

The **Competition and Consumer Protection Service** (CCPS) of the Ministry of Energy, Commerce, Industry and Tourism is responsible for the implementation of the following national laws, relating to the protection of consumers' economic interests:

- A. Unfair terms in consumer contracts - 93(I)/1996 (93/13/EEC)
- B. Unfair business-to-consumer commercial practices - 103(I)/2007 (2005/29EC)

Questions & Answers for consumers (Q/A)

A. Unfair terms in consumer contracts - 93(I)/1996 (93/13/EEC)

1. **Q. According to the contract you signed with the company, do you believe that there is a significant imbalance in the parties' rights and obligations to the detriment of you?**

A. A contractual term which has not been individually negotiated shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer. (Art. 5.1 - 93(I)/1996, Art. 3.1 - 93/13/EEC)

2. **Q. In which cases a term used in the contract is regarded as "not individually negotiated"?**

A. A term shall always be regarded as not individually negotiated, where it has been drafted in advance and the consumer has therefore not been able to influence the substance of the term, particularly in the context of a pre-formulated standard contract. (Art. 3.3 - 93(I)/1996, Art. 3.2 - 93/13/EEC)

The fact that certain aspects of a term or one specific term have been individually negotiated shall not exclude the application of this to the rest of a contract if an overall assessment of the contract indicates that it is nevertheless a pre-formulated standard contract. (Art. 3.4 - 93(I)/1996, Art. 3.2 - 93/13/EEC)

3. **Q. Who has the burden to proof that a term is individually negotiated?**

A. Where any seller or supplier claims that a standard term has been individually negotiated, the burden of proof in this respect shall be incumbent on him. (Art. 3.5 - 93(I)/1996, Art. 3.2 - 93/13/EEC)

4. **Q. How the unfairness of a contractual term can be assessed?**

A. The unfairness of a contractual term shall be assessed, taking into account the nature of the goods or services for which the contract was concluded and by referring, at the time of conclusion of the contract, to all the circumstances attending the conclusion of the contract and to all the other terms of the contract or

of another contract on which it is dependent. (Art. 5.2 - 93(I)/1996, Art. 4.1 - 93/13/EEC)

5. Q. What happens when terms are in plain intelligible language?

A. Assessment of the unfair nature of the terms shall relate neither to the definition of the main subject matter of the contract nor to the adequacy of the price and remuneration, on the one hand, as against the services or goods supplied in exchange, on the other, in so far as these terms are in plain intelligible language. (Art. 3.2 - 93(I)/1996, Art. 4.2 - 93/13/EEC)

6. The national law concerning unfair terms in consumer contracts L. 93(I)/1996, came into force on **1st of July 1997**. As the abovementioned law does not have a retrospective effect, the contracts conducted before 1/07/1997 do not fall within the scope of the Law said. (Art. 10 - 93(I)/1996)

7. The **Annex** shall contain an indicative and non-exhaustive list of the terms which may be regarded as unfair. (Art. 5.4 - 93(I)/1996, Art. 3.3 - 93/13/EEC)

B. Unfair business-to-consumer commercial practices - 103(I)/2007 (2005/29EC)

1. Q. In which commercial practices can this law be applied?

A. This Law shall apply to unfair business-to-consumer commercial practices, before, during and after a commercial transaction in relation to a product. (Art. 3.1- 103(I)/2007, Art.3.1-2005/29EC)

2. Q. In which cases a commercial practice is considered unfair?

A. A commercial practice shall be unfair if:
(a) it is contrary to the requirements of professional diligence,
and
(b) 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 directed to a particular group of consumers.
(Art. 4.2- 103(I)/2007, Art.5.2 -2005/29EC)

In particular, commercial practices shall be unfair which:

- (a) are misleading,
or
- (b) are aggressive.(Art.5.4 -2005/29EC)

3. Unfair commercial practices shall be **prohibited**. (Art. 4.1 - 103(I)/2007, Art.5.1 -2005/29EC)
4. **Annex I** contains the list of those commercial practices which shall in all circumstances be regarded as unfair. (Art. 4.4- 103(I)/2007, Art.5.5 -2005/29EC)
5. **Misleading actions**

Q. In which cases a commercial practice is regarded as misleading?

A. A commercial practice shall be regarded as misleading if it contains false information and is therefore untruthful or in any way, including overall presentation, deceives or is likely to deceive the average consumer, even if the information is factually correct, in relation to one or more of the following elements, and in either case causes or is likely to cause him to take a transactional decision that he would not have taken otherwise:

- (a) the existence or nature of the product,
- (b) the main characteristics of the product, such as its availability, benefits, risks, 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,
- (c) the extent of the trader's commitments, the motives for the commercial practice and the nature of the sales process, any statement or symbol in relation to direct or indirect sponsorship or approval of the trader or the product,
- (d) the price or the manner in which the price is calculated, or the existence of a specific price advantage,
- (e) the need for a service, part, replacement or repair,
- (f) the nature, attributes and rights of the trader or his agent, such as his identity and assets, his qualifications, status, approval, affiliation or connection and ownership of industrial, commercial or intellectual property rights or his awards and distinctions,
- (g) the consumer's rights, including the right to replacement or reimbursement under Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees [8], or the risks he may face. (Art. 5.1 - 103(I)/2007, Art.6.1 -2005/29EC)

A commercial practice shall also be regarded as misleading if, in its factual context, taking account of all its features and circumstances, it causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise.(Art. 5.3 - 103(I)/2007, Art.6.2 -2005/29EC)

6. Misleading omissions

Q. In which cases a commercial practice is regarded as misleading?

A. A commercial practice shall be regarded as misleading if, in its factual context, taking account of all its features and circumstances and the limitations of the communication medium, it 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. (Art. 6.1- 103(I)/2007, Art.7.1 - 2005/29EC)

Q. In which cases a commercial practice is regarded as misleading omission?

A. It shall also be regarded as a misleading omission when, taking account of the matters described above, a trader hides or provides in an unclear, unintelligible, ambiguous or untimely manner such material information as referred to in that paragraph or fails to identify the commercial intent of the commercial practice if not already apparent from the context, and where, in either case, this causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise. (Art. 6.2 - 103(I)/2007, Art.7.2 -2005/29EC)

7. Aggressive commercial practices

Q. In which cases a commercial practice is regarded as aggressive?

A. A commercial practice shall be regarded as aggressive if, in its factual context, taking account of all its features and circumstances, by harassment, coercion, including the use of physical force, 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. (Art. 7 - 103(I)/2007, Art.8 -2005/29EC)

8. The national law concerning unfair business-to-consumer commercial practices L. 103(I)/2007 came into force on **12th of December 2007**. As the abovementioned law does not have a retrospective effect, unfair commercial practices before 12/12/2007 do not fall within the scope of the Law said. (Art. 21 - 103(I)/2007)

ANNEX I

COMMERCIAL PRACTICES WHICH ARE IN ALL CIRCUMSTANCES CONSIDERED UNFAIR

Misleading commercial practices

1. Claiming to be a signatory to a code of conduct when the trader is not.
2. Displaying a trust mark, quality mark or equivalent without having obtained the necessary authorisation.
3. Claiming that a code of conduct has an endorsement from a public or other body which it does not have.
4. Claiming that a trader (including his commercial practices) or a product has been approved, endorsed or authorised by a public or private body when he/it has not or making such a claim without complying with the terms of the approval, endorsement or authorisation.
5. Making an invitation to purchase products at a specified price without disclosing the existence of any reasonable grounds the trader may have for believing that he 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).
6. Making an invitation to purchase products at a specified price and then:
 - (a) refusing to show the advertised item to consumers;
 - or
 - (b) refusing to take orders for it or deliver it within a reasonable time;
 - or
 - (c) demonstrating a defective sample of it,with the intention of promoting a different product (bait and switch)
7. Falsely stating that a product will only be available for a very limited time, or that it will only be available on particular terms for a very limited time, in order to elicit an immediate decision and deprive consumers of sufficient opportunity or time to make an informed choice.
8. Undertaking to provide after-sales service to consumers with whom the trader has communicated prior to a transaction in a language which is not an official language of the Member State where the trader is located and then making such service available only in another language without clearly disclosing this to the consumer before the consumer is committed to the transaction.
9. Stating or otherwise creating the impression that a product can legally be sold when it cannot.
10. Presenting rights given to consumers in law as a distinctive feature of the trader's offer.

11. 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 or by images or sounds clearly identifiable by the consumer (advertorial). This is without prejudice to Council Directive 89/552/EEC.

12. Making a materially inaccurate claim concerning the nature and extent of the risk to the personal security of the consumer or his family if the consumer does not purchase the product.

13. Promoting a product similar to a product made by a particular manufacturer in such a manner as deliberately to mislead the consumer into believing that the product is made by that same manufacturer when it is not.

14. Establishing, operating or promoting a pyramid promotional scheme where a consumer gives consideration for the opportunity to receive compensation that is derived primarily from the introduction of other consumers into the scheme rather than from the sale or consumption of products.

15. Claiming that the trader is about to cease trading or move premises when he is not.

16. Claiming that products are able to facilitate winning in games of chance.

17. Falsely claiming that a product is able to cure illnesses, dysfunction or malformations.

18. Passing on materially inaccurate information on market conditions or on the possibility of finding the product with the intention of inducing the consumer to acquire the product at conditions less favourable than normal market conditions.

19. Claiming in a commercial practice to offer a competition or prize promotion without awarding the prizes described or a reasonable equivalent.

20. Describing a product as 'gratis', 'free', 'without charge' or similar if the consumer has to pay anything other than the unavoidable cost of responding to the commercial practice and collecting or paying for delivery of the item.

21. Including in marketing material an invoice or similar document seeking payment which gives the consumer the impression that he has already ordered the marketed product when he has not.

22. Falsely claiming or creating the impression that the trader is not acting for purposes relating to his trade, business, craft or profession, or falsely representing oneself as a consumer.

23. Creating the false impression that after-sales service in relation to a product is available in a Member State other than the one in which the product is sold.

Aggressive commercial practices

24. Creating the impression that the consumer cannot leave the premises until a contract is formed.

25. Conducting personal visits to the consumer's home ignoring the consumer's request to leave or not to return except in circumstances and to the extent justified, under national law, to enforce a contractual obligation.

26. Making persistent and unwanted solicitations by telephone, fax, e-mail or other remote media except in circumstances and to the extent justified under national law to enforce a contractual obligation. This is without prejudice to Article 10 of Directive 97/7/EC and Directives 95/46/EC (1) and 2002/58/EC.

27. 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, or failing systematically to respond to pertinent correspondence, in order to dissuade a consumer from exercising his contractual rights.

28. Including in an advertisement a direct exhortation to children to buy advertised products or persuade their parents or other adults to buy advertised products for them. This provision is without prejudice to Article 16 of Directive 89/552/EEC on television broadcasting.

29. Demanding immediate or deferred payment for or the return or safekeeping of products supplied by the trader, but not solicited by the consumer except where the product is a substitute supplied in conformity with Article 7(3) of Directive 97/7/EC (inertia selling).

30. Explicitly informing a consumer that if he does not buy the product or service, the trader's job or livelihood will be in jeopardy.

31. Creating the false impression that the consumer has already won, will win, or will on doing a particular act win, a prize

or other equivalent benefit, when in fact either:

— there is no prize or other equivalent benefit,

or

— taking any action in relation to claiming the prize or other equivalent benefit is subject to the consumer paying money or incurring a cost.

If a consumer believes that he/she has been **mised** by a company or considers that he/she signed a contract with a company which contains **unfair terms**, may contact the Competition and Consumer Protection Service (CCPS) of the Ministry of Energy, Commerce, Industry and Tourism.

Contact details of the CCPS:

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