

Uz sākumlapu>Tiesību akti un judikatūra>Patērētāju aizsardzības tiesību aktu datubāze>Negodīgas komercprakses direktīva (2005/29)

Unfair Commercial Practices Directive (2005/29)

What is the aim of the directive? (Art. 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.

Scope of application (Art. 3)

This Directive shall apply to unfair business-to-consumer commercial practices, as laid down in Article 5, before, during and after a commercial transaction in relation to a product.

Key points

Unfair commercial practices are those which are contrary to the requirements of professional diligence; and are likely to materially distort the purchasing 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.

Directive 2005/29/EC distinguishes two categories of commercial practice that are unfair if they cause the average consumer to make a purchasing decision that they would not have taken otherwise: misleading commercial practices (by action or omission) and aggressive commercial practices.

1. Misleading commercial practices (Art. 6 and 7)

(i) Misleading actions (art. 6)

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 make a purchasing decision they would not have taken otherwise. 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.

Amending Directive (EU) 2019/2161 introduces a specific rule addressing the misleading marketing of goods as being identical when in reality their composition is significantly different in different Member States (this is often referred to as the 'dual quality' of goods).

(ii) Misleading omissions (Art. 7)

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

Directive 2005/29/EC provides a general list of information that should be regarded as material, such as the price and main characteristics of the product. Amending Directive (EU) 2019/2161 includes additional requirements for online sales, such as obligations for online marketplaces* to inform consumers about the main criteria determining the ranking* of the offers provided in response to a search query, and the obligation to inform whether and how the authenticity of consumer reviews is checked.

2. Aggressive commercial practices (Art. 8)

Purchasing 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 purchasing decision they would not have taken otherwise.

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 changing a contract).

Annex I to Directive 2005/29/EC contains a list of 35 commercial practices that are considered unfair in all circumstances.

3. Practices prohibited in all circumstances ('blacklist') (Annex I)

Directive 2005/29/EC contains a list of commercial practices that are prohibited in all circumstances. Amending Directive (EU) 2019/2161 has added to the list several additional practices prohibiting the publication of fake consumer reviews, hidden advertising in search results and the resale of tickets that the trader has acquired using automated means (known as bots).

4. Redress and penalties (Art. 13)

Amending Directive (EU) 2019/2161 adds a requirement for Member States to ensure that consumers have the right to individual remedies (e.g. compensation, a price reduction, etc.) when they are harmed by unfair commercial practices.

EU Member States must introduce effective, proportionate and dissuasive penalties to punish traders who break national rules on unfair commercial practices.

Amending Directive (EU) 2019/2161 introduces criteria to be applied when imposing penalties. It requires Member States to provide for fines of at least 4% of the trader's turnover or €2 million when information about the turnover is not available in cases where national authorities of several countries are working together on major cross-border infringements affecting consumers in several Member States.

5. Guidance document

In 2021, the [European Commission](#) issued updated [guidance](#) on the implementation and application of Directive 2005/29/EC. 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 guidance covers the amendments introduced by Directive (EU) 2019/2161.

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.

From when does the directive apply? (Art. 20)

Directive 2005/29/EC had to become law in the Member States by 12 June 2007. Member States had to apply the rules of the directive by 12 December 2007.

Amending Directive (EU) 2019/2161 had to become law in the Member States by 28 November 2021. Member States must apply the rules of the directive from 28 May 2022.

Background

For more information, see:

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

[Factsheet – New Deal: What benefits will I get as a consumer?](#) 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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