a general prohibition on the use or commercial communication of sales promotions, so that rules can be adopted at national level to regulate sales below cost in order to safeguard competition and protect supplier companies and consumers.

Amendment 29
Article 3, paragraph 1, second indent

– a limitation on the value of a sales promotion except for discounts on books;

– a limitation on the value of a sales promotion, ***provided that it is consistent with the value of the goods or services covered by the promotion***, except for discounts on ***fixed-price products and sales below cost***;

Justification

With due regard for the objectives and principles of the regulation, it would be appropriate to stipulate that the financial value of the prizes offered as a sales promotion should be consistent with the value of the goods or services concerned by the promotion.

Fixed-price products and sales below cost remain the responsibility of the Member States.

Amendment 30
Article 3, paragraph 1, third indent

– a prohibition on discounts preceding seasonal sales;

deleted

Justification

The prohibition of loss-making sales, which applies in half of the Member States, is a useful instrument that not only serves consumer interests but also helps to prevent unfair trade practices and encourages competition.

Amendment 31
Article 3, paragraph 2

2. Member States or non-public regulatory bodies shall neither restrict the freedom to provide services nor restrict the free movement of goods benefiting from the use

2. Member States or non-public regulatory bodies shall neither restrict the freedom to provide services nor restrict the free movement of goods benefiting from the use

of sales promotions on the grounds of the use of sales promotions and references to them in commercial communications;

of sales promotions on the grounds of the use of sales promotions and references to them in commercial communications; ***the competition law provisions of the EC Treaty and the relevant national competition law shall remain unaffected.***

Justification

It must continue to be possible for competition-law provisions to be used to combat sales-promotion excesses (e.g. cut-throat competition by an undertaking occupying a dominant position). That should be stated explicitly in the regulation.

Amendment 32
Article 3, paragraph 2 a (new)

2a. This article is without prejudice to national provisions governing sales or resales below cost.

Justification

Sales below cost should not be governed by Community law, but by national law in accordance with local circumstances. The subsidiarity principle should apply here .

Amendment 33
Article 5, paragraph 1

1. A promoter, when making a sales promotion, shall not collect personal data from a child without the verifiable prior consent from that child's legal guardian.

1. A promoter, when making a sales promotion, shall not collect personal data from a child without the verifiable prior consent from that child's legal guardian, ***except where it is necessary to ask a child for contact details of his legal guardian in order to get the consent of the latter.***

Justification

It is necessary to get the consent of the child's legal guardian; however, this requirement would bring practical problems of how to contact the parents. This amendment would allow the promoter to ask the child for his legal guardian's contact details in order to seek the necessary consent.

Amendment 34 Article 5, paragraph 1

1. A promoter, when making a sales promotion, shall not collect personal data from a child without the verifiable **prior** consent from that child's legal guardian.

1. A promoter, when making a sales promotion, shall not collect personal data from a child without the verifiable consent from that child's legal guardian.

Justification

Although it is necessary to obtain the consent of a legal guardian, in our modern electronic society it is not always possible to obtain it in advance.

Amendment 35 Article 5, paragraph 2

2. A promoter is prohibited from providing directly to a child a free gift **or** a premium if it is of a nature that could harm its **physical** health.

2. A promoter is prohibited, **in accordance with general product safety legislation**, from providing directly to a child a free gift, a premium **or a service** if it is of a nature that could **in any way** harm its health.

Justification

Looking beyond concerns relating to the physical health of children, is also important to ban gifts of products or services which might harm a child's mental health or state of mind, for instance certain video games that glamorise or condone violence. Referring simply to the 'health' of the child, without specifying physical health, covers all possible scenarios.

Amendment 36
Article 5, paragraph 3

3. A promoter is prohibited from providing a free gift consisting of an alcoholic beverage to individuals under the age of 18.

3. A promoter is prohibited from providing a free gift consisting of ***a product the sale of which is prohibited to minors, in particular*** an alcoholic beverage to individuals under the age of 18.

Justification

It is important to extend the legal protection of minors and in any case not to reduce the protection they already enjoy.

Amendment 37
Article 6, paragraph 1

1. A promoter shall at the request of a court or administrative authority, provide evidence as to the accuracy of the information referred to in Article 4.

1. A promoter shall at the request of a court or administrative authority, provide evidence as to the accuracy of the information ***concerning a sales-promotion activity as referred to in Article 4 for up to six months following conclusion of that activity. Where legal proceedings in relation to that sales-promotion activity have become pending within that time period, the obligation on the promoter to provide evidence shall apply until a ruling has been handed down by a court.***

Justification

The obligation on the promoter to provide evidence for a period of up to six months is sufficient to allow sales-promotion activities to be monitored. The deadline is necessary to protect the promoter against being placed at a disproportionate disadvantage.

Amendment 38
Article 6, paragraph 2

2. A promoter shall provide, free of charge, an address to which complaints can be directed to him. Where a promoter provides a telephone advice service in connection with a sales promotion, the promoter shall ensure that ***this is provided free of charge and that*** appropriate resources are dedicated to its operation.

2. A promoter shall provide, free of charge, an address to which complaints can be directed to him. Where a promoter provides a telephone advice service ***and/or e-mail address*** in connection with a sales promotion, the promoter shall ensure that appropriate resources are dedicated to its operation.

Justification

This increases consumer choice while reducing the cost to the seller.

Amendment 39
Article 6, paragraph 3

3. A promoter shall respond to an initial complaint relating to a sales promotion, within ***six*** weeks of the promoter's receipt of that complaint. The initial complaint and the response shall be in writing, which may include by electronic means. The response shall be in the language ***of*** the communication ***of*** the sales promotion.

3. A promoter shall respond to an initial complaint relating to a sales promotion, within ***four*** weeks of the promoter's receipt of that complaint. The initial complaint and the response shall be in writing, which may include by electronic means. The response shall be in the ***same*** language ***as*** the communication ***in which*** the sales promotion ***had had to be announced in accordance with the rules of the Member State concerned.***

Justification

The relevant national legal provisions should be complied with. Complaints should be processed as fast as possible. One month is enough.

Amendment 40
Article 6, paragraph 4

4. A promoter shall:

4. In the event of a settlement out of court the national law shall apply. If the sales promotion is being conducted from another

Member State the promoter shall be required to state under which national law sales promotions are being offered.

- indicate in the commercial communication relating to the sales promotion any out of court dispute settlement system or code of conduct that he/she subscribes to ; and*
- make available upon request information concerning any such dispute settlement system or code of conduct.*

Justification

From a consumer protection standpoint it is absolutely sufficient if the promoter states what national law is being applied to promotions conducted from another Member State. No further details should be expected to be supplied.

Amendment 41
Article 6, paragraph 4 a (new)

4a. The provisions of this article shall not apply to undertakings with nine employees or fewer.

Justification

The administrative costs of applying the provisions of this article will be so great as to prevent undertakings from carrying out sales promotions. This would be at odds with the Commission's policy of promoting SME and micro-undertakings in particular.

Amendment 42
Article 7

Before the end of (...), the Commission shall submit to the European Parliament and the Council a comprehensive report on the application of the Regulation, accompanied,

Within two years of the entry into force of this Regulation, the Commission shall submit to the European Parliament and the Council a comprehensive ***impact assessment*** report on the application of the Regulation,

if appropriate, with a proposal for its revision.

accompanied, if appropriate, with a proposal for its revision.

This report shall include an assessment of the impact of sales promotions law on both consumers and business in the EU.

Moreover, this report must also evaluate in detail the Internal Market effects of the differing national bans on sales below cost and assess the impact of a potential liberalisation of such bans.

Justification

Consumer and business impact of EU law should be reviewed. Moreover the impact of a potential liberalisation of sales below cost should be taken into account.

Amendment 43 Article 8, paragraph 1

This Regulation shall enter into force on ***the [] day following that of its publication in the Official Journal of the European Communities.***

This Regulation shall enter into force on ***1 January 2005.***

Justification

To make it possible for the different national systems to be approximated to the liberal competition provisions of this regulation, a relatively long transition period is required. A report on experience with the new regulation should however at all events be submitted after the first year.

Amendment 44 Annex, paragraph 1, section 1.1, indent 1

– *an indication of the discount, free gift, premium, promotional contest or promotional game;* *deleted*

Justification

Delete first indent since it is duplicative with the provisions that follow.

Amendment 45
Annex, paragraph 1.1, indent 3

– the promoter's *identity*; – the promoter's *name and address*;

Justification

Consumers should be able to identify the promoter in the commercial communication.

Amendment 46
Annex, paragraph 1.1, indent 4

– the duration of the offer, including the start and end date; – the duration of the offer including the start *date* and *either the* end date *or the quantity of stock available*;

Justification

This provision needs to be clearly spelled out as it could prove difficult to apply. Consumers will thus be better informed.

Amendment 47
Annex, paragraph 1.1, indent 4 a (new)

– an indication of how the general conditions governing the sales promotion can be obtained;

Justification

Deletion of Annex, Title 1, paragraph 1.2, second indent.

Amendment 48
Annex, paragraph 1.2

- 1.2 Information to be made available on request unconditional on purchase of the promoted product or service:** *deleted*
- *the name and geographic address of the promoter; and*
 - *the terms and conditions relevant to the sales promotion.*

Justification

This information is provided in the commercial communication.

Amendment 49
Annex, paragraph 2.1

- 2.1. Information to be provided in the commercial communication:** *deleted*
- *the exact amount of the discount represented as either a percentage or a unit cost; and*
 - *an indication of a sale below cost.*

Justification

This information requirement will unduly burden the business and is based on the incorrect assumption that such information is essential to enable consumers to reach a purchase

decision. What matters to consumers is the price, not its relationship with the cost to the business.

Amendment 50
Annex, paragraph 2.2, indent 2

– the preceding price of the promoted good or service and the length of time (including dates) that this preceding price was applied. **deleted**

Justification

This information requirement will unduly burden the business and is based on the incorrect assumption that such information is essential to enable consumers to reach a purchase decision. What matters to consumers is the price.

Amendment 51
Annex 2.2, indent 2 a (new)

– where the good or service in question has previously been bundled and/or distributed in a format that prevents a direct price comparison with the promotional offer, the basis for assessing the pre-discount price must be stated.

Justification

To retain discount transparency in cases where vendors wish to use different formats or offer packages to consumers. (For example, separate offers on products previously sold as part of a bundle.)

Amendment 52
Annex, paragraph 2.3, indent 1

*– the **cash** value of the coupon or voucher* *– the **redemption** value of the coupon or voucher, **which may be a good or service, or***

*where the coupon or voucher can be
exchanged for cash the cash value*

Justification

Many coupons or vouchers have no cash value in that they cannot be redeemed for cash. Their value is in terms of the good they can buy. This amendment would overcome the need to provide a fictional cash value where there was none by indicating the good they will purchase.

Amendment 53
Annex, paragraph 2.4

2.4. Information to be made available on request of a manufacturer or a service provider from whom goods or services have been purchased: *deleted*
– *information of a sale below cost in conformity with prior contractual agreements.*

Justification

National laws prohibiting sales below cost remain feasible. The Member States may choose widely diverging options in this area. So it is desirable to leave regulation of the information that must be provided in the event of using a sales promotion to the Member States as well.

Amendment 54
Annex, paragraph 3.1

3.1. Information to be provided in the commercial communication: *deleted*
– *the actual value of the free gift or premium; and*
– *any costs associated with obtaining the free gift or premium.*

Justification

There is no reliable definition of how such a value should be calculated. Nor is it realistically possible to put figures to all the costs that are entailed by these free gifts or premiums.

Amendment 55 Annex, paragraph 4.1, first indent

- the value and nature of the prize;
- the **commercial** value and nature of the prize;

Justification

The concept of actual value is vague. It is simpler and more accurate for consumers if reference is made to the commercial value.

Amendment 56 Annex, paragraph 4, section 4.1, indent 4

- ***any requirements for proof of purchase;*** ***deleted***

Justification

Sales promotions should not include any obligation to purchase.

Amendment 57 Annexe, paragraph 4.1, indent 7

- in the case of a promotional game, ***the actual or estimated odds of winning the prize.***
- in the case of a promotional game, ***the promoter shall provide sufficient information for any participant in the promotion to understand their likely chance of winning.***

Justification

It is often not possible to give an accurate statement of the odds because that depends on the size of the entry. An estimate could be way out. Here the intention is that the consumer should be able to see easily the likelihood of winning and that no misleading claim along the lines of 'everyone a winner' are made.

Amendment 58

Annex, paragraph 4.2, indent 4

– whether a cash alternative can be substituted for any prize; ***deleted***

Justification

The possibility of a cash payment instead of the prize offered in the sales promotion runs counter to the principle that only games of chance (lotteries, betting games and betting transactions can offer cash prizes).

EXPLANATORY STATEMENT

1. Introduction

On 2 October 2001 the Commission submitted a communication on sales promotions in the Internal Market that proposed a Regulation from the European Parliament and the Council concerning sales promotions in the Internal Market.

This Communication is the first result of the Commission's Commercial Communications Policy that was adopted in 1998 and strongly supported by the European Parliament. The Commission first suggested the need for a policy for commercial communications in its 1996 Green Paper and, following strong support from the European Parliament, this policy was adopted and put in place by the Commission's follow-up Communication in 1998. This policy consists in promoting the free movement of a wide variety of services that had hitherto not been considered by the Commission in spite of their key importance in inciting cross-border trade. This Commission Communication also set up an Expert Group of representatives from the Member States and a proportionality assessment procedure to evaluate the compatibility of Internal Market barriers in this field with the Treaty. The Expert Group was asked to use this proportionality assessment procedure to assess where the principle of mutual recognition should be applied or where harmonisation was needed to resolve the relevant barriers.

The Parliament has always and unambiguously supported this policy and the Rapporteur has chaired a Commercial Communications Group for a number of years which seeks to ensure that this policy is effectively monitored and implemented.

The Commission undertook an extensive survey of interested parties to identify barriers that should be addressed. These were set out in the follow-up Communication of 1998 and problems in the field of sales promotions headed the list.

The proposal on sales promotion is based on two and a half years work with Member States representatives in a Commission Expert Group on commercial communications and very detailed analysis of the existing regulatory situation in the Member States. The need for harmonisation in this field is highlighted by the numerous cross-border restrictions to the provision of such services that are identified. There is an urgent necessity for this harmonisation given that the current regulatory fragmentation in this field will undermine the beneficial cross-border price transparency following the development of e-commerce and, in particular, the introduction of the euro. This measure has the potential to have far reaching beneficial effects since it will affect all businesses in the European Union. This is because sales promotions are the most affordable form of marketing service. The proposal is therefore important in that it will assist SMEs in benefiting from the Internal Market and thus increase cross-border competition and consumer choice within the Union.

The necessity for Community action in the pre-contractual field of the use and communication of sales promotions was further recognised at the time of the adoption of the common position of the e-commerce directive. The Commission and the Council adopted a joint declaration that called on the Commission, in the context of the its Internal Market policy on commercial communications, to consider the need for a further initiative (covering both on-line and off-line commercial communication services) to account for the need to protect against unfair competition and to protect consumers with respect to cross-border communications of sales promotions.

The Commission therefore decided to first submit for consideration to the Commercial Communications Expert Group identified Internal Market barriers to the cross-border use and communication of sales promotions. Three Expert Group opinions on this issue were adopted over a period of two and a half years and rendered public by the Commission and the national experts themselves. On the basis of these opinions, the Commission analysed each call for harmonisation using the proportionality assessment analysis. This very thorough preparatory work has been made available in Commission service documents that accompany the current Communication and proposal for a Regulation.

In view of this detailed preparatory work, this proposal takes the form of a Regulation, which the Commission believes to be the most appropriate instrument to establish uniform rules on very targeted issues; ensure price transparency and strengthen legal security; respond to the urgency for uniform rules with the introduction of the Euro; and secure consistency with the Community's new approach to better regulation.

The legal base for the proposal is Article 95(1) of the EC Treaty. This legal base should be strongly supported since the measure unambiguously seeks to create the Internal Market in this field notably by ensuring the free movement of services and the freedom of establishment which the Rapporteur proposes to recall in an existing recital. Furthermore, Article 95(1) requires that harmonisation be based on a high level of consumer and public health protection. Moreover, this legal base is required to ensure that general interest objectives other than consumer protection are accounted for which is particularly important since this measure also harmonises the use and commercial communication of sales promotions between businesses.

The Rapporteur notes that this measure is totally compatible with the green paper on consumer protection and the various outcomes that could result from that Green Paper. As a targeted measure it could complement either the specific or mixed options which the Green paper has put to public consultation. Furthermore, this regulation covers business to business activities which are excluded from the scope of the green paper on consumer protection. The Rapporteur wishes to further note that the Internal Market, Consumer affairs and Tourism Council in its conclusions of 1 March 2002 on the contribution on Economic Reforms for the Barcelona European Council has recognised this complementarity between both Commission initiatives and has thus concluded that negotiation of this Regulation must continue.

2. Analysis of the proposal for a regulation

A. Objective

The Regulation establishes rules concerning the use and commercial communication of sales promotions of sales promotions in order to ensure the proper functioning of the internal market. The use of a regulation instead of a directive is fully justified in this case given its efficiency, the introduction of Euro (which requires more transparency of sales promotions) and the fact that the Commission has been able to identify precisely the key problems and thus can propose clear and precise solutions.

B. Scope

The manner in which the Regulation addresses all forms of cross-border restrictions which affect a wide range of various service activities in this field should be welcomed and

supported. The provisions in the text apply not only to restrictions arising from the application of Member States rules but also to those resulting from actions by «any associations or organisations enacting rules aimed at regulating the provision of services in a collective manner», in accordance with the ECJ's jurisprudence. Sales promotions are defined as discounts, free gifts, premiums or the opportunities to participate in promotional contests or games. The definition of promotional games explicitly excludes gambling services which involve wagering a stake with monetary value in games of chance, including lotteries and betting transactions. The Rapporteur supports this exclusion which ensures that the existing regulatory framework for such gaming activities will remain unaltered by this text. The text therefore covers any use and commercial communication of a sales promotion by a promoter defined as a company, organisation or person by whom or on whose behalf a sales promotion is undertaken. This comprehensive scope should be supported since it is the only means by which full legal security can be achieved.

The definitions provided in the text correctly indicate that all such sales promotions are of a temporary nature. This is essential. For example, when discounts result in sales below cost, by ensuring that they are temporary, the regulation will confirm the need for national and European competition law to be applied efficiently in cases of systematic sales below costs which could represent anti-competitive predatory pricing behaviour .

The Rapporteur fully supports the definition of a promotional game which would allow for participation in such games to be linked to purchase. The obligation to make participation free to enter has often been circumvented by constructing such games as promotional contests where this obligation does not apply. Given the strict transparency conditions requiring the value of prizes and estimated odds of winning such games to be advertised, this will facilitate the detection of illegal gaming activities and ensure that consumers are not misled as to the value of such offers.

C. Full targeted harmonisation accompanied with reliance on the key principle of mutual recognition allows for a modern set of rules and the lifting of out-dated restrictions

In line with the previous opinion of the European Parliament on the Commission's commercial communication's policy, the proposed regulatory approach should be fully supported since it consists of establishing a legal framework that ensures that consumers and other market players are provided with sufficient information to make informed decisions, removes out-dated restrictions and ensures that the principle of mutual recognition, which is the cornerstone of the Internal Market project, is applied to remaining disproportionate restrictions. The European Parliament has always underlined the need to adopt such a balanced approach which relies on the full application of the principle of freedom to provide services and country of origin control combined, where necessary, with targeted harmonisation.

1. Restrictions requiring harmonisation.

The proposal sets out detailed transparency provisions in the annex linked to Article 4 for each of the types of sales promotions. These provisions are divided between information that must feature within the commercial communications; and information that must be made available to the potential customer on request.

The Rapporteur agrees with the need to have detailed information requirements and agrees in

particular with the need to ensure that the relevant commercial communication indicates the value of the sales promotion. He welcomes that all discounts should be accompanied with the previously applied unit price and the time period that that price was enforced. These provisions will improve customers, in particular consumers, confidence to engage in cross-border trade. He also agrees that “temporary” sales below costs should be indicated as such but feels that they should also not be subject to quantitative limitations per customer. In this manner a reseller will take the full risk of offering such a promotion. As a consequence of these provisions sales below cost should only be regulated through the efficient application of anti-trust law. Furthermore, in order to avoid duplication and excessive information in the relevant commercial communications which would be confusing to the consumer and burdensome to promoters, he considers that some modifications would be useful.

The Rapporteur strongly supports the need to protect minors and adolescents and for that reason welcomes Article 5 of the text which will ensure that children are not incited to reveal data by such marketing techniques, are protected from potentially harmful samples and are not encouraged to consume alcohol offered as a free gift.

2. Restrictions requiring to be replaced by less restrictive measures.

In view of this harmonisation, Article 3(1) of the proposal for a Regulation lifts national restrictions that disproportionately restrict both the right to establishment and the free movement of services. More specifically, its first indent removes general (as against sectoral) bans. For example, bans on premiums that are not directly associated with the promoted good or service are removed by this provision. The Rapporteur agrees with this assessment. He also agrees with the necessity to remove limits on the value of sales promotions. The lifting of value limits also implies that temporary sales below costs should be allowed subject to the information requirements set out above. The Rapporteur agrees with the need to allow for such temporary loss-leading strategies as long as resellers do not reduce their financial risk of offering such promotions by limiting the number of sales per customer. The exception for book pricing limitations is acceptable given existing Community policy and given that they are made subject to mutual recognition under Article 3(2). The necessity to remove bans on discounts prior to seasonal sales periods has recently been recognised by one Member State and this move should be supported given the counter-productive effects that such limitations can give rise to. Likewise, the Commission should be supported in its view that the high level of harmonisation offered in the rest of the text makes redundant prior authorisation regimes that act as strong disincentives to cross-border provision of such services.

3. Restrictions requiring the application of mutual recognition.

This paragraph imposes the principle of mutual recognition on all remaining national restrictions [not covered by Article 3(1)] to the use and commercial communication of sales promotions. This paragraph is essential since it ensures that the free movement that is the objective of this proposal will be guaranteed. The reliance on this key principle of the Internal Market should again be fully supported. The European Parliament has repeatedly done so in its opinions on the commercial communication policy of the Commission. It avoids over-prescriptive harmonisation but also makes such restrictions subject to the discipline of free movement. It applies to any service that has been identified as being affected by such restrictions. In addition to sales promotion design and advertising agency services it also concerns media services, media planning and sales services, direct marketing operations, retail services and customer relations services. It prohibits all forms of restrictions on such

services coming from other Member States on the grounds of the use of sales promotions and references to them in commercial communications i.e. any actions on the part of a Member State liable to hamper or otherwise make the provision or communication of such sales promotions less attractive. In addition, to promote the cross border development of all these service activities, it prohibits Member States from restricting on the grounds of such restrictions the free movement of goods and services promoted by the relevant sales promotions.

D. Redress

The Rapporteur welcomes the redress provisions proposed to improve consumer protection and enhance consumer trust in the Internal Market. In particular he supports the need for the promoter to carry the burden of proof and the obligation for advice services to be free of charge as well as the harmonisation of complaints handling. The proposal for the promoter to initially respond in the language that the consumer was solicited in within the relevant commercial communication is equitable. It ensures that in the event of a problem where the consumer wishes to take action against a promoter, he will always have written proof to trigger such action in the form of his complaint and a lack of a written reply. The obligation to publicise self-regulatory codes and ADR systems that are adhered to will incite the development of European self-regulatory codes and cross-border ADR schemes. Furthermore, it will ensure that the relevant bodies can prosecute those promoters that misleadingly advertise that they subscribe to such systems.

The Rapporteur nevertheless regrets, as for all Community texts, that the inefficiency of judicial cross-border redress is not addressed by the proposal and urges the Commission to come forward with concrete proposals for a Community cross-border small claims procedure that could cover both cross-border business to consumer and cross-border business to business judicial redress for legal claims in this and all other relevant fields.

E. Flanking measures

The Rapporteur considers that this regulation is the first of a series of actions required to achieve the Internal Market in commercial communications. It would therefore be important to encourage the strengthening of the direct application of the Treaty in this field via the infringement procedures and the acceleration of the work of the Expert Group on commercial communications. Likewise, where harmonisation is required, it should be targeted and preferably also take the form of regulations to ensure full legal certainty as the Commission has recently advocated in its work on better regulation.

The Rapporteur suggests that the Parliament urge the Council to adopt the amended proposal as rapidly as possible.

24 April 2002

OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS

for the Committee on Legal Affairs and the Internal Market

on the proposal for a European Parliament and Council regulation on sales promotions in the internal market

(COM(2001) 546 – C5-0475/2001 – 2001/0227(COD))

Draftsman: Werner Langen

PROCEDURE

The Committee on Economic and Monetary Affairs appointed Werner Langen draftsman at its meeting of 17 January 2002.

It considered the draft opinion at its meetings of 25 February, 20 March, 16 April and 23 April 2002.

At the latter meeting it adopted the following amendments by 23 votes to 5, with 2 abstentions.

The following were present for the vote: Christa Randzio-Plath, chairwoman; José Manuel García-Margallo y Marfil, Philippe A.R. Herzog and John Purvis vice-chairmen; Werner Langen, draftsman; Generoso Andria, Hans Udo Bullmann, Robert Goebbels, Lutz Goepel (for Astrid Lulling), Mary Honeyball, Christopher Huhne, Othmar Karas, Giorgos Katiforis, Piia-Noora Kauppi, Christoph Werner Konrad, Wilfried Kuckelkorn (for Bernhard Rapkay), Alain Lipietz, Ioannis Marinos, Helmuth Markov (for Armonia Bordes), David W. Martin, Hans-Peter Mayer, Miquel Mayol i Raynal, Fernando Pérez Royo, Mikko Pesälä (for Carles-Alfred Gasòliba i Böhm), Peter William Skinner, Alexander Radwan, Olle Schmidt, Charles Tannock (for Brice Hortefeux), Bruno Trentin and Theresa Villiers.

SHORT JUSTIFICATION

The principle of an open market economy with free competition is laid down in the European treaties. Functioning markets safeguard the public interest. A large and diverse supply, high quality and attractive prices of goods and services and the optimum use of scarce resources are best obtained, experience shows, if markets function freely. To this extent competition is clearly in the public interest, since it not only makes optimum use of resources but also protects consumers' rights. It is one of the main tasks of the European Union and the Member States to create and safeguard the necessary conditions for such competition. This raises the perennial question, where are there areas without competition and can they be eliminated. This is particularly relevant in view of completion of the European internal market and growing market globalisation. Introduction of the common European currency will lead to further market integration and encourage competition between companies on the large European internal market. A number of sectors from which competition has largely been excluded are being opened up as a result of the liberalisation of network-linked industries. These developments are affecting all aspects of competition policy.

Enforcing the competition rules is the task of the European institutions and the national authorities. With the present proposal on sales promotion in the internal market the Commission is pursuing the aim not just of creating equal competitive conditions for all companies wishing to conduct and publicise sales promotions throughout the EU, but also of providing more choice and price transparency for consumers with the introduction of the euro. The regulation discards general prohibitions and regulations that have ceased to be appropriate and have been impeding and regimenting sales promotion, and advertising for sales promotion, in various Member States. It does not affect existing European law, such as that prohibiting the sale of alcohol to minors, or the ban on tobacco advertising. In place of prohibition it introduces an extended requirement to inform. Choosing a regulation rather than a directive makes it possible to introduce a uniform minimum standard throughout the European Union.

There are a few essential points where amendments to the Commission proposal are needed. First, a general clause needs adding to prohibit unfair business practice and thus prevent gaps arising when business strategies and activities change under the impact of competition. Second, the proposed ban on sales below cost price, and the associated requirement to inform suppliers, should be scrapped. As defined by the Commission, sales below cost price could not be described in a way that did not affect competition, and would lead to indirect resale price maintenance.

The main purpose of the regulation is to introduce the 'country of origin' principle for sales promotions. This should be welcomed, but some of the proposed amendments are designed to soften its impact. There needs to be a way of ensuring that the relationship between Articles 81 and 82 of the EC Treaty and national competition law does not change. The Treaty ordains that agreements and concerted practices likely to affect trade between Member States must be subject only to the Community's competition law. The aim of the amendments is to ensure that unfair business practices and the exploitation of dominant market positions are judged in accordance with current national law. Article 3 aims to ensure that agreements and practices likely to affect trade between Member States are substantially simplified when it comes to the application of competition law.

The main beneficiaries of the regulation will be consumers who experience the advantages of introducing the single currency and the consequent rise in the intensity of competition. So it is only right to bring national laws, which have been drifting apart, into line on a European minimum standard. To allow for the adjustment of national law the regulation should not enter into force until 1 January 2004. The first Commission report should be presented after one year's experience.

AMENDMENTS

The Committee on Economic and Monetary Affairs calls on the Committee on Legal Affairs and the Internal Market, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission ¹	Amendments by Parliament
<hr/>	
Amendment 1	
Recital 3 a (new)	
	<i>(3a) The completion of the internal market requires a common set of modern European rules on sales promotions; in order to ensure that the European citizen can fully benefit from a competitive internal market these rules must liberalise the use and the communication of sales promotions and ensure that they are offered in a transparent manner.</i>

Justification

There is a need to support the thrust of the regulation, which is to tackle the out-dated national restrictions which have proved anti-competitive and to replace them with modern rules which emphasise the need to ensure that the consumer is well informed as to the content of various sales promotions.

Amendment 2 Recital 3 b (new)

¹ OJ C 75, 26.3.2002, p. 11(E).

(3b) The Regulation will abolish national bans on temporary sales below cost that exist in most Member States, and thus allow for more effective application of competition law to prevent predatory pricing behaviour, as is the case in the majority of Member States.

Justification

A number of Member States have bans on sale below cost and argue that this is to protect the small retailers and manufacturers. However, these same laws define the cost-prices below which prices cannot be practised to include volume discounts. They are therefore ineffective and may even be counterproductive, since they allow for price levels to be determined by the largest market players. The regulation proposes to remove these bans and imposes new transparency conditions that will facilitate the application of competition law. This will allow pro-competitive loss-leading strategies to be used in the internal market, but will also ensure that anti-competitive predatory pricing strategies are prevented.

Or. en

Amendment 3
Recital 5 a (new)

(5a) The principle of mutual recognition must be applied to remaining national restrictions that are disproportionate, to ensure that the pro-competitive benefits of the internal market are accomplished in the area of sales promotions.

Justification

This amendment contests efforts to introduce country of destination into this regulation. It is necessary to ensure that the country of origin principle (mutual recognition) applies for those remaining national restrictions that are not harmonised. If this is not the case, then the regulation will not achieve its aim of resolving the internal market barriers that have been identified. The call for a country of destination principle, which is inconsistent with the free movement principles of the Treaty, must be refuted since it is a call for protection of national industry. If the aim of the Lisbon Council, recently repeated at Barcelona, of making the internal market the most competitive economy in the world is to be realised then reliance on the country of origin principle is essential.

Amendment 4
Article 1, Object

This Regulation establishes rules concerning the use and commercial communication of sales promotions in order to ensure the proper functioning of the internal market.

This Regulation establishes rules concerning the use ***of, and advertising for,*** sales promotions in order to ensure the proper functioning of the internal market, ***without changing or affecting the competition law provisions of Articles 81 et seq. of the EC Treaty and other matters concerning agreements or practices that are subject to competition law.***

Justification

This correction follows the Parliament and Council Regulation of 8 June 2000 on e-commerce and is in the interest of clarity.

Amendment 5
Article 2, Definitions (a)

(a) ‘commercial communication’: any form of **communication** designed to promote, directly or indirectly, the goods, services or image of a company, organisation or person pursuing a commercial, industrial or craft activity or exercising a regulated profession. The following do not constitute commercial communications:

- information allowing direct access to the activity of the company, organisation or person, in particular a domain name or an electronic-mail address; **and**
- communications relating to the goods, services or image of the company, organisation or person compiled in an independent manner, particularly when this is without financial consideration;

(a) ‘commercial communication’: any form of **advertising** designed to promote, directly or indirectly, the goods, services or image of a company, organisation or person pursuing a commercial, industrial or craft activity or exercising a regulated profession. The following do not constitute commercial communications:

- information allowing direct access to the activity of the company, organisation or person, in particular a domain name or an electronic-mail address;
- communications relating to the goods, services or image of the company, organisation or person compiled in an independent manner, particularly when this is without financial consideration, **such as press comment; and**
- **information on shelf-edge labels as used by the trade.**

Justification

Shelf-edge labels are not suitable for the scale of information proposed.

Amendment 6
Article 2, Definitions (b)

(b) ‘sales promotion’: a discount, **a** free gift, **a** premium or **an** opportunity to participate in a promotional contest or game;

(b) ‘sales promotion’: **the offer of** a discount, free gift, premium or opportunity to participate in a promotional contest or game;

Justification

Offers should be mentioned here.

Amendment 7
Article 2, Definitions (e), sentence 1

(e) ‘discount’: the **temporary** offer of:

(e) ‘discount’: the offer, **for a limited or unlimited period**, of:

Justification

The present wording of ‘temporary’ discounts would not cover customer loyalty schemes, or would only do so if temporary sales promotions were conducted as part of such schemes. Since there are grounds for fearing that promotions of unlimited duration will increasingly be conducted by promoters operating throughout Europe, the restriction to limited periods indirectly disadvantages small businesses.

Amendment 8
Article 2, Definitions (f)

(f) ‘free gift’: the **temporary** offer to provide free of charge a good or service independently of an obligation to purchase a good or service **of an identical type**;

(f) ‘free gift’: the offer to provide free of charge a good or service independently of an obligation to purchase a good or service;

Justification

See Amendment 6. The fact that goods or services are of an identical type is not essential to the definition.

Amendment 9 Article 2, Definitions (g)

(g) ‘premium’: the **temporary** offer to provide a good or service **of a type** which is not **identical to** the good or service with which it is offered for purchase;

(g) ‘premium’: the offer to provide a good or service of a type which is not identical to the good or service with which it is offered for purchase;

Justification

See Amendment 8.

Amendment 10 Article 2, Definitions (h)

(h) ‘promotional contest’: the **temporary** offer to participate in a contest which may be subject to a prior obligation to purchase a good or service, in which the winner is designated primarily by means of skill;

(h) ‘promotional contest’: the offer to participate in a contest which may be subject to a prior obligation to purchase a good or service, in which the winner is designated primarily by means of skill;

Justification

See Amendment 7.

Amendment 11
Article 2, Definitions (i)

(i) ‘promotional game’: the **temporary** offer to participate in a game, in which the winner is designated primarily by chance and no fee is required to participate and where participation may be subject to a prior obligation to purchase. Such promotional games shall not include gambling activities which involve wagering a stake with monetary value in games of chance, including lotteries and betting transactions.

(i) ‘promotional game’: the offer to participate in a game, in which the winner is designated primarily by chance and no fee is required to participate and where participation may be subject to a prior obligation to purchase. Such promotional games shall not include gambling activities which involve wagering a stake with monetary value in games of chance, including lotteries and betting transactions.

Justification

See Amendment 7.

Amendment 12
Article 2, definitions, point (j)

(j) ‘child’: a person under the age of 14 years;

(j) ‘child’: a person under the age of 14 years ***unless the law provides for a higher age for the sale of certain products;***

Justification

There is a need to take account of other age-limits higher than 14 for certain products.

Amendment 13
Article 3, paragraph 1

1. Member States or non-public regulatory bodies shall not impose:

- a general prohibition on the use or commercial communication of a sales promotion unless required by Community law;*
- a limitation on the value of a sales promotion except for discounts on books;*
- a prohibition on discounts preceding seasonal sales; or*
- a requirement to obtain prior authorisation, or any requirement having equivalent effect, for the use or commercial communication of a sales promotion.*

1. Discounts, premiums and free gifts of unlimited value shall generally be permissible provided that the requirements to provide information set out in detail in the Annex are fulfilled. Exceptions shall apply only where Community law expressly prohibits such a practice.

Justification

Positive wording for this paragraph.

Amendment 14
Article 4

In addition to other information requirements deriving from Community law, the promoter shall ensure that the commercial communication of a sales promotion complies with the requirements set out at Annex to this Regulation. ***All the***

In addition to other information requirements deriving from ***the applicable*** Community law, the promoter shall ensure that the commercial communication of a sales promotion complies with the requirements set out at Annex to this

information requirements set out in Annex shall be provided in a clear and unambiguous manner. The information that the promoter must make available to the client on request must be available on the launch of the relevant sales promotion.

Regulation. ***Failure to comply with the information requirement may be an offence against the prohibition of misleading advertising, depending on the circumstances of the case and the gravity of the failure.*** The information that the promoter must make available to the client on request must be available on the launch of the relevant sales promotion.

Justification

The fact that misleading advertising is prohibited does not automatically mean that failure to provide required information is an offence.

Amendment 15 Article 6, paragraph 1

1. A promoter shall at the request of a court or administrative authority, provide evidence as to the accuracy of the information referred to in Article 4.

1. A promoter shall ***within six months of the end of the commercial communication*** at the request of a court or administrative authority, provide evidence as to the accuracy of the ***sales promotion*** information referred to in Article 4.

Justification

The period of six months for satisfying the request for evidence is enough to allow sales promotions to be scrutinised. Notice is necessary to prevent the requirement to provide evidence from running for an indefinite period.

Amendment 16 Article 6, paragraph 2

2. A promoter shall provide, free of charge, an address to which complaints

deleted

can be directed to him. Where a promoter provides a telephone advice service in connection with a sales promotion, the promoter shall ensure that this is provided free of charge and that appropriate resources are dedicated to its operation.

Justification

Provision free of charge of telephone and postal services is an inappropriate requirement for sales promotions.

Amendment 17
Article 7

Before the end of [...], the Commission shall submit to the European Parliament and the Council a comprehensive report on the application of the Regulation, accompanied, if appropriate, with a proposal for its revision.

Before the end of **2004** the Commission shall submit to the European Parliament and the Council a comprehensive report on the application of the Regulation, accompanied, if appropriate, with a proposal for its revision.

Justification

See Amendment 18.

Amendment 18
Article 8

This Regulation shall enter into force on *the [...] day following that of its publication in the Official Journal of the European Communities.*

This Regulation shall enter into force on **1 January 2004.**

Justification

To allow the national systems to come into line with the more liberal competition provisions of the regulation a longer transitional period is necessary. A report on experience with the new regulation should accordingly also be submitted after the first year (see Amendment 20).

Amendment 19 Annex, point 2.1

2.1. Information to be provided in the commercial communication:

- the exact amount of the discount represented as either a percentage or a unit cost; ***and***
- ***an indication of a sale below cost.***

2.1. Information to be provided in the commercial communication:

- the exact amount of the discount represented as either a percentage or a unit ***cost.***

Justification

Providing information on a sale below cost, whether to the supplier or the consumer, is awkward in the first instance and unnecessary in the second, since under Articles 81 and 82 of the EC Treaty resale price maintenance is indirectly being occasioned or encouraged.

Amendment 20 Annex, point 2.2

2.2. Information to be made available on request unconditional on purchase of the promoted product or service:

- any conditions or limitations applicable to the discount; and
- the preceding price of the promoted good or service ***and the length of time (including dates) that this preceding price was applied.***

2.2. Information to be made available on request unconditional on purchase of the promoted product or service:

- any conditions or limitations applicable to the discount; and
- the preceding price of the promoted good or service, ***if that price has been offered for at least 40 days in the past six months.***

Justification

See Amendment 19.

Amendment 21
Annex, point 2.4

2.4. Information to be made available on request of a manufacturer or a service provider from whom goods or services have been purchased: *deleted*
– *information of a sale below cost in conformity with prior contractual agreements.*

Justification

See Amendment 19.

Amendment 22
Annex, point 3.1

3.1. Information to be provided in the commercial communication: *deleted*
– *the actual value of the free gift or premium; and*
– *any costs associated with obtaining the free gift or premium.*

Justification

There is no reliable definition to show how the actual value is calculated. It is also difficult to

quantify all the costs associated with free gifts or premiums of this kind.

22 May 2002

OPINION OF THE COMMITTEE ON INDUSTRY, EXTERNAL TRADE, RESEARCH AND ENERGY

for the Committee on Legal Affairs and the Internal Market

on the European Parliament and Council Regulation concerning sales promotions in the
Internal Market

(COM(2001) 546 – C5-0475/2001 – 2001/0227(COD))

Draftsman: Christos Folias

PROCEDURE

The Committee on Industry, External Trade, Research and Energy appointed Christos Folias draftsman at its meeting of 19 February 2002.

It considered the draft opinion at its meetings of 23 April and 22 May 2002.

At the last meeting it adopted the following opinion by 20 votes to 10, with 10 abstentions.

The following were present for the vote: Carlos Westendorp y Cabeza, chairman; Peter Michael Mombaur, vice-chairman; Jaime Valdivielso de Cué, vice-chairman; Christos Folias, draftsman; Nuala Ahern, Sir Robert Atkins, Guido Bodrato, David Robert Bowe (for Luis Berenguer Fuster), Marco Cappato, Massimo Carraro, Gérard Caudron, Giles Bryan Chichester, Nicholas Clegg, Willy C.E.H. De Clercq, Concepció Ferrer, Francesco Fiori (for John Purvis), Glyn Ford (for Harlem Désir), Michel Hansenne, Philippe A.R. Herzog (for Konstantinos Alyssandrakis), Hans Karlsson, Bashir Khanbhai, Bernd Lange (for Norbert Glante), Werner Langen, Caroline Lucas, Eryl Margaret McNally, Minerva Melpomeni Malliori (for Rolf Linkohr), Erika Mann, Hans-Peter Martin (for Mechtild Rothe), Marjo Matikainen-Kallström, William Francis Newton Dunn (for Colette Flesch), Angelika Niebler, Reino Paasilinna, Paolo Pastorelli, Elly Plooi-j-van Gorsel, Godelieve Quisthoudt-Rowohl, Imelda Mary Read, Paul Rübig, Umberto Scapagnini, Konrad K. Schwaiger, Gary Titley, W.G. van Velzen, Alejo Vidal-Quadras Roca, Dominique Vlasto, Myrsini Zorba, Olga Zrihen Zaari.

SHORT JUSTIFICATION

The creation of a genuine internal market in the European Union has always been and continues to remain a top priority. After all, the objective of the European Council Lisbon Summit, to establish the EU as the most competitive and dynamic world economy by 2010 cannot be attained without an efficiently running internal market free of any barriers to trade within the EU.

The Communication for a Regulation concerning sales promotions in the internal market has been put forward by the Commission as a means to contribute to the implementation of the ambitious target of Lisbon. It is widely accepted by most of the market players, that any proposal, which aims to achieve the EU's stated target regarding the creation of the internal market is most welcome. However one of the prerequisites of such a proposal, in order to be fully credible has to be result of a wide consultation with the representative bodies of all the market players, which in the case of the proposal in question are consumers, commerce, industry and commercial employees.

Regrettably, this prerequisite does not appear to have been complied with regarding the proposal for sales promotions and it seems that its issuing came to many of the interested parties as somewhat of a surprise. It is noted that sales promotions is too serious a matter for the economy and the market to be dealt with behind desks without a proper dialogue with the opinion of all the market players and the achievement of a broad agreement. The result of this failure to carry out the appropriate consultations is that a fundamental controversy has emerged amongst consumers, commercial SMEs, large surface retailers, etc

The economy and even more so the cross-border market which extends across fifteen member states (soon to be at least 25), requires for the time being an appropriate flexibility in order to function, produce and best serve its purpose, which is to react promptly, effectively and harmoniously to the needs and desires of consumers. Too much rigidity reduces and stifles the breathing space of the market. This is why it is proposed that the question of sales promotions would be the subject of a directive rather than of a regulation.

Discounts for promotional reasons should be offered for limited periods of time, for limited amounts of goods. The amounts of goods should be available in sufficient volume in order to realistically satisfy the demand of the beneficiaries of the promotion, rather than be available in such limited quantities that they disappear within one hour. This is a phenomenon, which reportedly occurs although fortunately not too often.

Moreover, there should be a clear distinction between discounts for promotional reasons and seasonal sales. Seasonal sales are an institution, which allows for the liquidation of stocks before they become totally depreciated.

Regarding sales below cost which are illegal in a number of Member States; this is an issue, which constitutes a virtual time bomb to the very foundations of the European market. There is deep felt concern amongst the millions of commercial SMEs regarding their fate if the Commission's sales below cost proposal is adopted. Experience has shown that where this practice has been taking place, it has led to extensive losses and shop closures. Despite the

existing experience with this practice there has been no consultation with the representatives of SMEs in the EU and of their millions of employees as to the wisdom of proposing legislation providing for sales below cost.

Regarding the application of the principle of mutual recognition if adopted attention should be drawn to the fact that it has the potential to seriously harm and undermine a large number of enterprises. This principle if applied would also lead to a divergence of activities from one Member -State to the other depending on the degree of attraction posed by the legislation of the respective national legislations. Accordingly restrictions on the application of the principle of mutual recognition ought to be considered.

The proposal on sales promotions must take into account the need to provide adequate provisions for the protection of children and adolescents, given their particular vulnerability as consumers.

In conclusion, proposals to achieve the completion of the internal market are absolutely essential. However, it is noted that the prevailing and firm view is that the current proposal on sales promotions, should be withdrawn in its current form and re-tabled after a broad consultation with all parties concerned has taken place, with a view to achieving a degree of consensus. Given the fundamental importance of this issue it would be far better to have a proposal, which would enjoy wide support, rather than trying to legislate on the basis of a proposal which is characterised by the fact that it has created huge controversy.

CONCLUSION

The Committee on Industry, External Trade, Research and Energy calls on the Committee on Legal Affairs and the Internal Market, as the committee responsible, to request the Commission to withdraw its proposal, consult with all parties directly or indirectly concerned and present a new less controversial proposal that will take into consideration the interests of consumers, SMEs and commercial employees.

23 April 2002

OPINION OF THE COMMITTEE ON THE ENVIRONMENT, PUBLIC HEALTH AND CONSUMER POLICY

for the Committee on Legal Affairs and the Internal Market

on the proposal for a European Parliament and Council regulation concerning sales
promotions in the internal market

(COM(2001) 546 – C5-0475/2001 – 2001/0227(COD))

Draftsman: Béatrice Patrie

PROCEDURE

The Committee on the Environment, Public Health and Consumer Policy appointed Béatrice Patrie draftsman at its meeting of 6 November 2001.

It considered the draft opinion at its meetings of 26 February 2002 and 16 April 2002.

At the last meeting it adopted the following amendments by 36 votes to 10, with 5 abstentions.

The following were present for the vote: Caroline F. Jackson, chairman; Alexander de Roo and Anneli Hulthén vice-chairmen; Béatrice Patrie, draftsman; Per-Arne Arvidsson, María del Pilar Ayuso González, Jean-Louis Bernié, Hans Blokland, David Robert Bowe, Martin Callanan, Dorette Corbey, Chris Davies, Anne Ferreira, Francesco Fiori (for Eija-Riitta Anneli Korhola), Marialiese Flemming, Cristina García-Orcóyen Tormo, Laura González Álvarez, Robert Goodwill, Françoise Grossetête, Roger Helmer (for Jorge Moreira da Silva), Marie Anne Isler Béguin, Bernd Lange, Peter Liese, Giorgio Lisi (for John Bowis), Torben Lund, Jules Maaten, Minerva Melpomeni Malliori, Patricia McKenna, Eluned Morgan (for María Sornosa Martínez), Rosemarie Müller, Riitta Myller, Giuseppe Nisticò, Ria G.H.C. Oomen-Ruijten, Mihail Papayannakis, Marit Paulsen, Encarnación Redondo Jiménez (for Raffaele Costa), Frédérique Ries, Dagmar Roth-Behrendt, Guido Sacconi, Giacomo Santini (for Avril Doyle), Karin Scheele, Horst Schnellhardt, Inger Schörling, Catherine Stihler, Robert William Sturdy (for Karl-Heinz Florenz), Nicole Thomas-Mauro, Marianne L.P. Thyssen (for Cristina Gutiérrez Cortines), Antonios Trakatellis, Kathleen Van Brempt, Phillip Whitehead and Stavros Xarchakos (for Christa Kläß).

SHORT JUSTIFICATION

The proposal on sales promotions resolves the debate about the need for a specific measures (common rules for specific sectors) as against a mixed approach (common rules supplemented by specific rules), which was to have been initiated by the Green Paper. Its adoption therefore seems extremely premature and takes little account of the views of interested parties and the EP. It in fact amounts to making the harmonisation of regulations on sales promotions a priority.

In the case of offers and promotions with premiums or free gifts, it is essential to have some indication of the real value of the article or service promoted so that the consumer can assess whether or not the premium or gift is actually being used to ask a higher price for the main product.

Promotional games (free of charge and without any obligation to purchase) are a useful means, among others, of promoting sales without competing with gambling activities which are regulated by the government. Abolishing free entry to games amounts to enabling any operator to organise Europe-wide games of chance, in which the stake is disguised in the price of the product or service. It is essential to re-establish the principle that entry to promotional games is free of charge to avoid a situation in which promotions become merely a pretext to disguise a gambling game as a promotional operation. Games or contests, the real aim of which is not to promote a product, a service or the image of an undertaking, cannot be regarded as sales promotion operations, or authorised as such.

There is no objection to discounts provided there are adequate guarantees of transparency and that the discount is clearly real, i.e. there is some assurance that the old price has actually been applied. It is extremely regrettable that the proposal for a regulation does not include any obligation with regard to the availability of the products or services promoted; this is likely to encourage abuses (customers may be offered another more expensive product). The rules on discounts vary from one Member State to another and, from the point of view of consumers, it is difficult to see the disadvantages of being able to take advantage of price reductions at any time of the year. The proposal for a regulation does not remove the possibility of organising sales (which are also in the interest of retailers) and it is not proposed that this point should be amended.

In five Member States (B, F, GR, L, D) sales below cost are regulated and in the other Member States there are framework regulations. The Commission proposes to ban any restrictions on the amount of reductions, without demonstrating that such restrictions create an obstacle to the single market. Claiming that 'to protect against market destabilising practices, there is the need for suppliers to be informed (...) of the possibility that their goods or services are to be sold on at a loss by a reseller' reflects a somewhat naive view of the actual situation. By adding that suppliers who are concerned that such operations could undermine their brand equity can set conditions in their initial supply contracts to prevent such outcomes or simply refuse to enter into contract with the relevant resellers, the Commission ignores the problems of access to large scale distributors.

The argument that major operators tend to base their marketing campaigns on brand recognition, whereas small and medium-sized businesses are inclined to concentrate on price and customer service, is not valid. Nor is it convincing to claim that consumers have everything to gain from the lowest prices. We are all familiar with the strategy of loss leaders to attract customers in the hope that they will also buy other more expensive items.

It is not clear whether Community rules on the abuse of a dominant position are sufficient to contain competition. Case law states that there is no abuse of a dominant position unless the operation is clearly designed to eliminate a competitor or is carried out systematically. It does not make it possible to take action against agreements between dishonest operators, or predatory behaviour. Consequently, we are not suggesting that it should be authorised at Community level.

It is important not to underestimate the difficulties of applying the principle of mutual recognition: ignorance of foreign law, difficulty of applying foreign law which conflicts with national law, etc. Mutual recognition is likely to lead to deregulation that is harmful to all concerned. Operators subject to legislation providing greater consumer protection will be discriminated against compared with those who are subject to less stringent provisions. Although disparities between legislation undoubtedly impede the development of transfrontier trading, in order to reconcile the requirements of the internal market with the general interest, it is suggested that the principle of mutual recognition should be abandoned and that only those national restrictions that are strictly proportionate to the objective pursued (for example, consumer protection) should be allowed.

Although the ban on compiling personal data relating to children and adolescents without the prior consent of the legal guardian is fully justified, the restrictions applying to premiums and gifts likely to be offered to a child need to be tightened up. It is not only important to protect the physical health of children but also their mental health and stability.

The regulation must provide for effective monitoring of the provisions placing the burden of proof as to the accuracy of information on the promoter. The arrangements for out-of-court settlement of disputes have to comply with a number of principles safeguarding the rights of the consumer: independence, transparency, adversarial principle.

AMENDMENTS

The Committee on the Environment, Public Health and Consumer Policy calls on the Committee on Legal Affairs and the Internal Market, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission¹

Amendments by Parliament

Amendment 1 Request to withdraw

Calls on the Commission to withdraw its proposal and to present, after broad consultation of all interested parties, a new and balanced proposal that takes account of both the interests of the consumer and the need to ensure fair competition.

Justification

Although we support the aim of harmonising legislation on trading practices, almost everyone agrees that a decision on this matter can only be taken after broad consultation. So far no such consultation has taken place. A great many questions arise concerning the speed, form and substance of this proposal, all aspects of which create more problems than they solve, and which creates scope for unfair competition, legal uncertainty and practices that penalise the consumer.

Amendment 2 First citation, legal basis

Having regard to the Treaty establishing the European Community, and in particular Article 95(1) thereof,

Having regard to the Treaty establishing the European Community, and in particular Article 95(1) **and Article 153** thereof,

Justification

Reference should be made to this article of the Treaty, which mentions consumer protection as one of the policies of the European Community.

¹ OJ C not yet published.

Amendment 3
Recital 1

(1) In accordance with Article 14(2) of the Treaty, the internal market comprises an area without internal frontiers in which the free movement of goods, services and the freedom of establishment are ensured; the development of the use and commercial communication of sales promotions within the area without internal frontiers is vital to promote the development of cross-border activities.

(1) In accordance with Article 14(2) of the Treaty, the internal market comprises an area without internal frontiers in which the free movement of goods, services and the freedom of establishment are ensured; the development of the use and commercial communication of sales promotions within the area without internal frontiers is vital to promote the development of cross-border activities, ***provided that steps are taken to ensure a high level of consumer protection.***

Justification

The fact that the main aim is to ensure a high level of consumer protection should be mentioned in the first recital.

Amendment 4
Recital 5

(5) In the absence of uniform rules at Community level, obstacles to cross-border services and goods or the freedom of establishment might be justified in the light of the case-law of the Court of Justice as long as they seek to protect recognised public interest objectives and are proportionate to those objectives; in the light of Community objectives, of the provisions of the Treaty relating to free movement, of secondary Community law, and in accordance with the Commission's policy on commercial communications, such obstacles can only be eliminated by establishing uniform rules at Community level and by clarifying certain legal concepts at Community level to the extent

(5) In the absence of uniform rules at Community level, obstacles to cross-border services and goods or the freedom of establishment might be justified in the light of the case-law of the Court of Justice as long as they seek to protect recognised public interest objectives and are proportionate to those objectives; in the light of Community objectives, of the provisions of the Treaty relating to free movement, of secondary Community law, and in accordance with the Commission's policy on commercial communications, such obstacles can only be eliminated by establishing uniform rules at Community level and by clarifying certain legal concepts at Community level to the extent

necessary for the proper functioning of the Internal Market; other restrictions have been identified as requiring replacement by less restrictive measures; ***remaining restrictions relating to the use and communication of sales promotions should be submitted to the principle of mutual recognition of national legislation.***

necessary for the proper functioning of the Internal Market; other restrictions have been identified as requiring replacement by less restrictive measures.

Justification

See amendment 25.

Amendment 5 Recital 7

(7) This Regulation covers promotional contests or games where the purpose is to encourage the sale of goods or services, other than gambling activities, ***and where payments, if they arise, serve only to acquire the promoted goods or services.*** This excludes gambling activities, such as games of chance, lotteries and betting transactions, which involves wagering a stake with monetary value, from the scope of application.

(7) This Regulation covers promotional contests or games where the purpose is to encourage the sale of goods or services, other than gambling activities. ***Participation in promotional games is not conditional upon any payment or any obligation to purchase.*** This excludes gambling activities, such as games of chance, lotteries and betting transactions, which involves wagering a stake with monetary value, from the scope of application.

Justification

See amendment 10.

Amendment 6
Recital 12

(12) The heightened protection that the Regulation provides by the establishment of these uniform rules allows for the removal of certain national bans or limitations. This removal is necessary to eliminate the barriers to establishment and the export of services as well as the substantial distortions of competition that they give rise to; ***other cross-border barriers to the use and commercial communication of sales promotions are submitted to the application of the principle of mutual recognition of national legislation; requirements at national level which are subject to mutual recognition cover only those relating to the use of sales promotions or references to them in commercial communications and not general requirements on advertising such as those relating to health and ethical claims, advertising for certain products and services, nor requirements relating to other marketing practices.***

(12) The heightened protection that the Regulation provides by the establishment of these uniform rules allows for the removal of certain national bans or limitations. This removal is necessary to eliminate the barriers to establishment and the export of services as well as the substantial distortions of competition that they give rise to. ***The case law of the Court of Justice shall apply to any other barriers.***

Justification

See amendment 25.

Amendment 7
Recital 13

(13) Without verifiable prior consent this Regulation, in order to protect the ***physical*** health of children and consistent with Directive 92/59/EEC, prohibits promoters of free gifts or premiums from dispatching promotional products to children unless the promoters ensure that the products dispatched are not of a nature, ***in view of***

(13) Without verifiable prior consent this Regulation, in order to protect the health of children and consistent with Directive 92/59/EEC, prohibits promoters of free gifts or premiums from dispatching promotional products ***or providing services*** to children unless the promoters ensure that the products dispatched ***or services***

their intrinsic qualities or their packaging (notably through reliance on child-proof packaging), that they could harm a child's physical health.

provided are not of a nature that they could harm a child's health.

Justification

See amendment 27.

Amendment 8
Recital 14

(14) In view of the recognised need for reasons of public health to prevent inciting children and adolescents to drink alcoholic beverages; given the objective underlying the use of sales promotions which is to encourage consumption of promoted products and services, this Regulation bans the offer of free alcoholic beverages as promotional gifts to minors.

(14) In view of the recognised need for reasons of public health to prevent inciting children and adolescents to drink alcoholic beverages *or use tobacco products*; given the objective underlying the use of sales promotions which is to encourage consumption of promoted products and services, this Regulation bans the offer of free alcoholic beverages *or free tobacco products* as promotional gifts to minors.

Justification

Self-explanatory.

Amendment 9
Recital 15

(15) *Commercial communications of sales promotions for tobacco products and restrictions thereon are addressed in the proposed Directive on advertising and sponsorship of tobacco products*

deleted

Justification

Self-explanatory.

Amendment 10
Article 2, paragraph (a)

(a) ‘commercial communication’: any form of communication designed to promote, directly or indirectly, the goods, services or image of a company, organisation or person pursuing a commercial, industrial or craft activity or exercising a regulated profession. The following do not constitute commercial communications:

(a) ‘commercial communication’: any form of communication designed to promote, directly or indirectly, ***for a limited period of time***, the goods, services or image of a company, organisation or person pursuing a commercial, industrial or craft activity or exercising a regulated profession. The following do not constitute commercial communications:

Justification

Promotional contests and games must be complementary to some other economic activity. The aim is to ban gambling activities that are disguised as sales promotions. For the same reason, permanent promotional games should not be allowed.

Amendment 11
Article 2, paragraph (a), second indent a (new)

- the organisation of promotional contests or games when the promoter’s real aim is not to promote, directly or indirectly, goods, services or the image of an undertaking, an organisation or a person with a commercial, industrial or craft activity or exercising a regulated profession, but to make a profit by running a gambling activity disguised as a sales promotion operation;

Justification

See amendment 10.

Amendment 12
Article 2, paragraph (c)

(c) ‘promoter’: a user of a sales promotion, meaning a company, organisation or person by whom or on whose behalf a sales promotion is undertaken;

(c) ‘promoter’: a user of a sales promotion, meaning a company, organisation or person by whom or on whose behalf a sales promotion is undertaken, ***unless the person is carrying out an operation mentioned in the last subparagraph of paragraph (a) above;***

Justification

See amendment 10.

Amendment 13
Article 2, paragraph (e), first indent

– a price reduction;

– a price reduction; ***the price on which the reduction is based cannot exceed the lowest price actually applied by the promoter for a similar article or service, in the same retail establishment during the last 30 days before the start of the operation;***

Justification

There must be no doubt whatsoever that the reduction is genuine. This means, for example, that a reduction calculated on the basis of an old price cannot be regarded as a genuine reduction if that price has never actually been applied by the promoter or if the product or service has recently been offered for sale at a lower price than the old reference price on the basis of which the reduction has been calculated. Consequently, it is necessary to establish this reference price framework.

Amendment 14

Article 2, paragraph (e), third indent a (new)

- ***any promotional price reduction must be backed up by the existence of a sufficient supply of the relevant article or service throughout the period of the promotion;***

Justification

The promoter must be placed under an obligation in respect of the availability for sale of the products or services covered by the price reduction advertised.

Amendment 15

Article 2, paragraph (f)

- | | |
|---|--|
| (f) 'free gift': the temporary offer to provide free of charge a good or service independently of <i>an obligation to purchase a good or service of an identical type;</i> | (f) 'free gift': the temporary offer to provide free of charge a good or service independently of <i>any obligation to purchase whatsoever;</i> |
|---|--|

Justification

Self-explanatory.

Amendment 16
Article 2, paragraph (i)

(i) ‘promotional game’: the temporary offer to participate in a game, in which the winner is designated primarily by chance and no fee is required to participate and where participation ***may be*** subject to a prior obligation to purchase. Such promotional games shall not include gambling activities which involve wagering a stake with monetary value in games of chance, including lotteries and betting transactions.

(i) ‘promotional game’: the temporary offer to participate in a game, in which the winner is designated primarily by chance and no fee is required to participate and where participation ***is not*** subject to a prior obligation to purchase. Such promotional games shall not include gambling activities which involve wagering a stake with monetary value in games of chance, including lotteries and betting transactions.

Justification

Removing free entry to games amounts to allowing any operator to organise Europe-wide gambling activities, and games of chance, without being subject to national supervisory arrangements, with the stake wagered being hidden in the price of the product or service. If this were to happen, the product or service promoted would become merely a pretext disguising a gambling activity as a promotional operation. It is therefore necessary to re-state the principle that entry to promotional games is free of charge.

Amendment 17
Article 2, paragraph (j)

(j) ‘child’: a person under the age of **14** years;

(j) ‘child’: a person under the age of **16** years;

Justification

Protection against sales promotions should be extended to children over the age of 14.

Amendment 18
Article 2, paragraph (k a) new

(ka) ‘tobacco products’: tobacco products within the meaning of Article 2.1 of Directive 2001/37/EC’.

Justification

Same definition as in related legislation.

Amendment 19
Article 3, paragraph 1

1. Member States or non-public regulatory bodies shall not impose:

1. Subject to the provisions laid down in paragraph 2 below, Member States or non-public regulatory bodies shall not impose:

Justification

Below cost selling or resale do not constitute sales promotion but anti-competitive trading practices, which are illegal in most Member States of the European Union.

Amendment 20
Article 3, paragraph 1, second indent

– a limitation on the value of a sales promotion except for discounts on books;

deleted

Justification

See explanatory statement, section on loss-leaders. The benefits of stopping Member States from being able to ban loss-leaders have not been demonstrated either in terms of the

harmonious development of trade in a climate of fair and transparent competition, or from the point of view of protection of European consumers.

Amendment 21
Article 3, paragraph 1, indent 3

- ***a prohibition on discounts
preceding seasonal sales;*** ***deleted***

Justification

The ban on below cost selling, which exists in half the Member States, is a useful instrument which protects consumers' interests and at the same time helps to combat unfair trading practices and conditions of competition.

Amendment 22
Article 3, paragraph 1, indent 4

- requirement to obtain prior authorisation, or any requirement having equivalent effect, for the use or commercial communication of a sales promotion.
- a requirement to obtain prior authorisation, or any requirement having equivalent effect, for the use or commercial communication of a sales promotion.
However, this provision shall not prevent Member States from making the use or communication of specific sales promotion operations conditional upon prior notification of a designated government department.

Justification

A notification requirement for specific sales promotion measures encourages compliance with the law. It can be assumed that the Member State will use this option in a sensible way.

Amendment 23
Article 3, paragraph 1 a (new)

1a. As a derogation, the provisions of this article shall not apply to tobacco products and tobacco brands.

Justification

In conformity with the principle enshrined in the Treaty on protection of public health, it is justified to make a derogation for tobacco products and tobacco brands as no single other product legally sold in the European Union does more harm to public health. This amendment aims to encourage Member States to go further in order to combat smoking and promote human health.

Amendment 24
Article 3, paragraph 1 b (new)

1b. This article shall be without prejudice to national provisions on below-cost selling and resale.

Justification

Sales of this kind are against the interests of the consumer in that they are misleading with regard to the value of the saving and the article in general; below cost selling changes the consumer's perception of high-quality branded products. Below cost selling puts large-scale distributors at an advantage compared to small distributors, who are not able to offset below cost sales with higher margins on other products because, in overall terms, they sell fewer branded products and smaller quantities of any one brand. Below cost selling causes distortion of competition between producers and distributors, who often develop their own markets where below cost selling does not apply in order to avoid reducing their margins.

Amendment 25
Article 3, paragraph 2

2. Member States or non-public regulatory bodies shall neither restrict the freedom to provide services nor restrict the free movement of goods benefiting from the use of sales promotions on the grounds of the use of sales promotions and references to them in commercial communications;

2. In the absence of uniform regulations, and in order to satisfy the imperatives of fair trade and consumer protection, the Member States are authorised to apply their national legislation to sales promotion operations carried out in their territory, and to the movement of goods covered by such sales promotion operations.

Justification

The original provision is difficult to apply in practice (consumers know nothing whatsoever about foreign law, it is difficult for a national judge to apply foreign law which conflicts with national law, etc), the principle of mutual recognition could well lead to deregulation that is harmful both to economic operators and consumers because operators who are subject to the law of Member States with legislation providing greater consumer protection will necessarily be discriminated against compared with foreign operators who are subject to less stringent provisions and will therefore be tempted to pressurise their governments to bring their national legislation into line with more liberal legislation. Intra-European relocation of salespeople, attracted by a more flexible legal framework providing less consumer protection, could also be expected if the principle of mutual recognition were adopted in this case.

The new wording will allow only those national restrictions that are proportionate to the objective, in particular that of consumer protection and, consequently, will not give rise to purely protectionist measures.

Amendment 26 Article 4

4. Information to be provided in respect of sales promotions

In addition to other information requirements deriving from Community law, the promoter shall ensure that the commercial communication of a sales promotion complies with the requirements set out at Annex to this Regulation. All the information requirements set out in Annex shall be provided in a clear and unambiguous manner. The information that the promoter must make available to the

4. Information to be provided in respect of sales promotions

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client on request must be available on the **launch** of the relevant sales promotion.

client on request must be available on the **starting date** of the relevant sales promotion.

Justification

Clarification; a sales promotion action is often preceded by 'teaser campaigns'. The information that the promoter is required to make available to the client on request must be available as soon as the sales promotion as such really begins, i.e. on the actual starting date.

Amendment 27
Article 5, paragraph 2

2. A promoter is prohibited from providing directly to a child a free gift or a premium if it is of a nature that could harm its **physical** health.

2. A promoter is prohibited from providing directly to a child a free gift, a premium **or a service** if it is of a nature that could harm its health.

Justification

Looking beyond concerns relating to the physical health of children, is also important to ban gifts of products or services which might harm a child's mental health or state of mind, for instance certain video games that glamorise or condone violence. Referring simply to the 'health' of the child, without specifying physical health, covers all possible scenarios.

Amendment 28
Article 5, paragraph 3

3. A promoter is prohibited from providing a free gift consisting of an alcoholic beverage to individuals under the age of 18.

3. A promoter is prohibited from providing a free gift consisting of an alcoholic beverage **or a tobacco product** to individuals under the age of 18.

Justification

Self-explanatory.

Amendment 29
Article 6, paragraph -1 (new)

-1. Member States or non-public regulatory bodies shall ensure compliance with this Regulation and in particular the rules on transparency laid down in point 4 of the Annex to this Regulation. Member States may provisionally suspend sales promotion operations if the following conditions are fulfilled:

(a) a sales promotion operation coming from another Member State manifestly infringes any provision of this Regulation;

(b) during the previous 12 months, the undertaking responsible for the sales promotion operation has infringed the same provision on at least two prior occasions;

(c) the Member State concerned has notified the undertaking responsible for the sales promotion operation and the Commission in writing of the alleged infringements and of its intention to restrict the sales promotion operation in its territory should any such infringement occur again;

(d) consultations with the original State and the Commission have not produced an amicable settlement within 15 days of the notification provided for in point (c), and the alleged infringement persists.

The Commission shall ensure that the suspension is compatible with Community law. It may ask the Member State concerned to put an end to a suspension which is contrary to Community law, as a matter of urgency. This provision is without prejudice to the application of any procedure, remedy or sanction to the infringements in question in the Member State which has jurisdiction over the undertaking responsible for the sales promotion operation concerned.

Justification

Member States should have powers of control similar to those conferred on them in the television broadcasting sphere by Article 2 of Council Directive 89/552/EEC of 3 October 1989.

Amendment 30 Article 6, paragraph 1

1. A promoter shall at the request of a court or administrative authority, provide evidence as to the accuracy of the information referred to in Article 4.

1. A promoter shall at the request of a court or administrative authority ***or a consumer protection organisation, and if there are grounds for doubting the accuracy of the information referred to in Article 4,*** provide evidence as to the accuracy of the information referred to in Article 4.

Justification

Consumer protection organisations must also be able to require promoters to provide proof of the accuracy of information provided.

Amendment 31 Article 6, paragraph 2

2. A promoter shall provide, free of charge, an address to which complaints can be directed to him. Where a promoter provides a telephone advice service in connection with a sales promotion, the promoter shall ensure that this is provided free of charge and that appropriate resources are dedicated to its operation.

2. A promoter shall provide, free of charge, an address to which complaints can be directed to him. Where a promoter provides a telephone advice service in connection with a sales promotion, the promoter shall ensure that this is provided free of charge and that appropriate resources are dedicated to its operation. ***Complaints must be dealt with fairly, effectively, transparently and in***

confidence. The promoter must acknowledge receipt of complaints within a week.

Justification

Calls to a telephone advice service must be free of charge. It is also important to specify a number of criteria for dealing with complaints and to impose a short deadline for acknowledging receipt of complaints.

Amendment 32
Article 6, paragraph 2 a (new)

2a. The promoter shall subscribe to an out-of-court dispute settlement system complying with Commission recommendation 98/257/EC or Commission recommendation 2001/310/EC.

Justification

The Commission recommendation on the principles applying to the bodies responsible for out-of-court settlement of consumer disputes (98/257/EC) stipulates that all existing bodies and bodies to be created with responsibility for the out-of-court settlement of consumer disputes must comply with a certain number of principles (independence, transparency, adversarial principle, effectiveness, legality, liberty and representation).

Amendment 33
Article 6, paragraph 3

3. A promoter shall respond to an initial complaint relating to a sales promotion, within ***six*** weeks of the promoter's receipt of that complaint. The initial complaint and ***the*** response shall be in writing, which may

3. A promoter shall respond to an initial complaint relating to a sales promotion, within ***four*** weeks of the promoter's receipt of that complaint ***in the language of the communication of the sales***

include by electronic means. ***The response shall be in the language of the communication of the sales promotion.***

promotion or in the language of the country where the communication took place, in accordance with the regulations of the relevant Member State. The initial complaint and ***each*** response shall be in writing, which may include by electronic means.

Justification

Consumers should be entitled to receive a reply to their complaint in their own language and not only in that of the communication of the sales promotion.

Amendment 34 Article 6, paragraph 4, first indent

- indicate in the commercial communication relating to the sales promotion any out of court dispute settlement system ***or code of conduct*** that he/she subscribes to; and

- indicate in the commercial communication relating to the sales promotion any out of court dispute settlement system that he/she subscribes to ***and mention that, in any event, the consumer can always refer the matter to the courts;*** and

Justification

It should be made clear to consumers that they are entitled to refer the matter to the court responsible at any time if the out-of-court settlement scheme does not suit them or they do not consider the outcome satisfactory.

Amendment 35 Article 6, paragraph 4, indent 1 a (new)

If the consumer has not obtained satisfaction from his initial complaint, to provide information concerning the out-

of-court dispute settlement system to which he has subscribed.

Justification

Follows on from Amendment 32.

Amendment 36
Article 7

Before the end of [...], the Commission shall submit to the European Parliament and the Council a comprehensive report on the application of the Regulation, accompanied, if appropriate, with a proposal for its revision.

Within three years of the entry into force of this Regulation, the Commission shall submit to the European Parliament and the Council a comprehensive report on the application of the Regulation, accompanied, if appropriate, with a proposal for its revision.

Justification

Three years should be enough time to make the assessment and, if necessary, propose changes to the regulation.

Amendment 37
Annex 2.1, 2nd indent, (a) (new)

- *a precise indication of the period in which the reduction applies and for which the promoter has a sufficient stock available.*

Justification

The consumer needs this information.

Amendment 38
ANNEX, 4.1, fourth indent

– any requirements for proof of purchase; *deleted*

Justification

A certain amount of essential information must be provided in the promotional literature, irrespective of any request from the consumer. In the case of promotional games, the promotional literature must also stipulate that participation is free of charge.

Amendment 39
ANNEX, 4.2, second indent

- the number of prizes which may be won *deleted*
and the number of prizes of any one type
if more than one type of prize is on offer;

Justification

Cf amendment 38. The information should be provided in the commercial communication itself.

Amendment 40
ANNEX, 4.2, fifth indent

- the criteria for judging entries; *deleted*

Justification

Cf amendment 38. The information should be provided in the commercial communication itself.

Amendment 41
ANNEX, 4.2, sixth indent

the selection procedure for the award of prizes and, where the selection is made by jury, the composition of the jury;

where the selection is made by jury, the composition of the jury;

Justification

Cf amendment 38. The information should be provided in the commercial communication itself.

Amendment 42
ANNEX, 4.2, seventh indent

– ***the date of the results and the manner in which they are to be announced;*** ***deleted***

Justification

Cf amendment 38. The information should be provided in the commercial communication itself.

Amendment 43
ANNEX, 4.2, eighth indent

- the means by which prizes may be delivered or collected and any associated costs; ***deleted***

Justification

Cf amendment 38. The information should be provided in the commercial communication itself.

Amendment 44
ANNEX, 4.2, ninth indent

- the time period during which prizes must be collected; ***deleted***

Justification

Cf amendment 38. The information should be provided in the commercial communication itself.

Amendment 45
ANNEX, 4.2, tenth indent

– any intention and conditions to use winners in post event publicity; ***deleted***

Justification

Cf amendment 38. The information should be provided in the commercial communication itself.

