

EUROPEAN PARLIAMENT

1999



2004

Session document

FINAL
A5-0188/2004

18 March 2004

*****I**

REPORT

on the proposal for a European Parliament and Council directive concerning unfair business-to-consumer commercial practices in the Internal Market and amending Directives 84/450/EEC, 97/7/EC and 98/27/EC (the Unfair Commercial Practices Directive)
(COM(2003) 356 – C5-0288/2003 – 2003/0134(COD))

Committee on Legal Affairs and the Internal Market

Rapporteur: Fiorella Ghilardotti

Draftsman (*):

Phillip Whitehead, Committee on the Environment, Public Health and Consumer Policy

(*) Enhanced cooperation between committees – Rule 162a

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.

CONTENTS

	Page
PROCEDURAL PAGE	4
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION	5
EXPLANATORY STATEMENT	45
OPINION OF THE COMMITTEE ON THE ENVIRONMENT, PUBLIC HEALTH AND CONSUMER POLICY (*).....	48

(*) Enhanced cooperation between committees – Rule 162a

PROCEDURAL PAGE

By letter of 18 June 2003 the Commission submitted to Parliament, pursuant to Articles 251(2) and 95 of the EC Treaty, the proposal for a European Parliament and Council directive concerning unfair business-to-consumer commercial practices in the Internal Market and amending Directives 84/450/EEC, 97/7/EC and 98/27/EC (the Unfair Commercial Practices Directive) (COM(2003) 356 – 2003/0134(COD)).

At the sitting of 1 September 2003 the President of Parliament announced that he had referred the 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 (C5-0288/2003).

At the sitting of 15 October 2003 the President of Parliament announced that the Committee on the Environment, Public Health and Consumer Policy, which had been asked for its opinion, would be involved in the drafting of the report under Rule 162a.

The Committee on Legal Affairs and the Internal Market appointed Fiorella Ghilardotti rapporteur at its meeting of 11 September 2003.

The committee considered the Commission proposal and draft report at its meetings of 6 November 2003, 2 December 2003, 22 January 2004, 18 February 2004, 8 March 2004 and 17 March 2004.

At the last meeting it adopted the draft legislative resolution by 27 votes to 2.

The following were present for the vote: Giuseppe Gargani (chairman), Willi Rothley (vice-chairman), Ioannis Koukiadis (vice-chairman), Elena Ornella Paciotti (acting rapporteur), Uma Aaltonen, Paolo Bartolozzi, Maria Berger, Ward Beysen, Bert Doorn, Francesco Fiori (for Lord Inglewood, pursuant to Rule 153(2)), Marie-Françoise Garaud, Malcolm Harbour, Hans Karlsson (for Carlos Candal), Piia-Noora Kauppi (for Janelly Fourtou), Kurt Lechner, Sir Neil MacCormick, Toine Manders, Arlene McCarthy, Manuel Medina Ortega, Marcelino Oreja Arburúa (for Klaus-Heiner Lehne), Barbara O'Toole (for Evelyne Gebhardt), Anne-Marie Schaffner, Francesco Enrico Speroni (for Alexandre Varaut), Marianne L.P. Thyssen, Gary Titley (for Bill Miller, pursuant to Rule 153(2)), Ian Twinn (for Rainer Wieland), Diana Wallis, Phillip Whitehead (for François Zimeray, pursuant to Rule 153(2)) and Joachim Wuermeling.

The opinion of the Committee on the Environment, Public Health and Consumer Policy is attached.

The report was tabled on 18 March 2004.

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a European Parliament and Council directive concerning unfair business-to-consumer commercial practices in the Internal Market and amending Directives 84/450/EEC, 97/7/EC and 98/27/EC (the Unfair Commercial Practices Directive)

(COM(2003) 356 – C5-0288/2003 – 2003/0134(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2003) 356)¹,
 - having regard to Articles 251(2) and 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0288/2003),
 - 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 (A5-0188/2004),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends 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 Recital 6

(6) This Directive is without prejudice to individual actions brought by **individuals** who have been harmed by an unfair commercial practice. It is also without prejudice to Community and national rules on contract law, intellectual property rights, rules relating to the health and safety aspects of products and to Community competition rules and the national provisions implementing them.

(6) This Directive is without prejudice to individual actions brought by **those** who have been harmed by an unfair commercial practice. It is also without prejudice to Community and national rules on contract law, intellectual property rights, rules relating to the health and safety aspects of products and to Community competition rules and the national provisions implementing them.

¹ Not yet published in OJ.

Justification

The directive relates only to business-to-consumer practices. Without changing its scope, it must be made clear that this directive does not prevent a trader from taking legal action against trading practices by another trader that infringe the directive and amount to unfair practice in 'business to business' relations.

Amendment 2 Recital 8

(8) The high level of convergence achieved by the approximation of national provisions through this Directive creates a high common level of consumer protection. The Directive ***establishes a single general prohibition of*** unfair commercial practices distorting consumers' economic behaviour. It also sets rules on aggressive commercial practices, which are currently not regulated at EU level. The harmonisation achieved and the high common level of consumer protection create in turn the conditions to make the principle of mutual recognition applicable in the field co-ordinated by the Directive.

(8) The high level of convergence achieved by the approximation of national provisions through this Directive creates a high common level of consumer protection. The Directive ***prohibits*** unfair commercial practices distorting consumers' economic behaviour. It also sets rules on aggressive commercial practices, which are currently not regulated at EU level. The harmonisation achieved and the high common level of consumer protection create in turn the conditions to make the principle of mutual recognition applicable in the field co-ordinated by the Directive.

Amendment 3 Recital 8

(8) The high level of convergence achieved by the approximation of national provisions through this Directive creates a high common level of consumer protection. The Directive establishes a single general prohibition of unfair commercial practices distorting consumers' economic behaviour. It also sets rules on aggressive commercial practices, which are currently not regulated at EU level. The harmonisation achieved and the high common level of consumer protection create in ***turn*** the conditions to make the principle of mutual recognition applicable in the field co-ordinated by the Directive.

(8) The high level of convergence achieved by the approximation of national provisions through this Directive creates a high common level of consumer protection. The Directive establishes a single general prohibition of unfair commercial practices distorting consumers' economic behaviour. It also sets rules on aggressive commercial practices, which are currently not regulated at EU level. The harmonisation achieved and the high common level of consumer protection ***it aims to*** create ***will in time produce*** the conditions to make the principle of mutual recognition applicable in the field co-ordinated by the Directive.

Justification

The circumstances do not yet exist in which the mutual recognition approach can operate and ensure a high level of consumer protection, one of the two central aims of this Directive. It will take time for these circumstances to take root.

Amendment 4 Recital 10

(10) In order to achieve the Community's objectives through the removal of internal market barriers it is necessary to **replace** Member States' existing, divergent general clauses and legal principles. This Directive therefore **establishes a single, common general prohibition, covering** unfair commercial practices distorting consumers' economic behaviour. The general prohibition is elaborated by rules on the two types of commercial practices which are by far the most common, namely misleading commercial practices and aggressive commercial practices.

(10) In order to achieve the Community's objectives through the removal of internal market barriers it is necessary to **harmonise** Member States' existing, divergent general clauses and legal principles. This Directive therefore **includes a prohibition of** unfair commercial practices distorting consumers' economic behaviour. The general prohibition is elaborated by rules on the two types of commercial practices which are by far the most common, namely misleading commercial practices and aggressive commercial practices.

Amendment 5 Recital 10

(10) In order to achieve the Community's objectives through the removal of internal market barriers it is necessary to replace Member States' existing, divergent general clauses and legal principles. This Directive therefore establishes a single, common general prohibition, covering unfair commercial practices distorting consumers' economic behaviour.

(10) In order to achieve the Community's objectives through the removal of internal market barriers it is necessary to replace Member States' existing, divergent general clauses and legal principles. This Directive therefore establishes a single, common general prohibition, covering unfair commercial practices distorting consumers' economic behaviour. ***In order to achieve its consumer protection objective and to support consumer confidence the general prohibition applies equally to unfair commercial practices which occur outside any contractual relationship between the trader and the consumer or following the conclusion of a contract and during its***

The general prohibition is elaborated by rules on the two types of commercial practices which are by far the most common, namely misleading commercial practices and aggressive commercial practices.

execution.

The general prohibition is elaborated by rules on the two types of commercial practices which are by far the most common, namely misleading commercial practices and aggressive commercial practices.

Justification

The definition and scope of transactional decisions was not made explicit in this recital and in the draft Directive.

Amendment 6
Recital 11

(11) It is desirable that misleading commercial practices cover those practices, including misleading advertising, which by deceiving the consumer prevent him from making an informed and thus efficient choice. In conformity with the laws and practices of the Member States on misleading advertising, the Directive classifies misleading practices into misleading actions and misleading omissions. In respect of the omissions, the directive sets out a number of key information which the consumer needs to make an informed transactional decision. Such information will not have to be disclosed in all advertisements, but only where the trader makes an invitation to purchase, which is a concept clearly defined in the Directive.

(11) It is desirable that misleading commercial practices cover those practices, including misleading advertising, which by deceiving the consumer prevent him from making an informed and thus efficient choice. ***It is not the intention of the Directive to reduce consumer choice by disallowing or restricting the promotion of cheaper "lookalike" products except insofar as the consumer needs protection against implicit or explicit attempts to mislead by "passing off".*** In conformity with the laws and practices of the Member States on misleading advertising, the Directive classifies misleading practices into misleading actions and misleading omissions. In respect of the omissions, the directive sets out a number of key information which the consumer needs to make an informed transactional decision. Such information will not have to be disclosed in all advertisements, but only where the trader makes an invitation to purchase, which is a concept clearly defined in the Directive.

Or. en

Amendment 7
Recital 11 a (new)

(11a) The commercial practices found in Annex 1 shall in all circumstances be regarded as unfair. Member States shall transpose Annex 1 in its entirety without modification, deletions, or additions. The European Commission shall regularly report to the European Parliament and Council of Ministers on the application of the Directive, including Annex 1, and when necessary propose a revision of the Directive in accordance the procedures laid down in Article 251 of the Treaty.

Justification

To ensure legal certainty following adoption Member States must not be allowed to deviate from the list of prohibited practices during or after transposition. To do so would serve to undermine harmonisation and introduce legal discrepancies for consumers and traders alike.

Unfair practices not included in the list at adoption will be caught by the general clause and the three tests contained therein. This does not mean that the blacklist would not be open to periodic amendment as envisaged in the rapporteur's amendment 16. Any such revision, however, must take place using the full codecision procedure laid down in Article 251 of the Treaty.

Amendment 8 Recital 13_

(13) This Directive codifies the average consumer test elaborated by the European Court of Justice. Pursuant to the Court of Justice case law national courts will in applying the test also take social, cultural or linguistic factors into account. Where a commercial practice is specifically aimed at a particular group of consumers, *such as children*, it is desirable that the impact of the commercial practice is assessed from the perspective of the average member of that group.

(13) This Directive codifies the average consumer test elaborated by the European Court of Justice. Pursuant to the Court of Justice case law national courts will in applying the test also take *economic*, social, cultural or linguistic factors into account. Where a commercial practice is specifically aimed at a particular group of consumers, it is desirable that the impact of the commercial practice is assessed from the perspective of the average member of that group. *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 the consumer's age, infirmity,*

mental state and level of literacy.

Justification

In this Directive it is necessary to have regard for the circumstances in which particular consumers may be vulnerable to an extent not covered by the test based on the judgments of the ECJ.

Amendment 9

Recital 14

(14) It is appropriate to provide a role for codes of conduct, which enable traders to ***apply*** the principles of the directive ***effectively in specific economic fields. Such codes may be helpful to national authorities in determining the requirements of professional diligence in a particular sector. The control exercised by code owners at national or Community level to eliminate unfair commercial practices may avoid the need for recourse to administrative or judicial action and should therefore be encouraged.***

(14) It is appropriate to provide a role for codes of conduct, which enable traders to ***establish self-binding rules according to*** the principles of this directive. ***The establishment and the use of these codes and of the firm commitments within them should respect the requirements established by competition law.***

Justification

This amendment aims at making it clear that codes of conduct are only voluntarily accepted rules. They cannot replace either legislation or jurisprudence. Furthermore, codes of conduct must fit into competition law. This means that there must be free access to the code of conduct and that, if participation in a business association is obligatory, the drafting of a code of conduct must be subject to transparent and democratic rules.

Amendment 10

Recital 14

(14) It is appropriate to provide a role for codes of conduct, which enable traders to apply the principles of the directive effectively in specific economic fields. Such codes may be helpful to national authorities in determining the requirements of professional diligence in a particular sector. The control exercised by code owners at national or Community level to eliminate unfair commercial practices may

(14) It is appropriate to provide a role for codes of conduct, which enable traders to apply the principles of the directive effectively in specific economic fields. Such codes may be helpful to national authorities in determining the requirements of professional diligence in a particular sector. The control exercised by code owners at national or Community level to eliminate unfair commercial practices may

avoid the need for recourse to administrative or judicial action and should therefore be encouraged.

avoid the need for recourse to administrative or judicial action and should therefore be encouraged. ***With the aim of pursuing a high level of consumer protection, consumers' organisations may be informed and involved in the drafting of a code of conduct.***

Justification

It is highly desirable to involve consumer organisations in the drafting of the codes and also in their administration, in such a way as to promote full dissemination of the codes and increasingly frequent use.

Amendment 11 Article 1

The purpose of this Directive is to contribute to the proper functioning of the internal market and achieve a high level of consumer protection by approximating the laws, regulations and administrative provisions of the Member States on unfair commercial practices harming consumers' economic interests, as defined below.

The purpose of this Directive is to contribute to the proper functioning of the internal market and achieve a high level of consumer protection by approximating the laws, regulations and administrative provisions of the Member States on unfair commercial practices harming consumers' economic interests, as defined below.

This should be understood without prejudice to the ability of national laws to consider as unfair practices which affect the interests of all those who participate in the market.

Justification

Member States should be free to extend their national laws on unfair competition in such a way that breaches of this directive may be considered as breaches of the law on unfair competition between businesses.

Amendment 12 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 ***typical*** consumer who is reasonably well informed and reasonably observant and circumspect, ***and who has exercised due care and attention in making a transactional***

decision;

Justification

The intention is not to refer to an average of all consumers but to refer to the typical consumer who is reasonably well informed and reasonably observant and circumspect and who pays due care and attention, for example to available information, in coming to a decision.

Amendment 13

Article 2, point (b a) (new)

(ba)'particular group of consumers' means a group of consumers who have distinct characteristics of a non-economic nature, such as:

(i) consumers who are vulnerable as a result of various factors, such as age, disability, physical or mental conditions (including temporary ones) or level of literacy, which influence their assessment and/or reaction capacities;

(ii) consumers addressed by traders who have specific knowledge in the sector enabling them to understand a specialist commercial communication.

Justification

Article 5 contains a reference to a commercial practice being specifically directed to a particular group of consumers, and so a definition of 'group of consumers' should be given.

Amendment 14-

Article 2, point (c)

(c) 'seller or supplier' (hereinafter referred to as 'trader') means any natural or legal person who, in commercial practices covered by this Directive, is acting for purposes relating to his trade, business or profession;

(c) 'seller or supplier' (hereinafter referred to as 'trader') means

- any natural or legal person who, in commercial practices covered by this Directive, is acting for purposes relating to his trade, business or profession, ***or with a view to achieving his statutory objective; the trader shall be held responsible for an action which he deliberately promotes by means of his own behaviour or which he***

makes possible in the first place;

- the public authorities or the legal person in which the state has a controlling interest which carry on a commercial, financial or industrial activity and which offer for sale or sell products or services;

- the persons who, whether in their own name or in the name or on behalf of a third party which may or may not have legal personality, on a profit- or non-profit-making basis, carry on a commercial, financial or industrial activity and offer for sale or sell products or services;

Or. nl

Justification

The directive must cover the promotion of actions by other firms, since more and more often unfair practices are being employed by third parties which have contractual links to a trader. By the same token, interaction between a variety of firms (advertising, distribution, mail order) often makes it impossible to identify precisely which one is responsible for the breach of the rules.

Amendment 15 Article 2, point (e)

(e) 'commercial practices' means any act, omission, course of conduct or representation, commercial communication including advertising and marketing, by a trader, directly connected with the promotion, sale or supply of a product to consumers;

(e) 'commercial practices' means any act, omission, course of conduct or representation, commercial communication including advertising and marketing, by a trader, directly connected with the promotion, sale or supply **by that trader** of a product to consumers;

Justification

The effect of the original proposal may be that publishers (who are of course themselves a 'trader') could be liable for the publication of an advertisement which was deemed to constitute an unfair commercial practice. It is of vital importance that the Directive should not impinge upon consumer journalism or other forms of editorial material. Of equal importance is that the Directive's implementation should not encroach upon editorial and press freedom issues.

Amendment 16 Article 2, point (f)

(f) 'to materially distort the economic

(f) 'to materially distort the economic

behaviour of consumers' means using a commercial practice to significantly impair the **consumer's** ability to make an informed decision and thereby causing the consumer to take a transactional decision that he would not have taken otherwise;

behaviour of consumers' means using a commercial practice to significantly impair the ability **of the average consumer** to make an informed decision and thereby causing the **average** consumer to take a transactional decision that he would not have taken otherwise **with the result that the consumer suffers economic detriment**;

Justification

This makes it clear that the material distortion test applies to the average consumer. It also aims to make a clearer distinction between fair marketing practices which are intended to persuade consumers to act in ways they would not otherwise have done and those marketing practices which are genuinely unfair and which cause, or have the potential to cause, economic detriment to consumer.

Amendment 17 Article 2, point (g)

(g) 'code of conduct' means **an** agreement which defines the behaviour of the traders who undertake to be bound by the code in relation to one or more particular commercial practices or business sectors;

(g) 'code of conduct' means **a voluntary** agreement which defines the behaviour of the traders who undertake to be bound by the code in relation to one or more particular commercial practices or business sectors;

Justification

It should be made clear that codes of conduct are 'voluntary agreements', as the explanatory memorandum points out.

Amendment 18 Article 2, point (g)

(g) 'code of conduct' means an agreement which defines the behaviour of the traders who undertake to be bound by a code in relation to one or more particular commercial practices or business sectors;

(g) 'code of conduct' means an agreement which defines the behaviour of the traders who undertake to be bound by a code **or who are bound by it** in relation to one or more particular commercial practices or business sectors;

Justification

This amendment addresses the problem of membership v. non-membership schemes.

Amendment 19 Article 2, point (h)

(h) ‘Community level code’ means a code of conduct which allows any trader from any Member State, who meets the requirements laid down in the code, to participate on a non-discriminatory basis, and contains appropriate and effective mechanisms for monitoring and enforcing compliance with the code; **deleted**

Justification

The definition of a code of conduct is the same regardless of whether activity is at national or Community level. It is highly desirable to involve consumer organisations in the drafting of the codes and also in their administration, in such a way as to promote full dissemination of the codes and increasingly frequent use.

Amendment 20
Article 2, point (i)

(i) ‘code owner’ means **any entity, including a trader or group of traders, which** is responsible for the formulation and revision of a code of conduct **and/or** for monitoring compliance with the code by those who have undertaken to be bound by it;

(i) ‘code owner’ means **the natural or legal person who** is responsible for the formulation and revision of a code of conduct **and therefore** for monitoring compliance with the code by those who have undertaken to be bound by it;

Or. nl

Amendment 21
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 **standard of skill and care which a trader may reasonably be expected to exercise** towards consumers, **having regard to any particular requirements of market practice** in his field of activity **in the Member State where he is established.**

Justification

This amendment has four effects:

1) It introduces a requirement that traders exercise skill and care towards consumers 'that might reasonably be expected' rather than 'special' skill and care. The current definition is

difficult to understand for traders and enforcement bodies whereas the amended text will use the more objective standard of how traders should deal with consumers.

2) It will ensure that traders cannot defend an unfair practice by claiming that it is 'normal market practice' for a particular sector e.g. mis-selling of a financial product or the door-to-door selling of particular products.

3) It will provide certainty to traders that compliance with detailed rules for a particular good or service will be taken into account in determining whether they are trading fairly e.g. detailed rules that apply to financial service providers or professionals such as lawyers. However, there will still be scope to apply the general clause to commercial practices relating to these products for exceptional circumstances where the detailed rules fail to tackle the unfair practice.

4) It makes it clear that the 'normal market practice' is that where the trader is established. This is in line with Article 4 (Internal Market), which establishes the country of origin for the applicable regulatory regime.

Amendment 22
Article 2, point (k)

(k) 'invitation to purchase' means a commercial communication which indicates the main characteristics of the product and the price in a way appropriate to the means of the commercial communication used and thereby ***enables the consumer to make a purchase***;

(k) 'invitation to purchase' means a commercial communication which indicates the main characteristics of the product and the price in a way appropriate to the means of the commercial communication used and thereby ***provides the consumer with an opportunity of purchasing the product from the trader or his agent***;

Justification

The detailed information provisions under Article 7 apply only where the consumer is able to make a transactional decision and therefore needs to hold certain information. This amendment is intended to distinguish between a real opportunity to purchase and marketing or advertising of a product where a price is quoted but the trader had no intention of soliciting mail order or direct response sales.

Amendment 23
Article 2, point (l)

(l) 'undue influence' means exploiting a position of power to apply pressure, without using physical force, in a way which significantly limits the consumer's ability to make an informed decision.

(l) 'undue influence' means exploiting a position of power to apply pressure, ***even*** without using ***or threatening to use*** physical force, in a way which significantly limits the consumer's ability to make an informed

decision.

Justification

The intention is to make it clear that the use of force or a threat to use force are possible indicators of 'undue influence', but are certainly not essential preconditions.

Amendment 24
Article 2, point (1 a) (new)

(1a) 'firm commitment' means a commitment in a code of conduct which constitutes a specific obligation on the part of the signatory to take a specific action or adopt a specific course of conduct in relation to the consumer with regard to the commercial practices covered by this Directive. It excludes any commitments which the code itself specifically excludes from the classification of firm commitments or which are mentioned as mere aims or aspirations.

Justification

A definition of the concept 'firm commitment' should be included, in view of the consequences connected with this concept when codes of conduct are used. In order to achieve this, it is necessary to establish a clear distinction between a firm commitment and a mere aspiration.

Amendment 25
Article 3, paragraph 1

1. This Directive shall apply to unfair commercial practices, as defined below in Article 5, ***before and after a commercial transaction in relation to any product.***

1. This Directive shall apply to unfair ***business-to-consumer*** commercial practices, as defined below in Article 5. ***It shall apply to consumers' transactional decisions even where those decisions do not result in a contract between the consumer and a trader. Where any such contract is formed, this Directive shall apply equally to transactional decisions before and after the formation of the contract.***

Justification

The definition and scope of decisions of a commercial nature were not expressly stated in the draft directive.

Amendment 26 Article 3, paragraph 6

6. This Directive is without prejudice to the rules determining the jurisdiction of the courts.

6. This Directive is without prejudice to the rules determining the jurisdiction of the courts ***and to the rules determining the law applicable to non-contractual obligations.***

Justification

To be coherent, if the Directive is without prejudice to the rules relating to jurisdiction it should also be without prejudice to rules on applicable law.

Amendment 27 Article 3, paragraph 6 a (new)

6a. This Directive (apart from Article 4) is without prejudice to the requirements of authorisation schemes, codes of conduct or other specific rules governing the conduct of traders supplying or promoting those products which, by reason of their characteristics, necessitate detailed requirements to protect the interests of consumers, provided the aforesaid requirements secure a level of consumer protection at least as high as that secured by this Directive.

Justification

As currently drafted, the Directive would require Member States to replace all regulation within the harmonised field with the provisions contained in the Directive. This would not cover the 'general clauses' or civil codes of Member States, but would mean removing consumer protection from sectors such as financial services, transport, utilities, property selling, and the professions.

The Directive should require Member States to have the same cross-sectoral 'general duties to trade fairly', thus introducing the level of harmonisation envisaged on the Commission's analysis of internal market barriers. However, the Directive should not unnecessarily

undermine Member States' ability to retain detailed sectoral rules intended to promote high standards of integrity in that sector provided this does not undermine the internal market objectives of the Directive.

Mutual recognition will require Member States to carefully consider which of their sectoral rules are really necessary to protect consumers because they could not be applied to products supplied by a trader in another Member State.

Amendment 28
Article 4, paragraph 2 a (new)

1. Traders shall only comply with the national provisions, falling within the field approximated by this Directive, of the Member State in which they are established. The Member State in which the trader is established shall ensure such compliance.

2. Member States shall neither restrict the freedom to provide services nor restrict the free movement of goods for reasons falling within the field approximated by this Directive.

1. Traders shall only comply with the national provisions, falling within the field approximated by this Directive, of the Member State in which they are established. The Member State in which the trader is established shall ensure such compliance.

2. Member States shall neither restrict the freedom to provide services nor restrict the free movement of goods for reasons falling within the field approximated by this Directive.

2a. This Directive is without prejudice to the competence of the Member States to take measures in sectors not harmonised by this Directive, such as health, the protection of the physical, mental or moral wellbeing of minors and public security.

Amendment 29
Article 5, paragraph 2, indent 1

– it is contrary to the requirements of professional diligence, and

– *they are* contrary to the requirements of professional diligence ***and good faith***, and

Justification

A re-wording of this article is necessary in order to achieve legal clarity, to avoid superfluous litigation and to maintain legal security.

Amendment 30
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, ***in the case of targeted marketing***, to whom it is addressed, or of the average member of the group ***of consumers who have access to the promotional materials*** when a commercial practice is specifically directed to a particular group of consumers.

Justification

Targeted marketing is principally defined by the specific recipients unless the promotion has had a more general circulation to groups of consumers.

Amendment 31
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. ***With reference to consumers, particular emphasis shall be placed on the protection of minors and the elderly.***

Justification

The categories of consumer who receive specifically targeted commercial practices include minors, in respect of whom the protection threshold should be higher since they are potentially more vulnerable than adults. For example, forms of advertising or marketing such as the sponsorship of sporting events, educational programmes or the selling of products in schools are relevant to this point. The category of the elderly also merits special attention.

Amendment 32
Article 5, paragraph 3, introductory part

3. In particular, commercial practices shall

3. In particular, ***subject to paragraph 2 above***, commercial practices shall be

be regarded as unfair that

regarded as unfair that

~~Or. en~~

Justification

This is to make it explicit that misleading and aggressive practices have to meet the conditions of paragraph 2 to be unfair.

Amendment 33
Article 5, paragraph 4

4. Annex 1 contains a list of commercial practices which shall in all circumstances be regarded as unfair.

4. Annex 1 contains an **exhaustive** list of commercial practices which shall in all circumstances be regarded as unfair. **The list shall be amended only by the codecision procedure.**

Justification

This amendment is to clarify the nature of the annex to ensure that Member States cannot add to the list when transposing the Directive. Any extension of the list at national level would undermine the harmonising effect of an exhaustive list at EU level. It also makes it clear that the list can be amended only through the normal EU legislative procedure.

Amendment 34
Article 6, paragraph 1, introductory sentence

1. A commercial practice shall be regarded as misleading which in any way, including overall presentation, causes or is likely to cause the **average** consumer to take a **transactional** decision **that he would not have taken otherwise** because it deceives or is likely to deceive him in relation to:

1. A commercial practice shall be regarded as misleading which in any way, including overall presentation, causes or is likely to cause the consumer to take a decision, **in relation to his economic behaviour**, because it deceives or is likely to deceive him in relation to:

Justification

It is not legally advisable to protect decisions which do not involve economic behaviour.

Amendment 35
Article 6, paragraph 1, point (a)

(a) the main characteristics of the product, such as its availability, benefits, **risks**,

(a) the main characteristics of the product, such as its availability, benefits, execution,

execution, composition, **accessories**, after-sale customer assistance and complaint handling, method and date of manufacture or provision, delivery, fitness for purpose, usage, quantity, specification, geographical or commercial origin or the results to be expected from its use, or the results and material features of tests or checks carried out on the product;

composition, after-sale customer assistance and complaint handling, method and date of manufacture or provision, delivery, fitness for purpose, usage, quantity, specification, geographical or commercial origin or the results to be expected from its use, or the results and material features of tests or checks carried out on the product;

Justification

Strict interpretation by an implementing Member State could lead to a number of what can only be best described as ‘consumer protection warnings’. E.g. a typical home computer package advertisement has to state that software packages may become outdated; or where an advertisement for a motor vehicle does not state the risks involved with driving.

Industry operators need reassuring that the Directive will be applied towards prevention of abusive practices rather than as a ‘backdoor’ means of imposing additional controls, without appropriate debate and consideration at the European level.

Amendment 36

Article 6, paragraph 1, point (d)

(d) the need for a service, part, replacement or repair;

(d) the need for a service, part, replacement or repair ***decided under conditions as described under Article 2(j)***;

Justification

Article 6(1)(d) appears to make no allowance of any kind for an assertion honestly made by a trader which subsequent events prove to have been wrong. There is no intention to deceive and in the case of repair it is not always possible to be sure that a part did need replacing where faults are difficult to diagnose. The provision is currently too absolute.

Amendment 37

Article 6, paragraph 1, point (f)

(f) claims about the product which ***the trader*** cannot ***substantiate***;

(f) claims about the product which cannot ***be substantiated***;

Justification

There may be circumstances where the trader himself cannot substantiate a claim but the latter can be substantiated by others on whom the trader can rely.

Amendment 38
Article 6, paragraph 1, point (g)

(g) *the consumer's rights or the risks he may face;* (g) **his** rights;

Justification

There is already a reference to risks in Article 2(1)(a); it is not clear what other risks are envisaged under this paragraph. In the absence of clear justification, the term 'risks' should be deleted to avoid confusion.

Amendment 39
Article 6, paragraph 2, introductory sentence

2. A commercial practice shall also be regarded as misleading where, in its factual context, taking account of all its features and circumstances, it thereby causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise, and it involves:

2. A commercial practice shall also be regarded as misleading where, in its factual context, taking account of all its features and circumstances, it thereby causes or is likely to cause the average consumer to take a transactional decision, ***in relation to his economic behaviour***, that he would not have taken otherwise, and it involves:

Justification

It is not legally advisable to protect decisions which do not involve economic behaviour.

Amendment 40
Article 6, paragraph 2, point (b), indent 3 (new)

- the trader himself announces that he has signed up to the code of conduct;

Amendment 41
Article 6, paragraph 2, point (c)

(c) non-compliance with a commitment given to a public authority to cease an unfair commercial practice under this Directive.

deleted

Justification

That to continue with an unfair business practice is itself unfair should be self-evident, making a specific rule unnecessary.

Amendment 42 *Article 6, paragraph 2 a (new)*

2a. A commercial practice shall also be regarded as misleading where there is non-compliance by the trader with commitments contained in codes of conduct by which the trader has undertaken to be bound, where:

- the commitment is not aspirational, is firm and is capable of being verified***
- information specifying the traders to whom the code applies and the content of the code are publicly available. Such a practice shall, however, only be subject to provisions of Articles 11, 12 and 13 below where there has been persistent non-compliance and as a last resort when the code owner has failed to act, or the trader has failed to comply with a decision of the code owner or the code owner has requested that the provisions should apply.***

Justification

The purpose of most UK codes of practice is to set out good trading practices towards consumers which exceed legal requirements. They are promoted and developed on a voluntary basis and are not part of the regulatory regime. Breach of an industry, voluntary code, may be minor and may be unintentional and should be dealt with at least in the first instance by the code sponsor.

The Commission's stated intention is that action should be taken by public enforcement authorities only as a last resort measure and where a pattern of behaviour has been established on the part of a company which has signed up to a code. The amendment seeks to clarify the Commission's intention in the text of the Directive.

The amendment includes the term 'aspirational'. This is intended to indicate those commitments which would not be capable of objective measurement.

Amendment 43
Article 7, paragraph 1

1. A commercial practice shall be regarded as misleading which, in its factual context, taking account of all its features and circumstances, omits material information that the average consumer needs, according to the context, to take an informed transactional decision and thereby causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise.

1. A commercial practice shall be regarded as misleading which, in its factual context, taking account of all its features and circumstances, omits material information ***or, where there are physical limitations of space or transmission time, fails to make available material information on request,*** that the average consumer needs, according to the context, to take an informed transactional decision and thereby causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise.

Justification

Article 7 introduces a set of mandatory information requirements for traders where there is an invitation to purchase that should be made available in the commercial communication. The idea of a list of material information that should be known by the consumer makes sense. However, this clause is disproportionate since there are practical reasons of space and/or transmission time which mean that some information can only be provided on request.

Amendment 44
Article 7, paragraph 1

1. A commercial practice shall be regarded as misleading which, in its factual context, taking account of all its features and circumstances, omits material information that the average consumer needs, according to the context, to take an informed transactional decision and thereby causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise.

1. A commercial practice shall be regarded as misleading which, in its factual context, taking account of all its features and circumstances, omits material information that the average consumer needs, according to the context, to take an informed transactional decision and thereby causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise.

Justification

Linguistic amendment to the Dutch-language version.

Amendment 45
Article 7, paragraph 1

1. A commercial practice shall be regarded as misleading which, in its factual context, taking account of all its features and circumstances, omits material information that the average consumer needs, according to the context, to take an informed transactional decision and thereby causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise.

1. A commercial practice shall be regarded as misleading which, in its factual context, taking account of all its features and circumstances, omits material information that the average consumer needs, **or withholds the possibility of obtaining it or amplifying it**, according to the context, to take an informed transactional decision **of economic significance** and thereby causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise.

Justification

It would be impossible for a company to include all the information in a small magazine advertisement or a radio or TV advertisement, and therefore, if it is not possible to provide all the information considered material which the average consumer needs, the company can always offer consumers the possibility of obtaining it or amplifying it. Only in a scenario where the company refuses to supply the information should this be considered a misleading omission.

Amendment 46 Article 7, paragraph 2

2. It shall also be regarded as a misleading omission when a trader hides or provides in an unclear, unintelligible, ambiguous or untimely manner such material information or fails to identify the commercial intent of the commercial practice.

2. It shall also be regarded as a misleading omission when a trader hides or provides in an unclear, unintelligible, ambiguous or untimely manner such material information **or does not provide it when he has been asked for it by the average consumer** or fails to identify the commercial intent of the commercial practice.

Justification

The concept of material information is wholly ambiguous and lacks a single meaning; the meaning will in fact depend not only on the implementation of this proposal for a directive in the legal systems of each of the Member States, but also on the cultural and legal heritage of each country and, in the final analysis, on the perception which the average consumer has of the concept 'material' **Amendment by John Bowis**

Amendment 47 Article 7, paragraph 2

2. It shall also be regarded as a misleading

2. It shall also be regarded as a misleading

omission when a trader hides or provides in an unclear, unintelligible, ambiguous or untimely manner such material information or fails to identify the commercial intent of the commercial practice.

omission when a trader hides or provides in an **incomplete**, unclear, unintelligible, ambiguous or untimely manner such material information or fails to identify the commercial intent of the commercial practice **where it is not already apparent from the context**.

~~Or. en~~

Justification

All commercial practices are designed to persuade a consumer to do something they might not otherwise do. The objective must be to ensure that this is not achieved by misleading the consumer. It is often clear to the average consumer from the context that the practice has a commercial intent, for example, advertising. In that case it is not misleading or unfair not to identify the commercial intent and this should not be required.

Amendment 48

Article 7, paragraph 3, introductory subparagraph

3. For commercial practices before a commercial transaction a misleading omission may occur only if a trader makes an invitation to purchase. In the case of an invitation to purchase, the following information **shall** be regarded as material, if not already apparent from the context:

3. For commercial practices before a commercial transaction a misleading omission may occur only if a trader makes an invitation to purchase. In the case of an invitation to purchase, **and taking into consideration the medium through which this invitation is disseminated, all or some of** the following information **may** be regarded as material, if not already apparent from the context:

Justification

This amendment takes into account the fact that communication of all the information referred to in Article 7 is impossible in the case of advertising through e.g. radio or TV advertising spots.

Amendment 49

Article 7, paragraph 3, point (b)

(b) the trading name of the trader and, where applicable, the trading name of the trader on whose behalf he is acting;

(b) **in every written document**, the trading name of the trader and, where applicable, the trading name of the trader on whose behalf he is acting;

Or. fr

Justification

This information should be provided at the same time as the invitation to purchase itself or, if this does not seem appropriate in view of the means of communication used, must be available at the consumer's request.

It is unrealistic to communicate such information via media which leave no permanent record (TV, radio), since it increases the size of the message without giving the consumer material information.

Amendment 50

Article 7, paragraph 3, point (e)

(e) for products and transactions involving a right of withdrawal or cancellation, the existence of such a right.

(e) for products and transactions involving a right of withdrawal or cancellation, **exchange and/or refund**, the existence of such a right.

Justification

This is in line with the EP resolution on the implications of the Commission Green Paper on European Union Consumer Protection for the future of EU consumer policy (Patrie Report, PE T5-0101/2003) adopted on 13 March 2003, which, in its paragraph 8, emphasises the need to provide clear and adequate information to consumers.

Amendment 51

Article 7, paragraph 3, point (e a) (new)

(ea) the exact content and origin in the case of foodstuffs;

Justification

This is in line with the EP resolution on the implications of the Commission Green Paper on European Union Consumer Protection for the future of EU consumer policy (Patrie Report, PE T5-0101/2003) adopted on 13 March 2003, which, in its paragraph 8, emphasises the need to provide clear and adequate information to consumers.

Amendment 52
Article 7, paragraph 3, point (e b) (new)

***(eb) full details of the product guarantee
and conditions of after-sales service;***

Justification

This is in line with the EP resolution on the implications of the Commission Green Paper on European Union Consumer Protection for the future of EU consumer policy (Patrie Report, PE T5-0101/2003) adopted on 13 March 2003, which, in its paragraph 8, emphasises the need to provide clear and adequate information to consumers.

Amendment 53
Article 7, paragraph 3, point (e c) (new)

***(ec) membership of a code of conduct,
where applicable;***

Justification

This is in line with the EP resolution on the implications of the Commission Green Paper on European Union Consumer Protection for the future of EU consumer policy (Patrie Report, PE T5-0101/2003) adopted on 13 March 2003, which, in its paragraph 8, emphasises the need to provide clear and adequate information to consumers.

Amendment 54
Article 7, paragraph 3 a (new)

***3a. All information listed in paragraph 3
shall be displayed in a clear and visible
manner.***

Justification

This is in line with the EP resolution on the implications of the Commission Green Paper on European Union Consumer Protection for the future of EU consumer policy (Patrie Report, PE T5-0101/2003) adopted on 13 March 2003, which, in its paragraph 8, emphasises the need to provide clear and adequate information to consumers.

Amendment 55
Article 7, paragraph 4

4. Information requirements in relation to advertising, commercial communication or marketing established by Community law shall be regarded as material.

4. Information requirements ***involving the range of the products offered by the specific trader*** in relation to advertising, commercial communication or marketing established by Community law shall be regarded as material.

Justification

A trader provides information regarding the products he himself offers. Comparative advertising is only permitted, under the conditions of Article 3(a) of Directive 1984/450/EEC; it cannot be imposed upon traders.

Amendment 56
Article 7, paragraph 5

5. Annex 2 contains a non-exhaustive list of Community law provisions setting out information requirements in relation to commercial communication, advertising or marketing.

deleted

Justification

The citation of already existing law provisions is superfluous and unsystematic. Nor is it of any assistance in the event of having recourse to the law if the listing is not conclusive.

Amendment 57
Article 7, paragraph 5

5. Annex 2 contains a non-exhaustive list of Community law provisions setting out information requirements in relation to commercial communication, advertising or marketing.

5. Annex 2 contains a non-exhaustive list of Community law provisions setting out information requirements in relation to commercial communication, advertising or marketing.

Traders duly fulfilling the aforementioned information requirements shall be presumed not to have omitted material information that the average consumer needed in order to take an informed transactional decision.

Justification

This amendment takes into consideration the fact that when the Commission imposes informational requirements, it always has in mind what the average consumer needs in order to reach an informed decision.

Amendment 58 Article 8

*A commercial practice shall be **regarded as** aggressive if, in its factual context, taking account of all its features and circumstances, by harassment, coercion or **undue influence**, it **significantly impairs or is likely to significantly impair** the **average** consumer's freedom of choice or conduct with regard to the product **and thereby causes him or is likely to cause him to take a transactional decision that he would not have taken otherwise**.*

***An aggressive** commercial practice shall be **deemed unfair** if, in its factual context, taking account of all its features and circumstances, by harassment **or** coercion it impairs the consumer's **or trader's** freedom of choice or conduct with regard to the product **or otherwise unreasonably occasions harassment**.*

Justification

The link with the necessity of a transactional decision appears superfluous here, since harassment and coercion are fundamentally unfair as such, and what is involved here is not just exerting business influence but also protection of the private sphere and freedom of decision as such. Any form of harassment or coercion, quite independently of its intended purpose, is unfair.

Technical legislative point: the text of the original Article 8, without paragraphs, should become the new paragraph 1, since a second paragraph is being added.

Amendment 59 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 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 **save where the consumer is explicitly seeking the product in connection with the misfortune or circumstance**;

~~Or. en~~

Justification

The trader must be able to legitimately advise a consumer on a product that will assist in dealing with the misfortune, for example, a funeral director must be able to advise on alternative options for a loved one's funeral even though it is clear the consumer may be distressed.

Amendment 60

Article 9 (e)

(e) any threat to take any action that cannot legally be taken.

(e) any threat to take any action that cannot legally be taken, ***unless the trader proves his good faith.***

Amendment 61

Article 10

This Directive does not exclude the control which Member States may encourage, of unfair commercial practices by code owners of national or Community level codes and recourse to such bodies by the persons or organisations referred to in Article 11 if proceedings before such bodies are in addition to the court or administrative proceedings referred to in that Article.

1. Codes of conduct contain appropriate and effective mechanisms for monitoring and enforcing compliance with the code. Consumer organisations may participate in the drafting of the code.

2. This Directive does not exclude the control which Member States may encourage, of unfair commercial practices by code owners of national or Community level codes and recourse to such bodies by the persons or organisations referred to in Article 11 if proceedings before such bodies are in addition to the court or administrative proceedings referred to in that Article.

Amendment 62

Article 10, paragraph 1 a (new)

The optional procedures referred to in the first paragraph may be arbitration proceedings and may make provision for the payment of sums of money by way of

penalty or as compensation.

Justification

The amendment seeks to widen the range of options available to consumers to combat unfair commercial practices, by allowing the codes of conduct to lay down procedures for a sort of 'DIY justice' which, while not replacing the need for legal and administrative remedies, may have the advantage of speed and, on occasion, more streamlined procedures.

Amendment 63

Article 11, paragraph 1, subparagraph 1

Member States shall ***ensure that*** adequate and effective means ***exist*** to combat unfair commercial practices ***and for the*** compliance with the provisions of this Directive in the interest of consumers.

Member States shall ***establish*** adequate and effective means to combat unfair commercial practices ~~***with a view to ensuring in order to ensure***~~ compliance with the provisions of this Directive in the interest of consumers.

Justification

Member States have an obligation to achieve results when it comes to monitoring compliance with the directive.

Amendment 64

Article 11, paragraph 1, subparagraph 4

With due regard for national laws, these legal facilities may be directed separately or jointly against a number of traders from the same economic sector ***or against a code owner.***

With due regard for national laws, these legal facilities may be directed separately or jointly against a number of traders from the same economic sector.

Justification

Is consistent with the deletion of the code of conduct; see justification to Amendment 13 to Article 2(g).

Amendment 65

Article 11, paragraph 1, subparagraph 4

With due regard for national laws, these legal facilities may be directed separately or jointly against a number of traders from the same

With due regard for national laws, these legal facilities may be directed separately or jointly against a number of traders from the same

economic sector *or against a code owner*.

economic sector.

Justification

The owners of codes of conduct ought not to be held legally liable for the unfair practices of traders, since these codes do not have binding legal force but are good conduct commitments.

~~Amendment by Marianne L.P. Thyssen~~

Amendment 66

Article 11, paragraph 3, point (c)

(c) **normally** give reasons for their decisions.

(c) give reasons for their decisions.

Amendment 67

Article 14, paragraph 5, subparagraph 3

With due regard for national laws, these legal facilities may be directed separately or jointly against a number of traders from the same economic sector *or against a code owner*.

With due regard for national laws, these legal facilities may be directed separately or jointly against a number of traders from the same economic sector.

Justification

The application of legal sanctions against a code owner for breaches by individual traders of the contents of the code will discourage the promotion by code owners of voluntary codes of conduct. This will operate to the detriment of consumers and will inhibit the development of best practice going beyond the requirements of the law.

Amendment 68

Article 17

Member States shall take appropriate measures to inform the consumer of the national law transposing this Directive and shall encourage, where appropriate, traders **and** professional organizations to inform consumers of their codes of conduct.

Member States shall take appropriate measures to inform the consumer of the national law transposing this Directive and shall encourage, where appropriate, traders, professional organizations **and code owners** to inform consumers of their codes of conduct.

~~Or. nl~~

Amendment 69
Article 17a (new)

Article 17a

Revision

The Commission shall report regularly to the European Parliament and the Council on the application of this Directive in the Member States and shall put forward, every five years, a proposal for a revised list of commercial practices which are in all circumstances considered unfair, as contained in Annex I to this Directive.

2. The Commission shall no later than four years after the transposition of this Directive submit to the European Parliament and the Council a comprehensive report on the application of the Directive, in particular of Articles 4, accompanied, if necessary, by a proposal to revise Article 4.

3. The European Parliament and the Council shall, on this basis, re-examine the provision of Article 4 and shall act, in accordance with the Treaty, within two years of the presentation by the Commission of the proposal referred to in the first subparagraph.

Justification

It is important to ensure that the list of practices considered to be definitely unfair is regularly updated in view of the fact that the market evolves and new unfair practices are continually arising. This will favour consumers in particular, by lightening the burden of proof applicable under the general clause of prohibition contained in Article 5.

Amendment 70

Annex 1, misleading commercial practices, paragraph 1

(1) Claiming to be a signatory to a code of conduct when the trader is not.

(1) Claiming ***in bad faith*** to be a signatory to a code of conduct when the trader is not.

Justification

Where there has been a clear case of a mistake, the practice must be assessed in accordance

with the general rule and not be automatically blacklisted.

Amendment 71

Annex 1, 'Misleading commercial practices', point (5)

(5) Falsely stating that the product will only be available for a very **short** time in order to elicit an immediate decision and deprive consumers of sufficient opportunity or time to make an informed choice.

(5) Falsely stating that the product will be available for only a very **limited** time in order to elicit an immediate decision and deprive consumers of sufficient opportunity or time to make an informed choice.

Justification

This provides more clarity.

Amendment 72

Annex 1, Misleading commercial practices, point (8)

(8) Using editorial content in the media to promote a product where a trader has paid for the promotion without making that clear in the content. (Advertorial)

(8) Advertisement features, announcements or promotions, sometimes referred to as 'advertorials', that are disseminated in exchange for a payment or other reciprocal arrangement should comply with the Directive if the marketers rather than the publishers control their content. Traders and publishers shall make it clear that advertisement features are advertisements, for example by heading them 'advertisement feature'.

Justification

In the current text, 'advertorials' is open to too wide an interpretation, which could unintentionally encompass editorial content. This amendment provides unambiguous wording and legal certainty to publishers, traders and consumers alike.

Amendment 73

Annex 1, 'Misleading commercial practices', point (9)

(9) Falsely arguing that the personal security of the consumer or his family is at risk if the consumer does not purchase the product.

(9) Falsely arguing that the personal security of the consumer or his family is at risk if the consumer does not purchase the product ***or materially overstating the risks that the***

consumer or his family is at if the consumer does or does not purchase the product.

~~Or. en~~

Justification

There are circumstances where it is important that traders make consumers aware of the risks associated with both purchasing and not choosing to purchase some products, therefore it is important that the prohibition does not capture these situations.

Amendment 74

Annex I, Misleading commercial practices, point (11)

(11) Failing to provide the information stipulated in the Annex of the Regulation on Sales Promotion or providing information which is false, unclear or ambiguous in fulfilment of the requirements in the Annex. ***deleted***

Justification

The Sales Promotions Regulation should not be singled out in the Directive. It should be treated in the same way as any other regulation and should make its own provisions. Moreover, the Sales Promotions Regulation information should no longer be necessary if the Directive becomes law.

Amendment 75

Annex 1, 'Misleading commercial practices', point (11 a) (new)

(11a) Using an artificially high reference price as the basis to grant discounts and so giving the consumer the false impression that there is a price advantage.

Amendment 76

Annex 1, 'Misleading commercial practices', point (12)

(12) Using the expression “liquidation sale” or equivalent when the trader is not about to cease trading.

(12) Using the expression “liquidation sale” or equivalent when the trader is not about to cease trading **and is not facing circumstances which give him the legal**

right to describe his sales position as a liquidation sale.

Or. nl

Amendment 77

Annex 1, 'Misleading commercial practices', point (12 a) (new)

(12a) Promoting a product similar to that made by a particular manufacturer in such a manner as to suggest it is made by that same manufacturer when that is not the case.

Justification

While companies have the right to produce cheaper alternatives to any product as long as patents/trade marks are not infringed, consumers must have the strongest possible protection against "passing off".

~~Amendment 29~~

~~Annex 1 section 'Misleading commercial practices', paragraph (12) a (new)~~

-

~~***(12a) Promoting a product purporting to be identical to that of another manufacturer when that is not the case.***~~

~~*Justification*~~

~~*Consumers have the right to know that the product offered to them is what it is claimed to be.*~~

Amendment 78

Annex 1, 'Misleading commercial practices', point (12 b) (new)

(12b) Supplying goods or services to consumers who have not requested them, unless it is made clear that the goods or services are free and may be retained or used without any obligation on the part of the consumer.

Justification

Amplification of the categories of unfair practices.

Amendment 79

Annex 1, 'Misleading commercial practices', point (12 c) (new)

(12c) Carrying on business in such a way as to make it difficult for consumers to know the true identity of the person or persons that would normally be liable as seller or supplier under the applicable law.

Justification

Amplification of the categories of unfair practices.

Amendment 80

Annex 1, 'Misleading commercial practices', point (12 d) (new)

(12d) Promoting the supply of products or services under the guise of canvassing or soliciting opinions.

Justification

Amplification of the categories of unfair practices.

Amendment 81

Annex 1, 'Misleading commercial practices', point (12 e) (new)

(12e) Advertising or promoting products or services in such a way as to disguise the commercial intent of the communication.

Justification

Amplification of the categories of unfair practices.

Amendment 34

~~Annex 1 section 'Misleading commercial practices', paragraph (12) f (new)~~

~~**(12f) Making claims for which the promoter or advertiser lacks appropriate substantiation.**~~

Justification

Amplification of the categories of unfair practices.

Amendment 82

Annex 1, 'Misleading commercial practices', point (12 f) (new)

(12f) Procuring in a fraudulent manner the signature by the consumer of waivers to the legal protection set out in this Directive.

Justification

Amplification of the categories of unfair practices.

Amendment 83

Annex 1, 'Misleading commercial practices', point (12 h) (new)

(12h) The practice of going into liquidation or changing ownership with the express purpose of avoiding liabilities and previous agreements (Phoenix companies).

Justification

Amplification of the categories of unfair practices.

Amendment 84

Annex 1, 'Misleading commercial practices', point (12 i) (new)

(12i) Competitions and prize promotions in schemes where there has not been and there is no intention of providing the prizes described.

Justification

Amplification of the categories of unfair practices.

Amendment 85

Annex 1, 'Aggressive commercial practices', point (2)

(2) Conducting prolonged and/or repeated personal visits to the consumer's home ignoring the consumer's request to leave.

(2) Conducting prolonged and/or repeated personal visits to the consumer's home ignoring the consumer's request to leave ***and not to return.***

Justification

This should serve to deal more appropriately with repeated visits.

Amendment 86

Annex 1, 'Aggressive commercial practices', point (3)

(3) Making persistent and unwanted solicitations by telephone, fax, e-mail or other remote media.

(3) Making persistent and unwanted solicitations by telephone, fax, e-mail or other remote media ***once the consumer has made clear that these solicitations are no longer desired.***

Justification

Cases whereby a trader persists with communications in spite of a clear indication from the consumer that the communication is unwanted should be blacklisted.

Amendment 87

Annex 1, Aggressive commercial practices, point (3)

(3) Making persistent and unwanted solicitations by telephone, fax, e-mail or other remote media.

(3) Making persistent and unwanted solicitations by telephone, fax, e-mail or other remote media.

'Solicitation' does not extend to legitimate activity to enforce a contract obligation which may or may not lead to a new contract.

Justification

Lenders of consumer finance or mortgage finance have a small part of their business at various stages of arrears. For a minority of consumers, whose tendency is to ignore the problem, regular telephoning is required to determine a new repayment proposal. This could involve a longer term and a new contract but is in the best interests of both the consumer and the lender. A properly regulated enforcement regime is an important part of competitive credit markets.

Amendment 88

Annex 1, Aggressive commercial practices, point (4)

(4) Targeting consumers who have recently suffered a bereavement or serious illness in their family in order to sell a product which bears a direct relationship with the misfortune.

(4) Targeting consumers who have recently suffered a bereavement or serious illness in their family in order to sell a product which bears a direct relationship with the misfortune. ***This provision shall not apply to funeral directors or associated trades.***

Justification

The amendment seeks to protect both funeral directors and those involved in associated trades from being unduly limited in their ability to provide necessary services, e.g. those providing headstones, memorials, etc.

Amendment 89

Annex 1, 'Aggressive commercial practices', point (5)

(5) Requiring ***a consumer who wishes to claim on an insurance policy*** to produce documents which could not reasonably be considered relevant as to whether ***the*** claim was valid ***in order to dissuade*** the consumer from exercising his contractual rights.

(5) Requiring ***an insured person*** to produce documents which could not reasonably be considered relevant as to whether ***his insurance*** claim was valid ***with a view to dissuading*** the consumer from exercising his contractual rights.

~~Or. nl~~

Amendment 90

Annex 1, 'Aggressive commercial practices', point (6)

(6) Advertising to children in a way which implies that their acceptance by their peers is dependent on ***their parents buying them*** a particular product. This provision is without prejudice to Article 16 of Directive 89/552/EEC on television broadcasting.

(6) Advertising to children in a way which implies that their acceptance by their peers is dependent on ***them buying or being bought*** a particular product. This provision is without prejudice to Article 16 of Directive 89/552/EEC on television broadcasting.

Justification

People other than parents may be responsible for the purchase, including the children themselves.

Amendment by Marianne L.P. Thyssen

Amendment 91

Annex 1, 'Aggressive commercial practices', point (7)

(7) Demanding payment for products supplied by the trader, but which were not solicited by the consumer (inertia selling).

(7) Demanding payment for ***or the return of*** products supplied by the trader, but which were not solicited by the consumer (inertia selling).

Or. nl

Justification

Requiring consumers to return unsolicited products generates costs for the consumers in question and must therefore be categorised as an aggressive commercial practice.

Amendment 92

Annex 1, Aggressive commercial practices, point (7)

(7) Demanding payment for products supplied by the trader, but which were not solicited by the consumer (inertia selling).

(7) Demanding payment for products supplied by the trader, but which were not solicited by the consumer (inertia selling).

Except in the case of substitute goods as established in Article 7(3) of Directive 97/7EC on distance selling contracts.

Justification

The special needs of distance selling have not been properly taken into account. In this sector, catalogues cover a long time frame; this is why Article 7(3) of the Distance Selling Directive makes an exception from the ban on inertia selling. If this exception is contained in the Directive on Distance Selling, it must also be recognised under the new directive.

Amendment 93

Annex 1, 'Aggressive commercial practices', point (7 b) (new)

(7b) Harassing, coercing or unduly influencing the consumer to enter into a

credit transaction at a rate of charge which is grossly exorbitant when compared to the rates which are then generally available to consumers for credit transactions of the same type.

~~Or. en~~

Justification

The wording 'credit transaction' protects consumers against all kinds of aggressive credit transactions, including credit associated with home improvement, where abusive practices occur regularly. It is important to ban such transactions on the basis of their aggressive nature, rather than on the basis of their price.

Amendment 94

Annex 1, 'Aggressive commercial practices', point (7 c) (new)

(7c) Imposing onerous or unreasonable obstacles, whether procedural or substantive, on consumers who wish to exercise their right to terminate a contract or switch to another supplier.

Justification

Amplification of the categories of unfair practices.

EXPLANATORY STATEMENT

Historical background

The proposal for a directive takes over a large part of the Green Paper (COM(2001) 531) on consumer protection, whose purpose was to launch an extensive public consultation on the future direction of EU consumer protection. The Green Paper contains clear indications with respect to the drafting of a framework directive based on a general principle governing business-consumer relations. It is clear that a choice has been made to take into consideration, on a negative basis, only unfair commercial practices, instead of defining fair commercial practices in a broad sense. With respect to the role of self-regulation, it is acknowledged that the codes of conduct under which commercial operators voluntarily take on commitments towards consumers have a complementary and useful role to play in increasing consumer confidence. Emphasis is thus placed on the codes of conduct, but it is made clear that it is not appropriate to lay down a Europe-wide code of conduct, as it would not be successful in ensuring effective consumer protection. The codes of conduct should make it clear, however, that when a trader who states that he subscribes to the code does not comply with the obligations laid down by it, this in itself constitutes an instance of unfair commercial practice; the aim is to confirm the role and specific purpose of the safeguards contained in the codes of conduct. An indicative, non-exhaustive list of general and specific examples of unfair commercial practices is set out in the annex (and is also intended to facilitate interpretation by the national courts).

The proposal for a Directive concerning unfair business-to-consumer commercial practices in the Internal Market

The rapporteur welcomes the Commission's proposal for a directive and endorses its fundamental approach.

The reasons underlying the directive - which is designed to achieve higher consumer protection - are of an economic nature, and therefore relate to the completion and smooth operation of the Internal Market. In order for these general economic goals to be achieved, it is necessary to have a consumer protection policy to create European consumer confidence and to give a fresh impetus to international and European commercial transactions.

The benefit of economic growth in the Internal Market ought to translate into higher profits for businesses and higher protection and financial benefits for consumers. Through a joint policy for consumers and the harmonisation of the Internal Market it will also be possible to achieve price convergence. Achieving these objectives is of enormous importance, in fact, since where the internal European market is not able to function effectively - as in the case where unfair commercial practices spread and persist - there is a failure of the market. Unfair commercial practices lead to irrational financial behaviour in consumers, create distortions of competition and place barriers in the way of the proper functioning of the Internal Market, because of fragmentation between the various Member States. In order to create consumer confidence it is thus necessary to harmonise the Internal Market by means of legislation against unfair commercial practices. To this end, the rapporteur endorses the Commission's approach, which is based on harmonisation (appropriate harmonisation), on the principle of mutual recognition and of the country of origin, on a general prohibition on unfair commercial

practices and on the identifying of specific criteria and examples. Above all, the rapporteur welcomes the fact that the scope of application is limited to a framework directive based on business-consumer relations.

A positive outcome for the proposal for a directive and rapid implementation would have the important result of achieving a high degree of consumer protection and, at the same time, clear benefits for businesses, whose cross-border sales costs would be reduced.

The rapporteur's position

The rapporteur endorses the fundamental approach and key objectives of the Directive concerning unfair commercial practices proposed by the Commission (COM(2003) 356). The main aim is to achieve a high level of consumer protection and smooth functioning of the Internal Market in such a way as to promote international commercial transactions so as to create economic growth. The creation of a European legislative framework covering unfair commercial practices based on an appropriate level of harmonisation and aimed at clear and effective protection of consumers within the European Union will result in enhanced consumer confidence and an increase in international trade and will allow businesses to compete in a situation of legal clarity.

The definition of 'consumers' and its significance in terms of the directive's provisions is a key element in the proposal on unfair commercial practices. Therefore, and with a view to providing true protection for those consumers most at risk of being exploited by unfair commercial practices, the rapporteur considers that it would be advisable to integrate the approach and definition adopted by the committee (which refers to the definition of the average consumer derived from the European Court of Justice) by making express reference to vulnerable consumers both in the recitals and, above all, in Articles 5 and 9. Children, the elderly and the disabled are more at risk of becoming victims of unfair commercial practices and exploitation by sellers and for this reason it is important that within the scope of the general clause, specific account is taken of children and the elderly in identifying consumers who are the victims of an unfair practice. Similarly, with regard to Article 9, it is important to state that the exploitation of a vulnerable state in the consumer (connected with motherhood, childhood, disability or advanced age) by a commercial operator constitutes an aggressive practice.

Codes of conduct can play an important role in complementing the directive and national law on unfair commercial practices. In the rapporteur's view, the main point of a voluntary code of conduct is to provide a level of protection for consumers, and of fair market behaviour by businesses, which goes beyond that laid down by legislation. The usefulness and contribution that the codes of conduct can make is acknowledged, and at the same time, the rapporteur believes that the definition (in Article 2(g)) should be made clearer; there should be a single definition setting out the possibility of having monitoring mechanisms and the involvement of consumer associations. Such a code of conduct could thus provide arbitration options to which consumers could have recourse and solutions to disputes between consumers and businesses relating to the payment of sums of money by way of penalty or compensation - this is the gist of the new Article 10, proposed by the rapporteur. In line with this structure, the arbitration proceedings stipulated in the codes of conduct must comply with the provisions of the directive (in Article 12) on the burden of proof laid down for proceedings before

administrative bodies or courts. Use of arbitration within the scope of the codes of conduct may be, for consumers, a method of obtaining a rapid and effective remedy, but it is necessary to maintain the same level of protection and safeguards as laid down for administrative or court remedies.

The main structure of the directive is based on a general prohibition clause, on two specific examples of unfair commercial practices - misleading and aggressive practices - and an indicative and non-exhaustive list in the annex of unfair commercial practices. The directive on unfair commercial practices is in the main equipped to deal with current realities and likely developments in the Internal Market and unfair commercial practices. In any case, it should be remembered that the Commission must monitor the application of the directive in the Member States and report on this regularly to the European Parliament and the Council. The rapporteur therefore proposes an amendment stipulating that every five years there should be an updating of the list of unfair commercial practices.

The rapporteur hopes, therefore, that the Committee on Legal Affairs and the Internal Market and the Environment Committee will be able to carry out jointly a coordinated examination of the directive on unfair commercial practices in such a way that Parliament will be able to issue its first reading shortly and make a significant and positive contribution to the drafting of this directive.

21 January 2004

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 directive concerning unfair business-to-consumer commercial practices in the Internal Market and amending directives 84/450/EEC, 97/7/EC and 98/27/EC (the Unfair Commercial Practices Directive) (COM(2003) 356 – C5-0288/2003 – 2003/0134(COD))

Draftsman (*): Phillip Whitehead

(*) Enhanced cooperation between committees – Rule 162a

PROCEDURE

The Committee on the Environment, Public Health and Consumer Policy appointed Phillip Whitehead draftsman at its meeting of 10 September 2003.

It considered the draft opinion at its meetings of ~~...~~ 21 January 2004.

At that meeting it adopted the following amendments by ~~...~~ 52 votes to ~~...~~ 3, with ~~...~~ 0 abstentions ~~(s)/unanimously~~.

The following were present for the vote: Caroline F. Jackson (chair~~(wo)~~man)/~~acting-chair(wo)man~~, ~~...~~ Alexander de Roo, Mauro Nobilia, Guido Sacconi (vice-~~chairmen-chair(wo)man~~), ~~...~~ (~~vice-chair(wo)man~~), Phillip Whitehead (draftsman), ~~...~~ María del Pilar Ayuso González, María Luisa Bergaz Conesa, Jean-Louis Bernié, Hans Blokland, David Robert Bowe, John Bowis, Hiltrud Breyer, Philip Bushill-Matthews (for Avril Doyle), Martin Callanan, Dorette Corbey, Chris Davies, Säid El Khadraoui, Jillian Evans (for Hiltrud Breyer), Karl-Heinz Florenz, Pernille Frahm, Cristina García-Orcoyen Tormo, Robert Goodwill, Françoise Grossetête, Cristina Gutiérrez Cortines, Jutta D. Haug (for Anne Ferreira), Marie Anne Isler Béguin, Eija-Riitta Anneli Korhola, Bernd Lange, Peter Liese, Minerva Melpomeni Malliori, Erik Meijer (for Mihail Papayannakis), Bill Miller (for Elena Valenciano Martínez-Orozco, pursuant to Rule 153(2)), Rosemarie Müller, Antonio Mussa (for Jim Fitzsimons), Riitta Myller, Giuseppe Nisticò, Ria G.H.C. Oomen-Ruijten, Marit Paulsen, Fernando Pérez Royo (for Béatrice Patrie), Frédérique Ries, Dagmar Roth-Behrendt, Yvonne Sandberg-Fries, Karin Scheele, Ursula Schleicher, Horst Schnellhardt, Jonas Sjöstedt, María Sornosa Martínez, Catherine Stihler, Robert William Sturdy, Nicole Thomas-Mauro, Astrid Thors, Marianne L.P. Thyssen (for Martin Kastler), Antonios Trakatellis, Ian Twinn (for Marialiese Flemming, pursuant to Rule 153(2)) and Peder Wachtmeister.

SHORT JUSTIFICATION

This proposal follows that substantial discussion in the European institutions about a framework directive to protect consumers from unfair commercial practices, thus facilitating the free movement of goods and services in the internal market as consumer confidence grows. The debate has evolved steadily since the publication of the Green Paper COM(2001)531. They should be welcomed, especially for the framing of a general duty not to trade unfairly, which will supplement and strengthen such sectoral legislation as is already in place. Where there are flaws in business-to-consumer transactions this will be important, whatever the Member State concerned.

It should not be assumed however that in the current state of the expanded single market, that an instant transfer to full harmonisation will be practicable, bearing in mind the very different levels of consumer protection which currently exist. Your rapporteur shares the misgivings of most European consumer movements about a legal base secured by Article 95 alone, when Article 153 specifically and at first instance requires a high level of consumer protection. Whilst Article 95 subsumes this, Article 153 makes it a prime obligation. Thus the use of both articles will ensure that where the protection of vulnerable consumers, and the maintenance of existing rights arise, they will be pro-actively addressed. Why else, after all, was Article 153 written into the treaties?

The Environment Committee has no doctrinal aversion to maximum harmonisation. Neither maximum nor minimum are practicable in all circumstances. What is best is a reasonable level of harmonisation, to assist the progressive transition to full harmonisation when it can be shown that current high levels of consumer protection in Member States will not be depressed. To this end the accumulation of designated unfair practices in the Annex I blacklist should be seen as a continuing process of harmonisation over time. The voluntary codes of conduct also play an important role in underpinning fair-trading practices and their alignment across national boundaries. Indeed they can often provide a higher level of consumer protection.

We understand that for vendors mutual recognition has become a high priority. Traders will have a simpler life and an increased market if they need only comply with legal requirements on trading fairly in the country of origin. Nationally, with full harmonisation, the rules would be the same. But there will still be a twilight zone in which consumers are assailed – for example by direct mail – with high pressure selling they are unable to handle, and for which they have inadequate or inaccessible means of redress. Industry should accept, for a given period of time, that the price of market entry is the cost of compliance with local rules on trading unfairly. Only zealots would prefer an ineffective and resented full harmonisation proposal to one which moves in a more measured way to the same objective.

On the concept of 'professional diligence' the skill and care of the vendor should be directed to what a consumer would reasonably accept in the circumstances. We prefer the requirements of good faith in line with the provisions laid down in Directive 93/13/EC on Unfair Terms in Consumer Contracts, as cited in the Patrie Resolution on the Green Paper. To further protect consumers, transnational decisions should be defined as the whole corpus of decisions as to when, how and on what terms to make a purchase, whether or not contractual rights in the

product were ultimately taken up.

There remains the definition of the 'average consumer' who is reasonably well informed, reasonably observant and circumspect. We are all of us, on this definition, average consumers for some of the time. At others we may be advantaged – or disadvantaged. Some groups of consumers are vulnerable, both in relation to being targeted themselves and in the general market. To protect them, the good faith of the transaction involved and its specific time and place should be taken into account when unfair trading practices are being analysed. The best hope for vulnerable consumers is that the list in Annex 1, though not exhaustive, will contain many of the practices by which they can be entrapped. Some of the suggested additions could give protection of last resort to consumers who have been failed by lacunae in the sectoral regulations.

The difficulties of definition, execution and enforcement of the Directive speak for themselves. But it must also be said that this is potentially an immense benefit for Europe's consumers. Their increased security and market knowledge will also increase cross-border trade and economic well being. No doctrinal mantras about how we progress, no committee rivalries about responsibility, should prevent the EP making common cause at every point where we can reach agreement, so that we can progress through First and Second Reading to concordance. Economy of words, clarity of thought will help us through.

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 Commission ¹	Amendments by Parliament
Amendment 1 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,

Justification

This proposal needs to give equal importance to the furtherance of the single market and the improvement of consumer protection.

¹ OJ not yet published.

~~Amendment by Astrid Thors~~

Amendment 2

Recital 3

(3) These disparities *cause uncertainty as to which national rules apply to unfair commercial practices harming consumers' economic interests and create many barriers affecting business and consumers. These barriers increase the cost to business of exercising internal market freedoms, in particular when they wish to engage in cross border marketing, advertising campaigns and sales promotions. They also make consumers uncertain of their rights* and undermine their confidence in the internal market.

(3) These disparities *make consumers uncertain about* cross border *transactions, as they do not know their rights,* and undermine their confidence in the internal market.

~~Or. sv~~

Justification

The recital should be amended as it is obvious that marketing campaigns should always be geared to the market in which they are conducted, taking into account the linguistic, social and cultural context. Arguing, as the Commission does here, that national rules increase marketing costs shows a terrible disrespect for cultural diversity, which is one of the Union's most important objectives. On the other hand, the differences may undermine consumers' confidence to venture into transactions with businesses in other countries.

~~Amendment by Astrid Thors~~

Amendment 3

Recital 4

(4) In the absence of uniform rules at Community level, obstacles to cross-border services and goods or the freedom of establishment could 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 view of* the Community's objectives, as set out in the provisions of the Treaty relating to freedom of movement, of secondary Community law, *and in accordance with the Commission's*

(4) In the absence of uniform rules at Community level, obstacles to cross-border services and goods or the freedom of establishment could 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. *Notwithstanding* the Community's objectives, as set out in the provisions of the Treaty relating to freedom of movement, of secondary Community law, *there are wide*

policy on commercial communications, such obstacles should be eliminated. These 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 and to meet the requirement of legal certainty.

differences in the Member States and those discrepancies may impede the attainment of the objective of a high level of consumer protection. A high level of protection can be achieved only by introducing 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 and to meet the requirement of legal certainty.

~~Of. sv~~

Justification

The recital should be amended as it is obvious that marketing campaigns should always be geared to the market in which they are conducted, taking into account the linguistic, social and cultural context. Arguing, as the Commission does here, that national rules increase marketing costs shows a terrible disrespect for cultural diversity, which is one of the Union's most important objectives. On the other hand, the differences may undermine consumers' confidence to venture into transactions with businesses in other countries.

~~Amendment by Béatrice Patrie~~

Amendment 4 Recital 5

(5) This Directive therefore approximates the laws of the Member States on unfair commercial practices, including unfair advertising, which harm consumers' **economic** interests. It neither covers nor affects the national laws on unfair commercial practices which harm only competitors' economic interests or which relate to a transaction between traders, nor the provisions of Directive 84/450/EEC on advertising which misleads business but which is not misleading for consumers and on comparative advertising. Neither does it affect accepted advertising and marketing practices such as product placement, brand differentiation or the offering of incentives which may legitimately affect consumers' perceptions of products and influence their behaviour without impairing the consumer's ability to make an informed decision. This Directive addresses commercial practices

(5) This Directive therefore approximates the laws of the Member States on unfair commercial practices, including unfair advertising, which harm consumers' interests. It neither covers nor affects the national laws on unfair commercial practices which harm only competitors' economic interests or which relate to a transaction between traders, nor the provisions of Directive 84/450/EEC on advertising which misleads business but which is not misleading for consumers and on comparative advertising. Neither does it affect accepted advertising and marketing practices such as product placement, brand differentiation or the offering of incentives which may legitimately affect consumers' perceptions of products and influence their behaviour without impairing the consumer's ability to make an informed decision. This Directive addresses commercial practices

directly related to influencing consumers' transactional decisions in relation to products. It does not address commercial practices carried out primarily for other purposes, including for example commercial communication aimed at investors, such as annual reports and corporate promotional literature.

directly related to influencing consumers' transactional decisions in relation to products. It does not address commercial practices carried out primarily for other purposes, including for example commercial communication aimed at investors, such as annual reports and corporate promotional literature.

~~Or. fr~~

Justification

All the interests of consumers (health, etc.) should be protected, not just their economic interests.

~~Amendment by Astrid Thors~~

Amendment 5 Recital 6

(6) This Directive is without prejudice to individual actions brought by individuals who have been harmed by an unfair commercial practice. It is also without prejudice to Community and national rules on contract law, intellectual property rights, rules relating to the health and safety aspects of products and to Community competition rules and the national provisions implementing them.

(6) This Directive is without prejudice to individual actions brought by individuals **and Member States** who have been harmed by an unfair commercial practice. It is also without prejudice to Community and national rules on contract law, intellectual property rights, rules relating to the health and safety aspects of products and to Community competition rules and the national provisions implementing them.

~~Or. sv~~

Justification

The Member States should also be able to introduce general bans; it should not be left to certain individuals to obtain injunctions. The amendment should also make it possible to align more closely with the different legal systems in the EU.

~~Amendment by Béatrice Patrie~~

Amendment 6 Recital 7

(7) It is necessary to ensure that the relationship between this Directive and existing Community law is coherent,

(7) It is necessary to ensure that the relationship between this Directive and existing Community law is coherent,

particularly where detailed provisions on unfair commercial practices apply to specific sectors. This Directive therefore amends Directive 84/450/EEC, as amended by Directive 97/55/EC, concerning misleading and comparative advertising, Directive 98/27/EC on injunctions for the protection of consumers' interests and Directive 97/7/EC on the protection of consumers in respect of distance contracts. This Directive accordingly applies only in so far as there are no specific Community law provisions regulating specific aspects of unfair commercial practices, such as information requirements and rules on the way the information is presented to the consumer. It provides protection for consumers where there is no specific sectoral legislation at Community level and prohibits traders from creating a false impression of the nature of products. This is particularly important for complex products with high levels of risk to consumers, such as certain financial services products. The Directive consequently complements the Community acquis which is applicable to commercial practices harming consumers' *economic* interests and, in particular, the Regulation of the European Parliament and Council concerning sales promotions in the internal market. The Regulation removes certain bans or limitation to the use of sales promotions and reference to them in commercial communications. The general requirements on misleading advertising and other unfair commercial practices, which are applicable to the use and communication of sales promotions, are covered by this Directive.

particularly where detailed provisions on unfair commercial practices apply to specific sectors. This Directive therefore amends Directive 84/450/EEC, as amended by Directive 97/55/EC, concerning misleading and comparative advertising, Directive 98/27/EC on injunctions for the protection of consumers' interests and Directive 97/7/EC on the protection of consumers in respect of distance contracts. This Directive accordingly applies only in so far as there are no specific Community law provisions regulating specific aspects of unfair commercial practices, such as information requirements and rules on the way the information is presented to the consumer. It provides protection for consumers where there is no specific sectoral legislation at Community level and prohibits traders from creating a false impression of the nature of products. This is particularly important for complex products with high levels of risk to consumers, such as certain financial services products. The Directive consequently complements the Community acquis which is applicable to commercial practices harming consumers' interests and, in particular, the Regulation of the European Parliament and Council concerning sales promotions in the internal market. The Regulation removes certain bans or limitation to the use of sales promotions and reference to them in commercial communications. The general requirements on misleading advertising and other unfair commercial practices, which are applicable to the use and communication of sales promotions, are covered by this Directive.

~~Or. fr~~

Justification

All the interests of consumers (health, etc.) should be protected, not just their economic interests.

Amendment 7
Recital 8

(8) The high level of convergence achieved by the approximation of national provisions through this Directive creates a high common level of consumer protection. The Directive establishes a single general prohibition of unfair commercial practices distorting consumers' economic behaviour. It also sets rules on aggressive commercial practices, which are currently not regulated at EU level. The harmonisation achieved and the high common level of consumer protection create in **turn** the conditions to make the principle of mutual recognition applicable in the field co-ordinated by the Directive.

(8) The high level of convergence achieved by the approximation of national provisions through this Directive creates a high common level of consumer protection. The Directive establishes a single general prohibition of unfair commercial practices distorting consumers' economic behaviour. It also sets rules on aggressive commercial practices, which are currently not regulated at EU level. The harmonisation achieved and the high common level of consumer protection **it aims to** create **will** in **time produce** the conditions to make the principle of mutual recognition applicable in the field co-ordinated by the Directive.

Justification

The circumstances do not yet exist in which the mutual recognition approach can operate and ensure a high level of consumer protection, one of the two central aims of this Directive. It will take time for these circumstances to take root.

Amendment 8
Recital 8 a (new)

(8a) To ensure that these provisions do not lead to a dilution of current high levels of consumer protection in the Member States there must be a process of convergence based on the principle of reasonable and effective harmonisation until it can be shown that there are no disadvantageous consequences in the evolution of a fully harmonised system.

Justification

The high level of consumer protection explicit in Article 153 requires a measured transition from minimum to maximum harmonisation.

Amendment 9
Recital 9

(9) As a result of the combination of harmonisation and the principle of mutual recognition legal certainty will considerably increase for both consumers and business. Both consumers and business will be able to rely on a single regulatory framework based on clearly defined legal concepts regulating all aspects of unfair commercial practices across the EU. Business will only have to comply with the national rules transposing the Directive in the country where there are established. The effect will be to eliminate the barriers stemming from the fragmentation of the rules on unfair commercial practices harming consumer **economic** interests and enable the achievement of the internal market in this area. The place where a trader is established shall be determined in conformity with any specific provisions in Community law and in conformity with the case law of the Court of Justice.

(9) As a result of the combination of harmonisation and the principle of mutual recognition legal certainty will considerably increase for both consumers and business. Both consumers and business will be able to rely on a single regulatory framework based on clearly defined legal concepts regulating all aspects of unfair commercial practices across the EU. Business will only have to comply with the national rules transposing the Directive in the country where there are established. The effect will be to eliminate the barriers stemming from the fragmentation of the rules on unfair commercial practices harming consumer interests and enable the achievement of the internal market in this area. The place where a trader is established shall be determined in conformity with any specific provisions in Community law and in conformity with the case law of the Court of Justice.

~~Or. fr~~

Justification

All the interests of consumers (health, etc.) should be protected, not just their economic interests.

Amendment 10
Recital 10

(10) In order to achieve the Community's objectives through the removal of internal market barriers it is necessary to replace Member States' existing, divergent general clauses and legal principles. This Directive therefore establishes a single, common general prohibition, covering unfair commercial practices distorting consumers' economic behaviour. The general

(10) In order to achieve the Community's objectives through the removal of internal market barriers it is necessary to replace Member States' existing, divergent general clauses and legal principles. This Directive therefore establishes a single, common general prohibition, covering unfair commercial practices distorting consumers' economic behaviour. ***In order to achieve***

prohibition is elaborated by rules on the two types of commercial practices which are by far the most common, namely misleading commercial practices and aggressive commercial practices.

its consumer protection objective and to support consumer confidence the general prohibition applies equally to unfair commercial practices which occur outside any contractual relationship between the trader and the consumer and, where a consumer does enter into a contract, to those aspects of the relationship which occur either within a contractual relationship or following a contract but which may not result in the consumer's further transactional decisions. The general prohibition is elaborated by rules on the two types of commercial practices which are by far the most common, namely misleading commercial practices and aggressive commercial practices.

Justification

The definition and scope of transactional decisions was not made explicit in this recital and in the draft Directive.

Amendment by Philip Bushill-Matthews

Amendment 11

Recital 11

(11) It is desirable that misleading commercial practices cover those practices, including misleading advertising, which by deceiving the consumer prevent him from making an informed and thus efficient choice. In conformity with the laws and practices of the Member States on misleading advertising, the Directive classifies misleading practices into misleading actions and misleading omissions. In respect of the omissions, the directive sets out a number of key information which the consumer needs to make an informed transactional decision. Such information will not have to be disclosed in all advertisements, but only where the trader makes an invitation to purchase, which is a concept clearly defined in the Directive.

(11) It is desirable that misleading commercial practices cover those practices, including misleading advertising, which by deceiving the consumer prevent him from making an informed and thus efficient choice. ***It is not the intention of the Directive to reduce consumer choice by disallowing or restricting the promotion of cheaper "lookalike" products except insofar as the consumer needs protection against implicit or explicit attempts to mislead by "passing off".*** In conformity with the laws and practices of the Member States on misleading advertising, the Directive classifies misleading practices into misleading actions and misleading omissions. In respect of the omissions, the directive sets out a number of key information which the consumer needs to make an informed transactional decision.

Such information will not have to be disclosed in all advertisements, but only where the trader makes an invitation to purchase, which is a concept clearly defined in the Directive.

~~Or. en~~

Amendment 12

Recital 13

(13) This Directive codifies the average consumer test elaborated by the European Court of Justice. Pursuant to the Court of Justice case law national courts will in applying the test also take social, cultural or linguistic factors into account. Where a commercial practice is specifically aimed at a particular group of consumers, ***such as children***, it is desirable that the impact of the commercial practice is assessed from the perspective of the average member of that group.

(13) This Directive codifies the average consumer test elaborated by the European Court of Justice. Pursuant to the Court of Justice case law national courts will in applying the test also take ***economic***, social, cultural or linguistic factors into account. Where a commercial practice is specifically aimed at a particular group of consumers, it is desirable that the impact of the commercial practice is assessed from the perspective of the average member of that group. ***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 the consumer's age, infirmity, mental state and level of literacy.***

Justification

In this Directive it is necessary to have regard for the circumstances in which particular consumers may be vulnerable to an extent not covered by the test based on the judgments of the ECJ.

Amendment 13

Recital 14

(14) It is appropriate to provide a role for codes of conduct, which enable traders to apply the principles of the directive

(14) It is appropriate to provide a role for codes of conduct, which enable traders to apply the principles of the directive

effectively in specific economic fields. **Such** codes may be helpful to national authorities in determining the requirements of professional diligence in a particular sector. The control exercised by code owners at national or Community level to eliminate unfair commercial practices may avoid the need for recourse to administrative or judicial action and should therefore be encouraged.

effectively in specific economic fields. **The firm commitments within such** codes may be helpful to national authorities in determining the requirements of professional diligence in a particular sector. The control exercised by code owners at national or Community level to eliminate unfair commercial practices may avoid the need for recourse to administrative or judicial action and should therefore be encouraged.

Justification

The use and definition of the codes of conduct has become blurred since the Follow-up Communication to the Green Paper on EU Consumer Protection. It is necessary to offer a more positive and clear definition of the supporting role, over time, of voluntary codes.

Amendment by Phillip Whitehead

Amendment 14 Recital 14a (new)

(14a) It is appropriate for code owners to seek official approval and acceptance of industry codes of conduct proven as successfully protecting the economic interests of consumers, and the diligence and fairness of commercial practices aimed at consumers. A number of Member States have mechanisms for officially approving or endorsing industry codes of conduct, and consideration should now be given to the development of such a mechanism by the EU. The European Commission should report to the European Parliament and the Member States within three years of the entry into force of this Directive with recommendations concerning the feasibility, and where appropriate, the minimum requirements for such a mechanism. The European Commission should have particular regard to the minimum criteria that industry codes of conduct must satisfy, to the transparent and voluntary nature of any mechanism leading to endorsement, and with due regard also to European Parliament and Council

***legislative prerogatives in the Internal
Market arena.***

Or. en

Justification

A number of Member States at present have systems in place for the approval of self-regulatory codes of conduct in the area of consumer protection. The European Commission's proposal rightly recognises the usefulness of codes in securing the adequate application of the Framework Directive across 25 Member States. Codes may be a first point of defence for consumers and therefore make a contribution to consumers' confidence. Approval of codes by regulators can further increase consumer confidence and contribute extensively to the application of consumer protection law.

It has been suggested that whilst the usefulness of codes, and their approval, is not disputed, it would be more appropriate at this stage to seek further public debate and study on the effectiveness of codes of conduct in protecting consumers' interests. It is therefore proposed that the European Commission should commit to examining further possible approval or endorsement mechanisms and report back to the European Parliament within three years with specific recommendations taking due account of the Parliament's prerogatives and co-decision rights in the Internal Market field.

Amendment by Karin Scheele

**Amendment 15
Article 1**

The purpose of this Directive is to contribute to the proper functioning of the internal market and achieve a high level of consumer protection by approximating the laws, regulations and administrative provisions of the Member States on unfair commercial practices harming consumers' ***economic*** interests, as defined below.

The purpose of this Directive is to contribute to the proper functioning of the internal market and achieve a high level of consumer protection by approximating the laws, regulations and administrative provisions of the Member States on unfair commercial practices harming consumers' interests, as defined below.

Or. de

Justification

The reference to purely economic interests is too restrictive. Interests relating to health or breaches of privacy also require protection, for example.

Amendment by Marianne L.P. Thyssen

**Amendment 16
Article 2, point (a)**

(a) ‘consumer’ means any natural person who, in commercial practices covered by this Directive, is acting for purposes ***which are outside his trade, business or profession***;

(a) ‘consumer’ means any natural person who, in commercial practices covered by this Directive, is acting ***solely*** for ***non-professional*** purposes;

Social, cultural and linguistic circumstances shall always be taken into account when assessing consumers' actions.

Or. nl

Justification

By making these changes, it is possible to adhere to the definitions laid down by the ECJ while still endeavouring to achieve a high level of consumer protection. The rules on marketing in many countries are based on the assumption that consumers do not have the time or opportunity to familiarise themselves with all the details of marketing literature etc. and that the general impression made by the marketing should be taken into account.

In the rest of the directive's text, therefore, the term 'average consumer' should always be replaced by the term 'consumer'.

Amendment 17 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, ***due regard being had, according to the circumstances of the case, to the consumer's age, infirmity, mental state and level of literacy***;

Justification

In this Directive it is necessary to have regard for the circumstances in which particular consumers may be vulnerable to an extent not covered by the test based on the judgments of the ECJ.

Amendment by Marianne L.P. Thyssen

Amendment 18- Article 2, point (c)

(c) ‘seller or supplier’ (hereinafter referred to as ‘trader’) means any natural or legal

(c) ‘seller or supplier’ (hereinafter referred

person who, in commercial practices covered by this Directive, is acting for purposes relating to his trade, business or profession;

to as ‘trader’) means

- any natural or legal person who, in commercial practices covered by this Directive, is acting for purposes relating to his trade, business or profession, ***or with a view to achieving his statutory objective; the trader shall be held responsible for an action which he deliberately promotes by means of his own behaviour or which he makes possible in the first place;***
- ***the public authorities or the legal person in which the state has a controlling interest which carry on a commercial, financial or industrial activity and which offer for sale or sell products or services;***
- ***the persons who, whether in their own name or in the name or on behalf of a third party which may or may not have legal personality, on a profit- or non-profit-making basis, carry on a commercial, financial or industrial activity and offer for sale or sell products or services;***

~~Or. nl~~

Justification

The directive must cover the promotion of actions by other firms, since more and more often unfair practices are being employed by third parties which have contractual links to a trader. By the same token, interaction between a variety of firms (advertising, distribution, mail order) often makes it impossible to identify precisely which one is responsible for the breach of the rules.

~~Amendment by Karin Scheele~~

Amendment 19 Article 2, point (d)

(d) ‘product’ means any good or service including immovable property;

(d) ‘product’ means any good or service including immovable property ***and rights***;

~~Or. de~~

Justification

The directive should also cover consumers’ rights (e.g. timesharing).

Amendment 20
Article 2, point (e)

(e) 'commercial practices' means any act, omission, course of conduct or representation, commercial communication including advertising and marketing, by a trader **directly** connected with the promotion, sale or supply of a product to consumers;

(e) 'commercial practices' means any act, omission, course of conduct or representation, commercial communication including advertising and marketing, by a trader, connected with the promotion, sale or supply of a product to consumers;

Justification

The indirect involvement of a trader or traders in a promotion to consumers may extend the possibility of unfairness and misrepresentation.

Amendment 21
Article 2, point (f)

(f) 'to materially distort the economic behaviour of consumers' means using a commercial practice to significantly impair the consumer's ability to make an informed decision and thereby causing the consumer to take a transactional decision that he would not have taken otherwise;

(f) 'to materially distort the economic behaviour of consumers' means using a commercial practice to significantly impair the consumer's ability to make an informed decision and thereby **potentially** causing the consumer to take a transactional decision that he would not have taken otherwise;

Justification

This would ensure consistency with the expression 'is likely to' in Articles 5, 6, 7 and 8 relating to the UCP tests, misleading and aggressive practices.

Amendment by Marianne L.P. Thyssen

Amendment 22
Article 2, point (i)

(i) 'code owner' means **any entity, including a trader or group of traders, which** is responsible for the formulation and revision of a code of conduct and/or for monitoring compliance with the code by those who have undertaken to be bound by it;

(i) 'code owner' means **the natural or legal person who** is responsible for the formulation and revision of a code of conduct and **therefore** for monitoring compliance with the code by those who have undertaken to be bound by it;

Or. nl

Amendment 23
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 **and the good faith demonstrated** 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 on unfair terms in consumer contracts**¹;

¹ OJ L 95, 21.4.1993, p. 29.

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.

Amendment 24
Article 2, point (l)

(l) 'undue influence' means exploiting a position of power to apply pressure, **without using physical force**, in a way which significantly limits the consumer's ability to make an informed decision.

(l) 'undue influence' means exploiting a position of power to apply pressure, **including but not limited to the use of physical force or the threat of physical force**, in a way which significantly limits the consumer's ability to make an informed decision.

Justification

Article 9 of the Directive does not specifically cover the threat of physical force. The definition of undue influence in the Commission proposal specifically excludes physical force. It would be odd if exploitative behaviour escaped the Directive only because it was coupled with physical force.

Amendment 25
Article 2, point (l a) (new)

(la) 'transactional decision' means any decision taken by a consumer concerning whether, how and on what terms to purchase, make payment in whole or in part for, retain or dispose of a product or to exercise a contractual right in relation to the product. Such a decision may result in the consumer either taking action or refraining from taking action.

Justification

The definition and scope of transactional decisions was not made explicit in the draft Directive.

Amendment by John Bowis

Amendment 26
Article 2, point (l b) (new)

(lb) 'firm commitment' means a commitment in a code of conduct which places a specific obligation on the signatory to undertake a specific action or course of action in relation to the consumer with regard to the commercial practices to which this Directive relates. It excludes any commitments which the Code itself specifically excludes from the classification of firm commitments or which are indicated to be aims or aspirations.

~~Or. en~~

Justification

It is important to define firm commitments as it is these that give rise to specific obligations to code signatories and code owners and are the basis of potential unfair commercial practices. Aims and aspirations are excluded to ensure codes continue to help raise standards above the minimum legal requirements without themselves creating additional legal obligations which may lead to signatories refusing to sign up to the code. It also limits the commitments to those in the areas covered by this Directive.

Amendment 27
Article 3, paragraph 1

1. This Directive shall apply to unfair commercial practices, as defined below in Article 5, ***before and after a commercial transaction in relation to any product.***

1. This Directive shall apply to unfair ***business-to-consumer*** commercial practices, as defined below in Article 5. ***It shall apply to consumers' transactional decisions even where that decision does not result in a contract between the consumer and a trader. Where any such contract is formed, this Directive shall apply equally to transactional decisions before and after the formation of the contract.***

Justification

The definition and scope of transactional decisions was not made explicit in the draft Directive.

Amendment by Phillip Whitehead

Amendment 28 Article 4, paragraph 1

1. Traders shall only comply with the national provisions, falling within the field approximated by this Directive, of the Member State in which they are established. The Member State in which the trader is established shall ensure such compliance.

1. Traders shall only comply with the national provisions, falling within the field approximated by this Directive, of the Member State in which they are established. The Member State in which the trader is established shall ensure such compliance. ***By way of derogation Member States shall be able to impose positive obligations upon traders where they relate to a sector which is not effectively regulated at EU level. This derogation shall last for a maximum period of seven years.***

Or. en

Justification

The Internal Market clause creates problems for consumers. The adoption of a system whereby consumers would be faced with having to deal with suppliers who provide goods and services under the various laws and regulations of (in 2004) 25 different Member States would cause a diminution of their own consumer protection for a period of time. Any approach which requires consumers to deal with an unfamiliar system of law, particularly in cases whereby the law is not being effectively implemented, will undermine consumer confidence in the protection they receive and therefore harm business. This argument was accepted in the debate about the amendment to the Brussels Convention on jurisdiction in consumer disputes. The same argument should apply here.

Amendment 14
Article 4, paragraph 1

1. Traders shall only comply with the national provisions, falling within the field approximated by this Directive, of the Member State in which they are established. The Member State in which the trader is established shall ensure such compliance.

1. Traders shall only comply with the national provisions, falling within the field approximated by this Directive, of the Member State in which they are established. The Member State in which the trader is established shall ensure such compliance. ***In the absence of effective compliance procedures a derogation shall be granted for consumer protection at higher levels. This shall apply for a period of not more than seven years before full harmonisation of the sector at a common level is completed.***

Justification

The Internal market clause creates problems for consumers. The adoption of a system whereby consumers would be faced with having to deal with suppliers who provide goods and services under the various laws and regulations of (in 2004) 25 different Member States. Any approach which requires consumers to deal with an unfamiliar system of law will undermine consumer confidence in the protection they receive and therefore harm business. This argument was accepted in the debate about the amendment to the Brussels Convention on jurisdiction in consumer disputes. The same argument should apply here.

Amendment 29
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, ***in the case of targeted marketing***, to whom it is addressed, or of the average member of the group ***of consumers who have access to the promotional materials*** when a commercial practice is specifically directed to a particular group of consumers.

Justification

Targeted marketing is principally defined by the specific recipients unless the promotion has

had a more general circulation to groups of consumers.

~~Amendment by Béatrice Patrie~~

Amendment 30
Article 5, paragraph 2 a (new)

2a. The criterion relating to the average member of the group need not be applied if a commercial practice is addressed specifically to minors or to persons who are physically or mentally disabled.

~~Or. fr~~

Justification

Some groups of consumers warrant particular protection by virtue of their vulnerability: minors and persons who are physically or mentally disabled. Where these categories of consumers are concerned, the group as a whole is protected and there is no need to apply the 'average consumer' test.

~~Amendment by John Bowis~~

Amendment 31
Article 5, paragraph 3, introductory part

3. In particular, commercial practices shall be regarded as unfair that

3. In particular, ***subject to paragraph 2 above***, commercial practices shall be regarded as unfair that

~~Or. en~~

Justification

This is to make it explicit that misleading and aggressive practices have to meet the conditions of paragraph 2 to be unfair.

~~Amendment by Karin Scheele~~

Amendment 32
Article 5, paragraph 4

4. Annex 1 contains a list of commercial practices which shall in all circumstances be

4. Annex 1 contains a ***non-exhaustive*** list of commercial practices which shall in all

regarded as unfair.

circumstances be regarded as unfair.

~~Or. de~~

Justification

It must be made clear that the list in Annex 1 merely sets out examples and is in no way exhaustive.

~~Amendment by John Bowis~~

Amendment 33
Article 6, paragraph 1, point (f)

(f) claims about the product which ***the trader*** cannot ***substantiate***.

(f) claims about the product which cannot ***be substantiated***.

~~Or. en~~

Justification

There may be circumstances where the trader cannot substantiate a claim but the claim can be substantiated by others on whom the trader can rely, e.g. suppliers.

~~Amendment 16~~
~~Article 6, paragraph 1, point (g)~~

~~(g) the consumer's rights or the risks ***he may face***.~~

(g) the consumer's rights or the risks ***faced by a consumer that the purchase of a product or service may reduce***.

Justification

~~*Consideration should be given for those situations in which the consumer may lose out (in health or safety) by not making a purchase.*~~

Amendment 17
Article 6, paragraph 2, point (a)

~~***(a) any marketing of a product, including comparative advertising, which creates***~~

~~***deleted***~~

~~confusion with any products, trade marks, trade names and other distinguishing marks of a competitor;~~

Justification

~~This would particularly hit low-income consumers who rely on these cheaper 'look-alike' products such as supermarket own labels to make ends meet. The problem of replicas which misrepresent their origin and manufacture to the consumer is dealt with under Annex 1, section 'Misleading commercial practices', paragraph 12 a) (new).~~

~~Amendment by John Bowis~~

Amendment 34
Article 6, paragraph 2, point (b)

(b) non-compliance by the trader with commitments contained in codes of conduct by which the trader has undertaken to be bound, where: *deleted*

- the commitment is firm and is capable of being verified, and
- information specifying the traders to whom the code applies and the content of the code are publicly available; or

~~Or. en~~

Justification

This is dealt with by a new article 6, paragraph 2 a (new) (see justification to amendment 35 on this paragraph).

~~Amendment by John Bowis~~

Amendment 35
Article 6, paragraph 2 a (new)

(2a) A commercial practice shall also be regarded as misleading where, in its factual context, taking account of all its features and circumstances, it thereby causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise, and it involves non-compliance by the trader with commitments

contained in codes of conduct by which the trader has undertaken to be bound, where:

- the commitment is not aspirational, but is firm and is capable of being verified, and

- the commitment is made in connection with the specific product or commercial practice in question in order to persuade the consumer to take a transactional decision in relation to that product, and

- information specifying the traders to whom the code applies and the content of the code are publicly available.

Such a practice shall, however, only be subject to the provisions of Articles 11, 12 and 13 below where there has been a ~~persistentepeated~~ course of non-compliance ~~and as a last resort~~ when the code owner has failed to act, or the trader has failed to comply with a decision of the code owner, or the code owner has requested that the provisions should apply.

~~Or. en~~

Justification

This replaces Article 6, paragraph 2, point (b). This amendment ensures that minor and/or unintentional breaches of codes can be dealt with at least in the first instance by the code sponsor. Action should be taken by public enforcement authorities only as a last resort measure and where a pattern of behaviour has been established on the part of a company which has signed up to a code. The term 'aspirational' is intended to indicate those commitments which would not be capable of objective measurement.

~~Amendment by John Bowis~~

Amendment 36 Article 7, paragraph 2

2. It shall also be regarded as a misleading omission when a trader hides or provides in an unclear, unintelligible, ambiguous or untimely manner such material information or fails to identify the commercial intent of the commercial practice.

2. It shall also be regarded as a misleading omission when a trader hides or provides in an **incomplete**, unclear, unintelligible, ambiguous or untimely manner such material information or fails to identify the commercial intent of the commercial practice **where it is not already apparent**

from the context.

~~Or. en~~

Justification

All commercial practices are designed to persuade a consumer to do something they might not otherwise do. The objective must be to ensure that this is not achieved by misleading the consumer. It is often clear to the average consumer from the context that the practice has a commercial intent, for example, advertising. In that case it is not misleading or unfair not to identify the commercial intent and this should not be required.

Amendment 37

Article 7, paragraph 3, point (e)

(e) for products and transactions involving a right of withdrawal or cancellation, the existence of such a right.

(e) for products and transactions involving a right of withdrawal or cancellation, ***exchange and/or refund***, the existence of such a right.

Justification

This is in line with the EP resolution on the implications of the Commission Green Paper on European Union Consumer Protection for the future of EU consumer policy (Patrie Report, PE T5-0101/2003) adopted on 13 March 2003, which, in its paragraph 8, emphasises the need to provide clear and adequate information to consumers.

Amendment 38

Article 7, paragraph 3, point (e a) (new)

(ea) the exact content and origin in the case of foodstuffs;

Justification

This is in line with the EP resolution on the implications of the Commission Green Paper on European Union Consumer Protection for the future of EU consumer policy (Patrie Report, PE T5-0101/2003) adopted on 13 March 2003, which, in its paragraph 8, emphasises the need to provide clear and adequate information to consumers.

Amendment 39

Article 7, paragraph 3, point (e b) (new)

***(eb) full details of the product guarantee
and conditions of after-sales service;***

Justification

This is in line with the EP resolution on the implications of the Commission Green Paper on European Union Consumer Protection for the future of EU consumer policy (Patrie Report, PE T5-0101/2003) adopted on 13 March 2003, which, in its paragraph 8, emphasises the need to provide clear and adequate information to consumers.

Amendment 40
Article 7, paragraph 3, point (e c) (new)

***(ec) membership of a code of conduct,
where applicable;***

Justification

This is in line with the EP resolution on the implications of the Commission Green Paper on European Union Consumer Protection for the future of EU consumer policy (Patrie Report, PE T5-0101/2003) adopted on 13 March 2003, which, in its paragraph 8, emphasises the need to provide clear and adequate information to consumers.

Amendment 41
Article 7, paragraph 3 a (new)

***3a. All information listed in paragraph 3
shall be displayed in a clear and visible
manner.***

Justification

This is in line with the EP resolution on the implications of the Commission Green Paper on European Union Consumer Protection for the future of EU consumer policy (Patrie Report, PE T5-0101/2003) adopted on 13 March 2003, which, in its paragraph 8, emphasises the need to provide clear and adequate information to consumers.

Amendment 42
Article 9, paragraph (b a) (new)

***(ba) the use by a trader of any physical
infirmity of which the trader is aware to
restrict the consumer's freedom of choice***

in relation to the product;

Justification

Protection must be offered to vulnerable groups, particularly the physically infirm, whose infirmity may be exploited.

~~Amendment by John Bowis~~

Amendment 43
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 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 ***save where the consumer is explicitly seeking the product in connection with the misfortune or circumstance;***

~~Or. en~~

Justification

The trader must be able to legitimately advise a consumer on a product that will assist in dealing with the misfortune, for example, a funeral director must be able to advise on alternative options for a loved one's funeral even though it is clear the consumer may be distressed.

Amendment 44
Article 10

This Directive does not exclude the control which Member States may encourage, of unfair commercial practices by code owners of national or Community level codes and recourse to such bodies by the persons or organisations referred to in Article 11 if proceedings before such bodies are in addition to the court or administrative proceedings referred to in that Article.

This Directive does not exclude the control which Member States may encourage, of unfair commercial practices by code owners of national or Community level codes and recourse to such bodies by the persons or organisations referred to in Article 11 if proceedings before such bodies are in addition to the court or administrative proceedings referred to in that Article. ***Such codes must provide verifiable commitments for monitoring, compliance and redress of complaints,***

binding on all signatories. Recourse to such a control body shall never imply a renunciation of the right to take the legal or administrative action referred to in Article 11 of this Directive.

Justification

This proposal strengthens the impact of the voluntary codes. The invoking of codes of conduct is optional and cannot take the place of the legal or administrative action provided for in Article 11 of the directive.

Amendment by Phillip Whitehead

Amendment 45
Article 10, paragraph 1 a (new)

(1a) The Commission shall further study the roles of industry codes of conduct in protecting the economic interests of consumers. Within three years from the date of entry into force of this Directive the Commission shall report to the European Parliament and the Member States with recommendations regarding the possible approval or endorsement of such voluntary, non-discriminatory industry codes of conduct, including the criteria such codes of conduct must meet and the process by which any approval or endorsement could be granted.

Or. en

Justification

See justification to amendment to Recital 14 a (new).

Amendment by Béatrice Patrie

Amendment 46
Article 11, paragraph 1, subparagraph 1

Member States shall ***ensure that*** adequate and effective means ***exist*** to combat unfair commercial practices ***and for the*** compliance with the provisions of this

Member States shall ***establish*** adequate and effective means to combat unfair commercial practices ***with a view to-
ensuring in order to ensure*** compliance

Directive in the interest of consumers.

with the provisions of this Directive in the interest of consumers.

~~Or. fr~~

Justification

Member States have an obligation to achieve results when it comes to monitoring compliance with the directive.

~~Amendment by John Bowis~~

Amendment 47

Article 11, paragraph 2, subparagraph 1

even without proof of actual loss or damage or of intention or negligence on the part of the trader.

where there is no proof of actual loss or damage *to the average consumer* or of intention or negligence on the part of the trader, *it shall be necessary to establish sufficient evidence to satisfy the relevant courts or administrative authorities that the unfair commercial practice will result in that loss or damage.*

~~Or. en~~

Justification

The unamended wording might allow action to be taken where a certain practice is imminent, but without proof of actual loss or damage to consumers' economic interests, or intention of negligence on the part of the trader. There needs to be an indication of the standard of proof which would be required.

~~Amendment by Marianne L.P. Thyssen~~

Amendment 48

Article 11, paragraph 3, point (c)

(c) *normally* give reasons for their decisions.

(c) give reasons for their decisions.

~~Or. nl~~

~~Amendment 25~~
~~Article 13 a (new)~~

~~Article 13a~~
~~Reparation of damages:~~

~~Member States shall provide for individual consumers or groups of consumers the right to bring a judicial or administrative action against a trader who, by breaching the provisions of this Directive, has caused the individual consumer or group of consumers to suffer damage.~~

~~Justification~~

~~The rights of consumers collectively should also be protected.~~

Amendment by Marianne L.P. Thyssen

Amendment 49
Article 17

Member States shall take appropriate measures to inform the consumer of the national law transposing this Directive and shall encourage, where appropriate, traders and **professional organizations** to inform consumers of their codes of conduct.

Member States shall take appropriate measures to inform the consumer of the national law transposing this Directive and shall encourage, where appropriate, traders and **code owners** to inform consumers of their codes of conduct.

Or. nl

Amendment 50
Annex 1, 'Misleading commercial practices', point (3)

(3) Making an invitation to purchase products at a specified price if there **are reasonable grounds for believing** that the trader will not be able to offer for supply or to procure another trader to supply, those products or equivalent products at that price for a period that is, and in quantities that are reasonable having regard to the product and price offered (bait advertising).

(3) Making an invitation to purchase products at a specified price if there **is evidence** that the trader will not be able to offer for supply or to procure another trader to supply, those products or equivalent products at that price for a period that is, and in quantities that are reasonable having regard to the product, **the scale of advertising of the product** and **the price offered** (bait advertising).

Justification

The test in the Commission text is based on a belief. This is not a fair measure.

Amendment 51

Annex 1, 'Misleading commercial practices', point (5)

(5) Falsely stating that the product will only be available for a very **short** time in order to elicit an immediate decision and deprive consumers of sufficient opportunity or time to make an informed choice.

(5) Falsely stating that the product will be available for only a very **limited** time in order to elicit an immediate decision and deprive consumers of sufficient opportunity or time to make an informed choice.

Justification

This provides more clarity.

Amendment by Phillip Whitehead

Amendment 52

Annex 1, 'Misleading commercial practices', point (9)

(9) Falsely arguing that the personal security of the consumer or his family is at risk if the consumer does not purchase the product.

(9) Falsely arguing that the personal security of the consumer or his family is at risk if the consumer does not purchase the product **or materially overstating the risks that the consumer or his family is at if the consumer does or does not purchase the product.**

Or. en

Justification

There are circumstances where it is important that traders make consumers aware of the risks associated with both purchasing and not choosing to purchase some products, therefore it is important that the prohibition does not capture these situations.

Amendment by Marianne L.P. Thyssen

Amendment 53

Annex 1, 'Misleading commercial practices', point (11)

(11) Failing to provide the information stipulated in the Annex of the Regulation on Sales Promotion or providing information which is false, unclear or

deleted

ambiguous in fulfilment of the requirements in the Annex.

Or. nl

Justification

The regulation on sales promotion has not yet come into force. Once it has come into force, the directive under consideration here can be brought into line with it.

Amendment 54

Annex 1, 'Misleading commercial practices', paragraph (11 a) (new)

(11a) Using an artificially high reference price as the basis to grant discounts and so giving the consumer the false impression that there is a price advantage.

~~Amendment by Marianne L.P. Thyssen~~

Amendment 55

Annex 1, 'Misleading commercial practices', point (12)

(12) Using the expression "liquidation sale" or equivalent when the trader is not about to cease trading.

(12) Using the expression "liquidation sale" or equivalent when the trader is not about to cease trading ***and is not facing circumstances which give him the legal right to describe his sales position as a liquidation sale.***

Or. nl

Amendment 56

Annex 1, 'Misleading commercial practices', point (12 a) (new)

(12a) Promoting a product similar to that made by a particular manufacturer in such a manner as to suggest it is made by that same manufacturer when that is not the case.

Justification

While companies have the right to produce cheaper alternatives to any product as long as patents/trade marks are not infringed, consumers must have the strongest possible protection against "passing off".

Amendment 29

~~Annex 1 section 'Misleading commercial practices', paragraph (12) a (new)~~

~~(12a) Promoting a product purporting to be identical to that of another manufacturer when that is not the case.~~

Justification

~~*Consumers have the right to know that the product offered to them is what it is claimed to be.*~~

Amendment 57

Annex 1, 'Misleading commercial practices', point (12 b) (new)

(12b) Supplying goods or services to consumers who have not requested them, unless it is made clear that the goods or services are free and may be retained or used without any obligation on the part of the consumer.

Justification

Amplification of the categories of unfair practices.

Amendment 58

Annex 1, 'Misleading commercial practices', point (12 c) (new)

(12c) Carrying on business in such a way as to make it difficult for consumers to know the true identity of the person or persons that would normally be liable as seller or supplier under the applicable law.

Justification

Amplification of the categories of unfair practices.

Amendment 59

Annex 1, 'Misleading commercial practices', point (12 d) (new)

(12d) Promoting the supply of products or services under the guise of canvassing or soliciting opinions.

Justification

Amplification of the categories of unfair practices.

Amendment 60

Annex 1, 'Misleading commercial practices', point (12 e) (new)

(12e) Advertising or promoting products or services in such a way as to disguise the commercial intent of the communication.

Justification

Amplification of the categories of unfair practices.

~~Amendment 34~~

~~Annex 1 section 'Misleading commercial practices', paragraph (12) f (new)~~

-

~~***(12f) Making claims for which the promoter or advertiser lacks appropriate substantiation.***~~

~~*Justification*~~

~~*Amplification of the categories of unfair practices.*~~

Amendment 61

Annex 1, 'Misleading commercial practices', point (12 f) (new)

(12f) Procuring directly or indirectly the signature by the consumer of waivers to the legal protection set out in this Directive.

Justification

Amplification of the categories of unfair practices.

Amendment 62

Annex 1, 'Misleading commercial practices', point (12 g) (new)

(12g) Having responsibility for a code of practice but failing to take reasonable steps to deal with members of the code who persistently fail to honour its provisions.

Justification

Code-owners should be expected to ensure that code signatories respect the provisions of a given code.

Amendment 63

Annex 1, 'Misleading commercial practices', point (12 h) (new)

(12h) The practice of going into liquidation or changing ownership with the express purpose of avoiding liabilities and previous agreements (Phoenix companies).

Justification

Amplification of the categories of unfair practices.

Amendment 64

Annex 1, 'Misleading commercial practices', point (12 i) (new)

(12i) Competitions and prize promotions in schemes where there has not been and there is no intention of providing the prizes described.

Justification

Amplification of the categories of unfair practices.

Amendment 65

Annex 1, 'Aggressive commercial practices', point (2)

(2) Conducting prolonged and/or repeated personal visits to the consumer's home ignoring the consumer's request to leave.

(2) Conducting prolonged and/or repeated personal visits to the consumer's home ignoring the consumer's request to leave ***and not to return.***

Justification

This should serve to deal more appropriately with repeated visits.

Amendment 66

Annex 1, 'Aggressive commercial practices', point (3)

(3) Making persistent and unwanted solicitations by telephone, fax, e-mail or other remote media.

(3) Making persistent and unwanted solicitations by telephone, fax, e-mail or other remote media ***once the consumer has made clear that these solicitations are no longer desired.***

Justification

Cases whereby a trader persists with communications in spite of a clear indication from the consumer that the communication is unwanted should be blacklisted.

Amendment by Marianne L.P. Thyssen

Amendment 67

Annex 1, 'Aggressive commercial practices', point (4)

(4) Targeting consumers who have recently suffered a bereavement or serious illness in their family in order to sell a product which bears a direct relationship with the misfortune.

(4) Targeting consumers who have recently suffered a bereavement or serious illness in their family in order to sell a product which bears a direct relationship with the misfortune. ***This provision shall not apply to funeral directors.***

~~Or. nl~~

~~Amendment by Marianne L.P. Thyssen~~

Amendment 68

Annex 1, 'Aggressive commercial practices', point (5)

(5) Requiring *a consumer who wishes to claim on an insurance policy* to produce documents which could not reasonably be considered relevant as to whether *the* claim was valid *in order* to *dissuade* the consumer from exercising his contractual rights.

(5) Requiring *an insured person* to produce documents which could not reasonably be considered relevant as to whether *his insurance* claim was valid *with a view* to *dissuading* the consumer from exercising his contractual rights.

~~Or. nl~~

Amendment 69

Annex 1, 'Aggressive commercial practices', point (6)

(6) Advertising to children in a way which implies that their acceptance by their peers is dependent on *their parents buying them* a particular product. This provision is without prejudice to Article 16 of Directive 89/552/EEC on television broadcasting.

(6) Advertising to children in a way which implies that their acceptance by their peers is dependent on *them buying or being bought* a particular product. This provision is without prejudice to Article 16 of Directive 89/552/EEC on television broadcasting.

Justification

People other than parents may be responsible for the purchase, including the children themselves.

~~Amendment by Marianne L.P. Thyssen~~

Amendment 70

Annex 1, 'Aggressive commercial practices', point (7)

(7) Demanding payment for products supplied by the trader, but which were not solicited by the consumer (inertia selling).

(7) Demanding payment for *or the return of* products supplied by the trader, but which were not solicited by the consumer (inertia selling).

~~Or. nl~~

Justification

Requiring consumers to return unsolicited products generates costs for the consumers in question and must therefore be categorised as an aggressive commercial practice.

~~Amendment by Phillip Whitehead~~

Amendment 71

Annex 1, 'Aggressive commercial practices', point (7 a) (new)

(7a) Commercial communications that tend to promote anti-social or dangerous behaviour, especially among vulnerable groups.

~~Or. en~~

Justification

Products which are known to be causally connected to increases in violent behaviour, and are promoted without regard to their potentially dangerous consequences, shall not be advertised to vulnerable groups.

~~Amendment 42~~

~~Annex 1 section 'Aggressive commercial practices', paragraph (7) a (new)~~

~~-~~

~~***(7a) Commercial communications that tend to promote anti-social or dangerous behaviour, especially among vulnerable groups.***~~

~~*Justification*~~

~~*Amplification of the categories of unfair practices.*~~

~~Amendment by Martin Callanan~~

Amendment 72

Annex 1, 'Aggressive commercial practices', point (7 b) (new)

(7b) Harassing, coercing or unduly influencing the consumer to enter into a credit transaction at a rate of charge which is grossly exorbitant when compared to the

rates which are then generally available to consumers for credit transactions of the same type.

Or. en

Justification

The wording 'credit transaction' protects consumers against all kinds of aggressive credit transactions, including credit associated with home improvement, where abusive practices occur regularly. It is important to ban such transactions on the basis of their aggressive nature, rather than on the basis of their price.

Amendment 73

Annex 1, 'Aggressive commercial practices', point (7 c) (new)

(7c) Imposing onerous or unreasonable obstacles, whether procedural or substantive, on consumers who wish to exercise their right to terminate a contract or switch to another supplier.

Justification

Amplification of the categories of unfair practices.

Amendment 44

~~Annex 1 section 'Aggressive commercial practices', paragraph (7) c (new)~~

~~***(7c) Money lending at rates demonstrably exorbitant compared to what would be available to the consumer in the money markets for loans of the same type.***~~

Justification

~~*Until the provisions of consumer credit are effectively regulated by the future Directive of that name, it is important that consumers are not disadvantaged since, according to Article 3, paragraph 5 of this Directive, other Community rules governing specific aspects of unfair commercial practices will take precedence. This cannot be the case until the Consumer Credit Directive has entered into force.*~~

Amendment 74

Annex 1, 'Aggressive commercial practices', point (7 d) (new)

(7d) Refusal to respond to complaints within a reasonable timeframe and procedures which are obscure, complex, prolonged or expensive.

Justification

Amplification of the categories of unfair practices.

Amendment 75

Annex 1, 'Aggressive commercial practices', point (7 e) (new)

(7e) Initiating court proceedings or disconnecting services without attempting to reach agreement on an affordable repayment schedule with a consumer in financial difficulty.

Justification

This is an elaboration of the 'transactional decision' definition to ensure cover for situations whereby the consumer refrains from taking an action, thereby becoming a victim of an unfair commercial practice. For example, a consumer's electricity supply is cut off after he queries payment of a bill for which he is overcharged to the tune of seven times the amount due.