

WRITTEN QUESTION E-4028/00
by Angelika Niebler (PPE-DE)
to the Commission

Subject: Harmonisation of the law on advertising in the European Community

This May the European Parliament adopted the Directive on electronic commerce at second reading. The Directive centres on the country of origin principle under which persons offering goods and services over the internet only have to obey the rules on advertising applying in the country of where they are established. In view of the differing legislation on advertising in the Member States this can produce discrimination against nationals of a country where advertising regulations are strict such as the Federal Republic of Germany.

The strict advertising laws in Germany include a Discount Act and a Free Gift Act. The German Free Gift Act, which requires the offer of a free gift not to be made dependent on purchase of the principal article being advertised, would appear to be an inadmissible obstacle to the free trade in goods via the internet. This far-reaching prohibition also covers services and guarantees which are normal commercial practice in the other Member States and extensively used as a marketing tool (e.g. 'buy one, get one for free'). This discriminates against German consumers who are deprived of extra inducements and against undertakings based in Germany in relation to their foreign competitors.

The harm caused on the internal market was particularly apparent in a recent decision by the Saarbrücken Higher Regional Court, which ruled that a lifetime guarantee given by one company for its products was a breach of the Free Gift Act and was therefore prohibited in Germany. The company had given the same guarantee in all Member States and throughout the world.

In the light of this clear discrimination against Germans, does the Commission believe there to be a need for harmonisation of advertising legislation within the Community and has it given instructions to prepare such harmonisation or will it be doing so? Will the Commission be taking appropriate measures against Germany on account of these provisions in the Free Gift Act which are an obstacle to cross-border competition?