

15 April 2004

A5-0188/106

**AMENDMENT 106**

by Manuel Medina Ortega and Fiorella Ghilardotti, on behalf of the PSE Group

**Report**

**A5-0188/2004**

**Fiorella Ghilardotti**

Unfair business-to-consumer commercial practices

Proposal for a directive (COM(2003) 356 – C5-0288/2003 – 2003/0134(COD))

Text proposed by the Commission

Amendment by Parliament

Amendment 106  
Recital 13 a (new)

*Since the most vulnerable consumers are those most likely to be the victims of the unfair commercial practices covered by this Directive, it is appropriate that their interests as consumers be protected, due regard being had, according to the circumstances of the case, to factors such as age (for example minors and the elderly), particular physical or mental conditions (for example maternity or bereavement) and level of literacy. To this end, it is necessary to prevent undue exploitation of the vulnerable characteristics of a particular group of consumers. In addition, personal characteristics which make individuals particularly vulnerable, such as physical or mental disabilities, ought to be taken into account in cases of direct relations with individual consumers, such as door-to-door sales or solicitations or harassment directed towards individual consumers before, during and after the conclusion of a contract.*

Or. it

*Justification*

*The directive should define the concept of 'the most vulnerable consumers' and take account of the particular circumstances to which they may be exposed.*

15 April 2004

A5-0188/107

**AMENDMENT 107**

by Manuel Medina Ortega and Fiorella Ghilardotti, on behalf of the PSE Group

**Report**

**A5-0188/2004**

**Fiorella Ghilardotti**

Unfair business-to-consumer commercial practices

Proposal for a directive (COM(2003) 356 – C5-0288/2003 – 2003/0134(COD))

Text proposed by the Commission

Amendment by Parliament

Amendment 107  
Article 2, point (b)

(b) ‘average consumer’ means the consumer who is reasonably well informed and reasonably observant and circumspect;

(b) ‘average consumer’ means the consumer who is reasonably well informed and reasonably observant and circumspect, ***taking account of social, cultural and linguistic circumstances.***

Or. it

*Justification*

*This amendment takes account of the Court of Justice's case law relating to the definition of consumer.*

15 April 2004

A5-0188/108

**AMENDMENT 108**

by Manuel Medina Ortega and Fiorella Ghilardotti, on behalf of the PSE Group

**Report**

**A5-0188/2004**

**Fiorella Ghilardotti**

Unfair business-to-consumer commercial practices

Proposal for a directive (COM(2003) 356 – C5-0288/2003 – 2003/0134(COD))

Text proposed by the Commission

Amendment by Parliament

Amendment 108  
Article 2, point (j)

(j) 'Professional diligence' means the measure of special skill and care exercised by a trader commensurate with the requirements of normal market practice towards consumers in his field of activity in the internal market.

(j) 'Professional diligence' means the measure of special skill and care exercised by a trader commensurate with the requirements of normal market practice towards consumers in his field of activity in the internal market ***and the requirements of good faith in line with the provisions laid down in Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts***<sup>1</sup>;

<sup>1</sup> *OJ L 95, 21.4.1993, p. 29.*

Or. it

*Justification*

*The general clause should be based on precise and objective criteria in order to avoid differing interpretations in the legislation or case law of the Member States (simply inserts reference).*

15 April 2004

A5-0188/109

**AMENDMENT 109**

by Manuel Medina Ortega and Fiorella Ghilardotti, on behalf of the PSE Group

**Report**

**A5-0188/2004**

**Fiorella Ghilardotti**

Unfair business-to-consumer commercial practices

Proposal for a directive (COM(2003) 356 – C5-0288/2003 – 2003/0134(COD))

Text proposed by the Commission

Amendment by Parliament

Amendment 109

Article 4, paragraphs 2 a and 2 b (new)

*2a. By way of derogation, for a period of five years from the transposition of the directive, Member States shall be able to take national measures in the sector harmonised by this directive which are more rigorous or restrictive than those of the directive, and on the basis of the minimum harmonisation clauses contained in existing directives, in sectors harmonised by those directives. These measures must be aimed at ensuring that consumers are adequately protected against unfair commercial practices and must be proportionate to the objective pursued.*

*2b. Member States shall notify the Commission without delay of national measures referred to in paragraph 2a .*

Or. it

*Justification*

*Temporary derogations are required to take account of disparities between national protection rules.*

15 April 2004

A5-0188/110

**AMENDMENT 110**

by Manuel Medina Ortega and Fiorella Ghilardotti, on behalf of the PSE Group

**Report**

**A5-0188/2004**

**Fiorella Ghilardotti**

Unfair business-to-consumer commercial practices

Proposal for a directive (COM(2003) 356 – C5-0288/2003 – 2003/0134(COD))

Text proposed by the Commission

Amendment by Parliament

Amendment 110  
Article 5, paragraph 2, indent 2

- it materially distorts or is likely to materially distort the economic behaviour with regard to the product of the average consumer whom it reaches or to whom it is addressed, or of the average member of the group when a commercial practice is specifically directed to a particular group of consumers.

- it materially distorts or is likely to materially distort the economic behaviour with regard to the product of the average consumer whom it reaches or to whom it is addressed, or of the average member of the group when a commercial practice is specifically directed to a particular group of consumers. ***The need to protect particularly vulnerable consumers must, however, be safeguarded.***

Or. it

*Justification*

*Self-explanatory.*

15 April 2004

A5-0188/111

**AMENDMENT 111**

by Manuel Medina Ortega and Fiorella Ghilardotti, on behalf of the PSE Group

**Report**

**A5-0188/2004**

**Fiorella Ghilardotti**

Unfair business-to-consumer commercial practices

Proposal for a directive (COM(2003) 356 – C5-0288/2003 – 2003/0134(COD))

Text proposed by the Commission

Amendment by Parliament

Amendment 111  
Article 9, point (c)

(c) the use by the trader of any specific misfortune or circumstance *of such gravity* as to impair the consumer's judgement, of which the trader is aware, to influence the consumer's decision with regard to the product;

(c) the use by the trader of any specific misfortune or circumstance *resulting in such vulnerability* as to impair the consumer's judgement, of which the trader is aware, to influence the consumer's decision with regard to the product;

Or. it

*Justification*

*Self-explanatory.*

15 April 2004

A5-0188/112

**AMENDMENT 112**

by Manuel Medina Ortega and Fiorella Ghilardotti, on behalf of the PSE Group

**Report**

**A5-0188/2004**

**Fiorella Ghilardotti**

Unfair business-to-consumer commercial practices

Proposal for a directive (COM(2003) 356 – C5-0288/2003 – 2003/0134(COD))

Text proposed by the Commission

Amendment by Parliament

Amendment 112  
Citation 1

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

Having regard to the Treaty establishing the European Community, and in particular *Articles 95 and 153* thereof,

Or. it

*Justification*

*It is advisable to add Article 153 TEC as a legal basis to take account of the consumer protection objectives of the directive.*