Transposition, implementation and enforcement of the Misleading and Comparative Advertising Directive 84/450/EC, as revised by Directive 97/55 /EC and of the Unfair Commercial Practices (UCP) Directive 2005/29/EC

2008/2114(INI) - 13/01/2009 - Text adopted by Parliament, single reading

The European Parliament adopted by 566 votes to 18, with 15 abstentions, a resolution on the transposition, implementation and enforcement of Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market (UCP) and Directive 2006/114/EC concerning misleading and comparative advertising (MCA).

The own initiative report had been tabled for consideration in plenary by Barbara **WEILER** (PES, DE), on behalf of the Committee on Internal Market and Consumer Protection.

MEPs stress the importance of the UCP and MCA Directives in making consumers and traders more confident in engaging in cross-border transactions and strongly believe that **proper transposition, implementation and enforcement is crucial** in order to achieve the aims of those Directives. In this context, they call on the Commission to investigate the need to protect small and medium-sized undertakings against aggressive business practices and, if appropriate, to initiate the requisite follow-up measures.

Codification and transposition: while MEPs welcome the Commission's efforts to assist Member States in transposing the UCP and MCA Directives, they note that Article 3a(2) of Directive 84/450/EEC, as amended by Directive 97/55/EC, referring to a "comparison referring to a special offer", was deleted and appears neither in the UCP Directive nor in the MCA Directive. They regret that there is confusion surrounding the consequences of this deletion for business-to-consumer transactions and call on the Member States, with the assistance of the Commission, to investigate this and to take possible follow-up action.

Member States are called upon to: (i) screen their legal systems in order to avoid possible overlaps between rules adopted in transposition of the UCP and the MCA Directives and already-existing national provisions; (ii) focus their efforts on the proper transposition, implementation and enforcement of the UCP and MCA Directives; (iii) ensure that all relevant national court judgments and Court of Justice of the European Communities (ECJ) rulings are respected.

Misleading black lists: MEPs call on the Commission to submit a proposal for an amendment to the MCA Directive to include a "black list" of practices that are under all circumstances to be considered misleading, or extend the scope of the UCP Directive to cover business-to-business (B2B) contracts. They call on the Commission to report by December 2009 on the measures taken.

The resolution observes that several Member States have disaggregated the "black list" contained in Annex I to the UCP Directive in transposing and implementing it in their legal systems, which creates confusion for undertakings and might lead to distortions in the application of the UCP Directive. MEPs ask the Commission to work with Member States in adapting their national legislation so that "black lists" are visible and useful for consumers to the greatest extent possible.

Implementation and enforcement: the resolution notes that some Member States have provided that only certain regulatory bodies may enforce national rules adopted in implementation of the UCP Directive and have not made provision for a direct right of redress for consumers, who thus are not entitled to bring claims for damages resulting from unfair commercial practices. It calls on Member States which have not already done so to consider the necessity of giving consumers a direct right of redress in order to ensure that they are sufficiently protected against unfair commercial practices.

Sweeps: the Parliament welcomes the results of the Commission's EU Airlines Sweep and EU Ringtones Sweep as a first step towards better monitoring of the implementation and enforcement of internal market legislation. It emphasises the need to carry out extended checks in this respect at regular intervals.

MEPs encourage the Commission to develop more efficient implementation monitoring tools, such as sweeps, in such a way that the enforcement of consumer protection law can be improved. Member States are called upon to cooperate fully with the Commission in conducting and following up on Commission sweeps.

Cross-border enforcement: MEPs call on the Commission to further develop the use of the Consumer Protection Cooperation Network and underline the need to further raise awareness of the European Consumer Centres Network. Member States and national judicial authorities are called upon to reinforce cross-border cooperation regarding misleading database services.

Database: the resolution welcomes the Commission's initiative to establish a publicly accessible database of national measures adopted in transposition of the UCP, jurisprudence thereon and other relevant material. It calls on the Commission to: (i) include in this database expert monitoring reports which formulate specific recommendations for action to improve enforcement of the law; (ii) furthermore use this database to set up a "single point of access" website where both undertakings and consumers can retrieve information on the legislation in force in the Member States.

Information campaigns: the Parliament calls on the Commission and the Member States to organise information campaigns to heighten consumers' awareness of their rights. Member States should also provide sufficient guidance for companies at national level. In this respect, MEPs highlight as a best practice "Consumer Protection from Unfair Trading Regulations: a basic guide for business" published by the UK Department for Business, Enterprise & Regulatory Reform.

Lastly, the Parliament insists that the Commission submit on schedule, by 12 June 2011, a **comprehensive implementation report** pursuant to Article 18 of the UCP Directive which incorporates experience gained from the MCA Directive.