

Procedure file

Basic information		
INI - Own-initiative procedure	2013/2122(INI)	Procedure completed
Misleading advertisement practices		
Subject		
2.40 Free movement of services, freedom to provide		
2.80 Cooperation between administrations		
3.30.25 International information networks and society, internet		
3.45.02 Small and medium-sized enterprises (SME), craft industries		
3.45.05 Business policy, e-commerce, after-sales service, commercial distribution		
4.60.02 Consumer information, advertising, labelling		
7.40.02 Judicial cooperation in civil and commercial matters		

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	IMCO Internal Market and Consumer Protection	Shadow rapporteur	
		PPE SCHWAB Andreas	
		S&D PRENDERGAST Phil	
		ALDE ROCHEFORT Robert	
		Verts/ALE RÜHLE Heide	
		ECR BIELAN Adam	
		EFD SALVINI Matteo	
	Committee for opinion	Rapporteur for opinion	Appointed
	ECON Economic and Monetary Affairs	The committee decided not to give an opinion.	
EMPL Employment and Social Affairs	The committee decided not to give an opinion.		
ITRE Industry, Research and Energy	The committee decided not to give an opinion.		
JURI Legal Affairs		19/06/2013	
	PPE BALDASSARRE Raffaele		
PETI Petitions	The committee decided not to give an opinion.		
European Commission	Commission DG Health and Food Safety	Commissioner BORG Tonio	

Key events			
27/11/2012	Non-legislative basic document published	COM(2012)0702	Summary
12/09/2013	Committee referral announced in		

	Parliament		
26/09/2013	Vote in committee		
30/09/2013	Committee report tabled for plenary	A7-0311/2013	Summary
22/10/2013	Results of vote in Parliament		
22/10/2013	Decision by Parliament	T7-0436/2013	Summary
22/10/2013	End of procedure in Parliament		

Technical information

Procedure reference	2013/2122(INI)
Procedure type	INI - Own-initiative procedure
Procedure subtype	Initiative
Legal basis	Rules of Procedure EP 54
Other legal basis	Rules of Procedure EP 159
Stage reached in procedure	Procedure completed
Committee dossier	IMCO/7/12302

Documentation gateway

Non-legislative basic document		COM(2012)0702	27/11/2012	EC	Summary
Committee draft report		PE510.678	08/05/2013	EP	
Amendments tabled in committee		PE514.655	21/06/2013	EP	
Committee opinion	JURI	PE514.684	19/09/2013	EP	
Committee report tabled for plenary, single reading		A7-0311/2013	30/09/2013	EP	Summary
Text adopted by Parliament, single reading		T7-0436/2013	22/10/2013	EP	Summary
Commission response to text adopted in plenary		SP(2014)62	07/03/2014	EC	

Misleading advertisement practices

PURPOSE: to provide increased protection for companies against misleading marketing practices by revising the provisions of [Directive 2006/114/EC concerning misleading and comparative advertising](#).

BACKGROUND: advertising has a strong economic impact on companies. It allows traders to present their goods and services and is an important element for commercial success. It can also enhance competition by providing customers with better information and the possibility to compare products.

In business relations, customers and competitor firms expect companies to use truthful marketing communication and to act with professional diligence. Small businesses the mainstay of Europe's economy are particularly vulnerable to misleading marketing practices as they lack the resources to protect themselves.

A clear and efficient framework safeguarding fair competition and providing effective means to enforce it is required.

The Misleading and Comparative Advertising Directive provides a common minimum level of protection against misleading advertising for traders across the EU and also regulates comparative advertising.

As more and more advertising moves online, advertising and marketing practices are changing and may affect thousands of businesses worldwide.

Misleading marketing practices, such as misleading directory companies (traders who send out forms asking businesses to update details in their directories, seemingly for free, but later this is revealed to be a service which must be paid for), continue to cause considerable harm to companies, especially SMEs.

The Commission announced its intention to reassess the functioning of existing rules in its review of the Small Business Act. The Communication therefore gives an overview of how the Directive is currently implemented in the Member States, identifies problems in how it is applied and outlines plans to revise it in the future.

CONTENT: the Misleading and Comparative Advertising Directive was transposed in Member States through various legislative instruments. However, there is a great variety of rules going beyond the minimum EU-wide protection against misleading advertising. Some Member States decided to go beyond the minimum legal standard enshrined in the Directive and extended the level of protection to business-to-business relations. Other Member States emphasise contractual freedom and the higher degree of diligence expected in transactions between businesses instead, and do not consider it appropriate that businesses and consumers should be protected to an equal degree.

Consequently, the level of protection for European businesses remains varied leaving businesses uncertain about their rights and obligations in cross-border situations. Furthermore, Member States currently enforce the Directive on the basis of different national systems, the key factor being whether public authorities have the power to enforce the Directive effectively.

Most common misleading marketing practices: having examined the application of the Directive, the Commission reached the conclusion that most of the misleading marketing practices operating cross-border take the following forms:

- misleading payment forms disguised as an invoice for services that the trader has purportedly already ordered, where in fact he has not ;
- offers to extend internet domain names (e.g. extension to other country domains) whereby a trader provides false information and exercises psychological pressure in order to conclude a contract ;
- offers to extend protection for trademarks in other countries employed by traders who use misleading advertising and provide untruthful information about the nature of the service, which may, in fact, only be granted by official bodies ;
- legal advice through an internet platform based on a marketing scheme where the service offered is purely based on publicly accessible free legal databases ;
- misleading marketing concerning advertising on social networks based on a practice involving abusive prices (e.g. very expensive pay per click), whilst actually this service is offered by the social networks themselves at much lower rates.

In this context, the Commission considers that even though the current Directive provides a fairly solid regulatory framework for a considerable part of the business-to-business advertising market, the Directive is not effective against certain large-scale misleading schemes which also affect SMEs, which are particularly vulnerable.

Proposal to revise Directive 2006/114/EC: the scale, persistence and financial detriment resulting from certain, clearly misleading marketing practices both at cross-border and national level need to be addressed in a more targeted and efficient manner at EU level.

In this context, the Commission considers that:

- 1) the definition of advertising in the current Directive is not clear enough to stop current misleading marketing practices and respond to future developments. Consequently, traders as well as national enforcers find it sometimes difficult to recognise that such practices are "advertising" within the meaning of the Directive: it is intended, then, to clarify the scope of the Directive by introducing a new definition of misleading marketing practices;
- 2) the test for determining whether a practice is misleading does not give sufficient legal certainty for the purpose of tackling these clearly misleading schemes, as it is broad, general and open to different interpretations and case-by-case assessment. An additional specific ban on harmful marketing practices, such as, for example, the fact of concealing the commercial intent of a communication, in the form of a "black-list" would strengthen legal certainty and the level of protection, without unduly affecting the contractual freedom in business-to-business relations.

Furthermore, the current Directive does not provide for a cross-border cooperation procedure and therefore, national authorities have no formal basis to request an enforcement action from their counterparts in other Member States. Moreover, there are no established tools to share information about marketing practices affecting businesses in Europe. In some Member States national authorities lack enforcement powers to stop such practices in business-to-business relations, particularly in cross-border cases.

The Commission therefore intends to table a proposal to strengthen the protection of businesses against cross-border misleading marketing practices. This proposal to amend the Directive will be complemented by a forthcoming initiative addressing unfair trading practices between businesses in the retail chain.

Apart from revising the definition of advertising and establishing a black list, the revision of the Directive will:

- clarify the interplay of the Directive with the Unfair Commercial Practices Directive;
- respond to businesses' needs while at the same time not creating any unnecessary administrative burden;
- step up enforcement and create an ad-hoc working group of national enforcers with immediate effect;
- introduce effective, proportionate and dissuasive penalties for infringements of the national provisions adopted in application of the Directive.

With regard to a cooperation procedure between Member States, the revision of the Directive will:

- create an enforcement cooperation procedure (enforcement network) grouping national enforcement authorities in charge of the legislation protecting businesses to cooperate in cases of cross-border misleading marketing practices;
- introduce mutual assistance obligations for the Member States entailing the explicit possibility of requesting enforcement measures in cross-border situations;
- introduce provisions that will require Member States to designate an enforcement authority in the area of business-to-business marketing.

Misleading advertisement practices

The Committee on the Internal Market and Consumer Protection unanimously adopted the own-initiative report by Cornelis de JONG (GUE/NGL, NL) on misleading advertisement practices in response to the Commission communication on the subject.

Members recall that Parliament has repeatedly expressed its concern over the problem of misleading marketing practices, which are often of a cross-border nature, and has called on the Commission and the Member States to step up their efforts in terms of raising awareness, strengthening cooperation, enforcement and legislation. For this reason, they welcome the Commission communication, but stresses that an additional effort is needed, especially with regard to enforcement. They ask the Commission to clarify the scope of [Directive 2006/114/EC](#) in order to allow better protection for businesses against misleading marketing practices.

Prevention and information: the report calls on all Member States to assign a national focal point to which businesses and other victims of misleading practices can report the latter and can obtain information on judicial and non-judicial means of redress. These focal points should play an active role in sharing information between public authorities, citizens and businesses, and should work together in order to warn each other of new misleading practices.

Members also call on national as well as international business organisations, and in particular SME organisations, to work closely together with the national focal points and welcome public-private cooperation.

They support the Commission's intention to investigate the possibility of introducing, on the basis of validated criteria, an EU-wide blacklist of misleading marketing practices, and, if practicable, of companies who have been repeatedly convicted for such practices. Such a blacklist should be coherent with that which already exists under the Unfair Commercial Practices Directive, should be exhaustive, and should include clear definitions of misleading marketing practices.

In addition, Members call for

- Europol to play a more active role in tackling these forms of fraud by collecting information regarding cross-border forms of misleading marketing practices;
- closer cooperation between national enforcement authorities with providers whose services have been used by perpetrators of misleading marketing practices, such as banks, telephone companies, postal services and collection agencies, in particular by stepping up the exchange of information;
- initiatives on education and information and exchanges of best practice on the dangers.

Enforcement and prosecution: the report emphasises that different levels of protection and public enforcement mechanisms among Member States are proving to be obstacles to running advertising campaigns across national borders, and that this leads to major legal and operative uncertainties for businesses. It also notes with concern that the investigative authorities in a number of Member States are extremely unwilling to take up cases of misleading marketing practices because of the lack of clarity of the existing provisions, and lack of confidence that the burden of proof can be sufficiently discharged. Members call on the Commission, therefore, to draw up guidelines for national enforcement bodies on best practices regarding priorities for investigation and prosecution.

Member States, for their part, are asked to boost the capacity of the relevant investigative and judicial authorities.

The report stresses the need to introduce effective, proportionate and dissuasive penalties, recalling that sanctions can have a preventive effect.

Members call on the Commission to establish a mutual cooperation network between national enforcement bodies to improve the implementation of the Directive in cross-border cases.

Furthermore, the Commission to examine, as a matter of priority, how any convictions for using serious and repeated misleading marketing practices could affect the eligibility of the companies concerned for taking part in EU procurement procedures and/or receiving EU funding. Members call on Member States to ensure that their tax authorities cooperate closely with national focal points by actively inspecting companies which have been reported to use misleading marketing techniques.

Noting that dispute resolution processes have proven inefficient, lengthy and costly, and that they offer no guarantee of adequate and timely compensation for the damage caused, Members call for national laws making it possible for the victims of misleading marketing practices to act collectively in a case against a rogue company.

They ask the Commission to evaluate Parliament's recommendation for a partial extension of the scope of the Unfair Commercial Practices Directive by having Annex I (the blacklist) cover business-to-business (B2B) contracts.

International cooperation beyond the EU: lastly, Members stress that misleading marketing practices constitute an international problem that extends beyond individual Member States as well as the EU. They call on the Commission and Member States, therefore, to pursue international cooperation on the matter, and to step up involvement in the International Mass Marketing Working Group, which consists of law enforcement, regulatory, and consumer agencies in the US, Australia, Belgium, Canada, the Netherlands, Nigeria, and the UK, and also includes Europol.

Misleading advertisement practices

The European Parliament adopted a resolution on misleading advertisement practices in response to the Commission communication on the subject.

Parliament recalled that it has repeatedly expressed its concern over the problem of misleading marketing practices, which are often of a cross-border nature, and has called on the Commission and the Member States to step up their efforts in terms of raising awareness, strengthening cooperation, enforcement and legislation. For this reason, it welcomed the Commission communication, but stressed that an additional effort was needed, especially with regard to enforcement. It asked the Commission to clarify the scope of [Directive 2006/114/EC](#) in order to allow better protection for businesses against misleading marketing practices.

Prevention and information: Parliament called on all Member States to assign a national focal point to which businesses and other victims of misleading practices can report the latter and can obtain information on judicial and non-judicial means of redress. These focal points should play an active role in sharing information between public authorities, citizens and businesses, and should work together in order to warn each other of new misleading practices.

It also called on national as well as international business organisations, and in particular SME organisations, to work closely together with the national focal points and welcome public-private cooperation.

Members supported the Commission's intention to investigate the possibility of introducing, on the basis of validated criteria, an EU-wide blacklist of misleading marketing practices, and, if practicable, of companies who have been repeatedly convicted for such practices. Such a blacklist should be coherent with that which already exists under the Unfair Commercial Practices Directive, should be exhaustive, and should include clear definitions of misleading marketing practices.

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Enforcement and prosecution: Parliament emphasised that different levels of protection and public enforcement mechanisms among Member States are proving to be obstacles to running advertising campaigns across national borders, and that this leads to major legal and operative uncertainties for businesses. It also noted with concern that the investigative authorities in a number of Member States are extremely unwilling to take up cases of misleading marketing practices because of the lack of clarity of the existing provisions, and lack of confidence that the burden of proof can be sufficiently discharged. Members called on the Commission, therefore, to draw up guidelines for national enforcement bodies on best practices regarding priorities for investigation and prosecution.

Member States, for their part, are asked to boost the capacity of the relevant investigative and judicial authorities.

Parliament also stressed the need to introduce effective, proportionate and dissuasive penalties, recalling that sanctions can have a preventive effect. It also called on the Commission to establish a mutual cooperation network between national enforcement bodies to improve the implementation of the Directive in cross-border cases.

Furthermore, the Commission is also called upon to examine, as a matter of priority, how any convictions for using serious and repeated misleading marketing practices could affect the eligibility of the companies concerned for taking part in EU procurement procedures and/or receiving EU funding. Parliament called on Member States to ensure that their tax authorities cooperate closely with national focal points by actively inspecting companies which have been reported to use misleading marketing techniques.

Noting that dispute resolution processes have proven inefficient, lengthy and costly, and that they offer no guarantee of adequate and timely compensation for the damage caused, Members called for national laws making it possible for the victims of misleading marketing practices to act collectively in a case against a rogue company.

In order to avoid abusive litigation, the victims should be represented by a qualified entity, as outlined in the Commission documents.

Parliament asked the Commission to evaluate Parliament's recommendation for a partial extension of the scope of the Unfair Commercial Practices Directive by having Annex I (the blacklist) cover business-to-business (B2B) contracts, in parallel to the consideration of a possible review of Directive 2006/114/EC in order to assess whether this would result in a more coherent approach since it would extend the concept of unfair commercial practices, together with the blacklist, to B2B relations.

International cooperation beyond the EU: lastly, Parliament stressed that misleading marketing practices constitute an international problem that extends beyond individual Member States as well as the EU. It called on the Commission and Member States, therefore, to pursue international cooperation on the matter, and to step up involvement in the International Mass Marketing Working Group, which consists of law enforcement, regulatory, and consumer agencies in the US, Australia, Belgium, Canada, the Netherlands, Nigeria, and the UK, and also includes Europol.