

Unfair Commercial Practices Directive (2005/29)

What is the aim of the directive?

It defines the unfair business-to-consumer commercial practices which are prohibited in the European Union. It applies to any act or omission directly related to the promotion, sale or supply of a product by a trader to consumers. It thus protects the economic interests of consumers before, during and after a commercial transaction has taken place.

It ensures the same level of protection to all consumers irrespective of the place of purchase or sale in the EU.

Key points

Unfair commercial practices are those which:

are contrary to the requirements of professional diligence* and;

are likely to materially distort the economic behaviour of the average consumer*.

Certain consumers enjoy a higher level of protection due to their particular vulnerability to the practice or the product, their age (children or the elderly), their naivety or their mental or physical infirmity.

The directive defines 2 specific categories of commercial practice as particularly unfair: **misleading commercial practices** (by action or omission) and **aggressive commercial practices**.

Misleading commercial practices

Misleading actions

A practice is misleading if it contains false or untrue information or is likely to deceive the average consumer, even though the information may be correct, and cause them to take a transactional decision they would not have otherwise taken. Examples of such actions include false or deceptive information regarding:

the existence or nature of the product;

the main characteristics of the product (its availability, benefits, risks, composition, geographical origin, results to be expected from its use, etc.);

the extent of the trader's commitments (in codes of conduct by which the trader has agreed to be bound);

the price or the existence of a specific price advantage;

the need for service or repair.

Misleading omissions

A practice is also misleading if material information needed by the average consumer to take an informed transactional decision is omitted or provided in an unclear, unintelligible, ambiguous or untimely manner and is likely to cause them to take a purchase decision that they would not have otherwise taken.

Aggressive commercial practices

Transactional decisions must be made freely by the consumer. A practice is aggressive and unfair if by harassment, coercion or undue influence* it significantly impairs the average consumer's freedom of choice and causes them to take a transactional decision they would not have otherwise taken.

Several elements must be taken into consideration in order to determine whether a commercial practice is aggressive or not. These include:

the nature, location and duration of the practice;

the possible use of threatening or abusive language or behaviour;

the exploitation by the trader of any specific circumstance of such seriousness (e.g. a death or a serious illness) as to impair the consumer's judgment in order to influence their decision with regard to the product;

any disproportionate non-contractual condition imposed on the consumer wishing to exercise their contractual rights (such as terminating or switching a contract).

Annex I to the directive contains a list of 31 commercial practices which are considered unfair in all circumstances.

Application — Assessment

In 2013, the [European Commission](#) published a first [assessment](#) of how EU countries were applying the directive as well as an outline of the actions needed to maximise its benefits. It noted that national authorities were able to curb a broad range of misleading and aggressive commercial practices. Its legal framework has proven well suited to ensure the fairness of the new online practices that are developing in parallel with the evolution of advertising sales techniques. The assessment shows, however, that more should be done to guarantee a high level of consumer protection, particularly in cross-border trade. An accompanying Commission [communication](#) concluded that there is a need for more stringent and consistent enforcement of the rules of the directive in areas such as travel, transport, digital, online and financial services and immovable property.

Guidance document and database

In 2016, the Commission issued updated [guidance](#) on the implementation and application of the directive. It explains key concepts and rules and gives practical examples taken from the case-law of the [Court of Justice of the European Union](#) and from national courts and administrations to make enforcement easier for national authorities and to ensure greater legal certainty for traders.

The Commission has compiled a publicly accessible database of EU countries' laws incorporating the directive as well as their jurisprudence, administrative decisions, references to related legal literature and other relevant materials. In this way, EU countries' decisions and judgments can be compared. The database is to be accessible via the [e-Justice portal](#) in 2017.

From when does the directive apply?

It has applied since 12 December 2007. EU countries had to incorporate it into national law by 12 June 2007.

Background

For more information, see:

'[Unfair commercial practices directive](#)' on the European Commission's website.

* Key terms

Professional diligence: the standard of special skill and care which a trader may reasonably be expected to exercise towards consumers corresponding to honest market practice and/or the general principle of good faith in the trader's field of activity.

Consumer: an individual who, in commercial practices covered by this directive, is acting for purposes which are outside their trade, business, craft or profession.

Undue influence: exploiting a position of power in relation to the consumer so as 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.

Main document

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 and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('unfair commercial practices directive') (OJ L 149, 11.6.2005, pp. 22-39)

Related documents

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 — Achieving a high level of consumer protection — Building trust in the internal market ([COM\(2013\) 138 final](#), 14.3.2013)

Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee — First report on the application of 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 and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('unfair commercial practices directive') ([COM\(2013\) 139 final](#), 14.3.2013)

Commission staff working document — Guidance on the implementation/application of Directive 2005/29/EC on unfair commercial practices —

Accompanying the document — Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — A comprehensive approach to stimulating cross-border e-Commerce for Europe's citizens and businesses ([SWD\(2016\) 163 final](#), 25.5.2016)

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