Tuesday 4 February 2014

P7_TA(2014)0063

Implementation of Unfair Commercial Practices Directive

European Parliament resolution of 4 February 2014 on the implementation of the Unfair Commercial Practices Directive 2005/29/EC (2013/2116(INI))

(2017/C 093/05)

The European Parliament,

— having regard to Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market (the Unfair Commercial Practices Directive) ([1]),

— having regard to the Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee entitled 'First Report on the application of the Unfair Commercial Practices Directive' (COM(2013)0139),

— having regard to the Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the application of the Unfair Commercial Practices Directive' (COM(2013)0138),

— having regard to Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection cooperation) ([2]),

— having regard to Directive 98/27/EC of the European Parliament and of the Council of 19 May 1998 on injunctions for the protection of consumers' interests ([3]),

— having regard to its resolution of 13 January 2009 on the transposition, implementation and enforcement of Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market and Directive 2006/114/EC concerning misleading and comparative advertising ([4]),

— having regard to its resolution of 15 December 2010 on the impact of advertising on consumer behaviour ([5]), and the Commission's follow-up response adopted on 30 March 2011,

— having regard to the study entitled 'Transposition and Enforcement of the Directive on unfair commercial practices (2005/29/EC) and the Directive concerning misleading and comparative advertising (2006/114/EC), requested by its Committee on the Internal Market and Consumer Protection ([6]),

— having regard to Rule 48 of its Rules of Procedure,

— having regard to the report of the Committee on the Internal Market and Consumer Protection and the opinion of the Committee on Legal Affairs (A7-0474/2013),

A. whereas consumption is one of the essential drivers for growth in the European Union, and consumers therefore play a vital role in the EU economy;

B. whereas the protection of consumers and their rights is one of the Union's fundamental values:

C. whereas Directive 2005/29/EC on unfair commercial practices is the European Union's main legislative tool regulating misleading advertising and other unfair practices in business-to-consumer transactions;

([1]) OJ L 149, 11.6.2005, p. 22.
([2]) OJ L 364, 9.12.2004, p. 1.
([3]) OJ L 166, 11.6.1998, p. 51.
([4]) OJ C 46 E, 24.2.2010, p. 26.
([5]) OJ C 169 E, 15.6.2012, p. 58.
([6]) IP/A/IMCO/NT/2008-16.

Tuesday 4 February 2014

D. whereas the Directive aims, through the 'internal market' clause, to ensure a high level of consumer protection throughout the European Union and to boost consumer confidence in the Single Market, whilst guaranteeing businesses significant legal certainty and a reduction in barriers to cross-border trade;

E. whereas there have been major differences in the implementation of Directive 2005/29/EC from one Member State to another;

F. whereas the temporary derogations allowing Member States to continue to apply national provisions that were more restrictive or prescriptive than the Directive and that implemented minimum harmonisation clauses in other EU legislative instruments expired on 12 June 2013;

G. whereas Member States which so wish are free to extend application of the Directive to business-to-business relations, and whereas to date only four Member States have chosen to do so;

H. whereas the Commission has announced that it will propose shortly a review focusing on business-to-business relations of Directive 2006/114/EC on misleading and comparative advertising;

I. whereas the development of the digital economy and all its technological applications have revolutionised purchasing methods and the way in which businesses sell and advertise their goods and services;

J. whereas some undertakings, particularly the smaller ones, as well as many consumers, are still insufficiently aware of consumers' rights in Europe;

K. whereas it is necessary to strengthen the role of consumers' associations and enable them to enhance their capacities;

1. Lays stress on the effectiveness of the legislation established by the Directive and its importance in making consumers and traders more confident with regard to transactions within the internal market (particularly cross-border transactions), in guaranteeing businesses greater legal certainty, and in helping to enhance consumer protection in the Union; stresses that disparities in the application of the Directive risk impairing its effectiveness;

2. Regrets that despite provisions in Directive 2006/114/EC to combat misleading practices in business-to-business advertising, some of these practices, notably 'directory scams', still persist; notes the Commission's intention to propose shortly amendments to Directive 2006/114/EC focusing on business-to-business relations, in order to combat these practices more effectively; suggests that the Commission could, in this context, consider the merits of a targeted black list of commercial practices that are to be considered unfair in all circumstances in the field of business-to-business relations for Directive 2006/114/EC, similar to that which already exists for Directive 2005/29/EC; does not, however, consider it appropriate for the moment to extend the scope of Directive 2005/29/EC on business-to-consumer relations to include business-to-business unfair commercial practices;

3. Calls on the Commission to clarify the relationship between Directives 2005/29/EC and 2006/114/EC, in order to guarantee a high level of protection for all economic operators in the Union, particularly consumers and SMEs, from fraudulent and unfair practices, thus boosting confidence within the Single Market;

4. Takes the view that the derogations laid down for the property and financial services sectors are justified and that it is appropriate for them to be retained;

5. Considers that it would not be appropriate at this stage to expand the black list in Annex I; calls however on the Commission to draw up a list of practices which national authorities have identified as unfair within the meaning of the general principles of the Directive, in order to assess whether such an expansion would be advisable in the future;

6. Notes that with certain forms of consumer-to-business engagement, consumers may be victims of unfair commercial practices, for example when selling a product on to a trader; calls on the Commission to investigate problems of this kind and, if appropriate, explore targeted and practical remedies which might include inter alia more flexible interpretations of the provisions of Directive 2005/29/EC on unfair commercial practices, and could be explained in the Commission's guidance on the application of this Directive;

7. Recalls that, with effect from 12 June 2013, Member States may no longer maintain the provisions retained until that date as temporary derogations; calls as a consequence on Member States to comply with the Directive as swiftly as possible; at the same time, calls on the Commission to carry out research into how Member States have transposed the Directive, in particular regarding national prohibitions not included in Annex I, and to submit within 2 years to Parliament and to the Council a new comprehensive report on its application, containing, in particular, an analysis on the scope for further harmonisation and simplification of Community law relating to consumer protection and suggestions for any necessary measures to be taken at Community level to ensure that a high level of consumer protection is maintained;

8. Reasserts the importance and absolute necessity of the Directive being fully and uniformly applied and properly implemented by Member States in order to eliminate legal and operational uncertainties for businesses operating across borders; notes with disquiet that in 2011 and 2012 the Commission was obliged to employ the 'EU Pilot' consultation system because several Member States had failed to transpose the Directive correctly; calls on the Member States to support enforcement at national level with all available means, in particular with sufficient resources; stresses the essential role of stepping up cooperation between the national authorities responsible for implementing the Directive as well as the importance of building up a structured dialogue between public enforcers and other stakeholders, in particular consumer associations;

9. Notes that, since the expiry of the deadline for implementation of the Directive in 2007, there have been numerous cases of Member States not correctly implementing or applying key provisions, in particular the black list of banned, misleading and aggressive commercial practice; calls therefore on the Commission to continue monitoring closely application of the Directive and, if necessary, to bring proceedings against Member States which infringe the Directive or fail to implement it or to apply it correctly, in accordance with the Treaty on the Functioning of the European Union; calls in particular on the Commission to urgently resolve any outstanding issues with regard to the consultations launched in 2011, either by terminating the infringement procedures or by referring them to the Court of Justice;

10. Supports the Commission's wish to draw up a list of indicators to evaluate the effectiveness of the mechanism whereby the Member States implement the Directive;

11. Welcomes the fact that since the Directive was transposed in Member States, cross-border purchases have increased; recalls however that reinforced cooperation and coordination between the Commission and national authorities is essential in order to promote converging practices in implementation, and to provide a rapid and efficient response; notes that particular attention should be paid to dealing with cross-border online purchasing, especially where price comparison websites do not clearly disclose the identity of the trader operating the site;

12. Reasserts the importance of enhanced cooperation between national authorities responsible for applying the Directive in order to achieve its full application and proper implementation by the Member States; encourages the Commission in this respect to examine thoroughly the scope, effectiveness and operational mechanisms of the Consumer Protection Cooperation Regulation (CPC Regulation), as it has committed itself to doing before the end of 2014; welcomes, with that in mind, the recent opening by the Commission of a public consultation on the revision of that regulation and the availability of the consultation in all EU languages; calls on involved stakeholders to take a part in this consultation;

13. Stresses the usefulness of the 'sweeps' carried out under the CPC Regulation and calls on the Commission to further develop and strengthen them and broaden their scope; urges the Commission to summarise the data collected and the list of actions taken by the Commission and Member States in the wake of these sweeps, and to publish its findings, while taking into account the need to ensure the confidentiality of certain sensitive information that is being used in the framework of a judicial procedure at national level; calls on the Commission to report to Parliament on its findings and to further propose additional measures if needed in order to improve the functioning of the internal market;

14. Agrees that further efforts should be made to strengthen the enforcement of the Unfair Commercial Practices Directive in relation to vulnerable consumers;

15. Expresses concern at the conflicts of interest involved and the misleading use to which some traders are putting customer review tools and price comparison websites; welcomes the Commission's decision to consider how the information provided on such platforms might be made clearer to consumers;

16. Calls on the Commission and the Member States to ensure proper application of the Unfair Commercial Practices Directive especially regarding misleading 'hidden' internet advertising in the form of comments posted on social networks, forums or blogs, apparently emanating from consumers themselves while they are in reality messages of a commercial or advertising nature directly or indirectly generated or financed by economic operators; insists on the damaging effect of such practices on consumer confidence and competition rules; calls on the Member States to take appropriate measures to further prevent the development of such practices, including by launching information campaigns aimed at warning consumers of these 'hidden' forms of advertising, or by encouraging the emergence of forum observers/moderators who are specifically trained and alert to the dangers of 'hidden' advertising;

17. Maintains that, given the rapid spread of online advertising, a suitable method for monitoring the protection of vulnerable groups of people, especially children, and their accessing by advertisers, needs to be developed;

18. Regrets that, despite current EU legislation on airline prices and the 2007 sweep under the CPC Regulation of websites selling plane tickets, consumers continue to fall victim to the very many misleading practices in this sector, such as not including unavoidable costs like credit and debit card surcharges when booking online; notes with concern the increasing number of complaints concerning online ticket purchasers who have fallen victim to what is commonly referred to as 'IP tracking', a practice which seeks to record the number of web visits by individual users through the same IP address and then artificially push up prices based on the level of interest revealed by other similar searches; calls on the Commission to investigate the frequency of this practice, which results in unfair competition and constitutes a misuse of users' personal data, and, if appropriate, to propose suitable legislation to protect user interests;

19. Considers that the penalties imposed for failure to comply with the Directive ought never to be lower in value than the profit made through a practice deemed to be unfair or misleading; reminds Member States that the Directive states that penalties must be effective, proportionate and dissuasive; asks the Commission to compile and analyse data on penalties applied by Member States as well as on the efficiency of enforcement regimes in particular with regard to the complexity and length of enforcement procedures; calls on the Commission to provide the Parliament with results of these analyses;

20. Welcomes the efforts of the Commission to assist Member States in transposing and applying the directive;

21. Welcomes the database on national legislation and case law concerning unfair commercial practices developed by the Commission and recognises it to be a useful means of adding to the information available to consumers; regrets that it is only available in English; asks the Commission to increase progressively the number of languages in which the database is available and to enhance its visibility, particularly for economic operators; calls on the Commission to consider also additional instruments for raising the awareness of SMEs with regard to unfair commercial practices;

22. Emphasises the importance of the guidance document produced by the Commission to assist in application of the Directive; welcomes the Commission's intention to revise this document by 2014; encourages the Commission to work transparently, holding wide-ranging consultations with stakeholders throughout the process; calls on the Commission to continue updating and clarifying this document on a very regular basis in the future; calls on the Member States to take this guidance document into account as far as possible and to exchange best practices on its implementation; calls on the Commission to submit an evaluation of interpretation and implementation problems which national authorities and stakeholders have regularly encountered while implementing the provisions of the Directive, in order to assess which aspects of the guidance document need to be improved;

23. Underlines that the principle of maximal harmonisation set by the Directive implies that national legislation cannot provide for stricter provisions than those provided under this Directive; stresses that the Court of Justice has interpreted that principle as requiring that bundled sales and other commercial promotions, which are treated by the Court as unfair commercial practices and which do not feature on the black list in Annex I, can only be prohibited on a case-by-case basis; stresses that for reasons of legal certainty, and to guarantee a high level of consumer protection, the Commission should specify, as part of its review of the guidance document, in what precise cases bundled sales and other commercial promotions should be deemed illegal; calls also on the Commission to reflect on the necessity of a new legislative proposal dedicated to commercial promotions;

24. Stresses that the use of false environmental claims is an unfair practice which is on the rise; encourages the Commission to expand the section of the guidance document devoted to this practice in order to clarify the application of the Directive for economic operators; at the same time, calls on the Commission to explore the initiatives it could take to improve consumer protection against such practices;

25. Calls on the Commission and the Member States to raise business' awareness of consumer rights in order to promote greater respect for these rights by economic operators;

26. Points out that many consumers hesitate to ask for redress when it seems to them that the amount concerned is not very high; stresses that consumers need to be made more aware of the support available to them from both consumer associations and the network of European Consumer Centres; underlines the importance of consumer organisations in raising awareness of existing unfair commercial practices as a preventive measure, and on their role in assisting victims of unfair practices, thus enabling consumers to properly assert their rights; calls for coordinated actions between consumer organisations at national and European level, as well as with national authorities and the Commission;

27. Stresses the importance for consumers of having effective, swift and inexpensive legal remedies; asks in this regard for Member States to implement fully the Directive on alternative dispute resolution methods and out-of-court settlement of online disputes;

28. Points to the importance of collective redress mechanisms for consumers and welcomes the Commission's recently published recommendation C(2013)3539 and its communication COM(2013)0401; agrees that a horizontal framework on collective redress would avoid the risk of uncoordinated sector-specific EU initiatives; calls on the Member States to follow the Commission Recommendations for the establishment of horizontal common principles, whose implementation in Member States would serve to assess whether further measures, including a legislative initiative, are needed, in particular for cross-border cases; recalls that none of the various approaches to collective redress must give any economic incentive to bring abusive collective actions and that all such approaches must include appropriate safeguards to avoid unmeritorious claims;

29. Instructs its President to forward this resolution to the Council and the Commission.