

Riina Hero

STATEMENT

13 October 2011

European Commission
Directorate-General Justice
Unit A3 – Consumer and Marketing Law
Rue Montoyer 59
B-1049 Brussels
Belgium

CONSULTATION ON THE APPLICATION OF DIRECTIVE 2005/29/EC ON UNFAIR COMMERCIAL PRACTICES

The European Commission has launched a consultation on the application of directive 2005/29/EC on unfair commercial practices. Finland Chamber of Commerce submits the following answers to the questions on consultation.

Question 1: Please specify whether you are responding to this questionnaire on behalf of / as a:

Responding is done on behalf of an organisation.

Question 2: Please indicate the name of your organisation or entity (for individual respondents, your name):

*Finland Chamber of Commerce
Interest Representative Register ID Number 5552918474-13*

Question 3: Please provide a description of the area of activity / interest of your entity / organisation (e.g. direct selling, advertising, on-line retailing etc...) and select the appropriate category from the table below. In addition, please give an indication of the number of members you represent and your geographical coverage.

Finland Chamber of Commerce coordinates the operations of the nineteen independent regional Chambers of Commerce in Finland.

Regional Chambers of Commerce promote entrepreneurship and a favourable business environment in Finland. The 19 Finnish Chambers of Commerce have approximately 17.200 members.

Question 4: Please provide the address and contact details of your organisation / entity (for individual respondents, your address and contact details), including the country where you and/or your organisation is established. If need be can we contact you by e-mail to obtain further information about your submission? In the affirmative please also provide an e-mail address where we can contact you.

*Finland Chamber of Commerce
World Trade Center Helsinki,
P.O Box 1000
00101 Helsinki
Finland*

Question 5: Contact person: (Ms/Mr, Name, Job Title)

*Ms Riina Hero, Legal Counsel
riina.hero@chamber.fi*

Question 6: National Legislation Do you consider that the UCPD Directive has been adequately transposed / implemented in your country? (*In response to this question please indicate whether, in your opinion, the transposition of the Directive in your country created legal gaps / loopholes or inadequacies*).

We consider that the UCPD is adequately implemented in Finland.

Question 7: Issues related to specific provisions of the Directive Have you encountered any problems in the interpretation / transposition / application of certain provisions of the Directive in relation to specific situations / practices? *In the affirmative please describe the problems encountered and substantiate your answer with concrete examples.*

We are not aware of such problems.

Question 8: In particular, please provide your comments on the following topics:

- a) Price information Have you experienced any problems as concerns the application of the requirements of the Directive to the price of a product / service offered for sale (e.g. in the context of an invitation to purchase), in particular as concerns the requirement that the price be "final", inclusive of all applicable charges and taxes (Art. 6(1)(d) and Art. 7(4) (c))? *Please provide some concrete examples.*

We are not aware of such problems.

- b) Misleading practices (actions or omissions)

- i. Price comparisons tools / web-sites. Have you come across any unfair practices in the context of price comparison media / web-sites? Please provide some concrete examples.

We are not aware of such examples.

- ii. Have you encountered any problems in relation to the interpretation / application of the provision related to the limitation of space and time of the communication medium and the measures taken by the trader to make the information available by other means (Art. 7(3) UCPD)? *In the affirmative please describe the problems encountered and substantiate your answer with concrete examples.*

We are not aware of such problems.

- c) Aggressive practices

- i. Have you experienced any problems in relation to the application of the provisions of the Directive to aggressive practices (e.g. criteria for assessing the existence of an aggressive commercial practice; the use of disproportionate non-contractual barriers impeding the trader from terminating the contract or switching from one product / trader to another (Art. 9(d))? *Please provide some concrete examples.*

We are not aware of such examples.

- ii. Would there be a need, in your opinion, to further develop these concepts¹? *In reply to this question, please list the provisions / concepts that should be clarified.*

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d) The black list

- i. Have you encountered any difficulties as concerns Annex I of the Directive (the "black list")? *In response to this question please explain the problems encountered, mentioning the specific provision of Annex I to which they relate to, possibly by giving some concrete examples.*

We are not aware of such difficulties.

- ii. Would it be appropriate to add / remove / modify the provisions of Annex I in order to solve the possible difficulties or inadequacies identified under questions 7 and 8? *In reply to this question, please provide concrete examples of provisions that should, in your opinion, either be added to, deleted from, or clarified in Annex I of the Directive and for what reasons.*

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Question 9: Do you have any suggestions as to whether any of the provisions of the Directive you have identified under questions 7 and 8 above can be improved in a possible future revision process?

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Question 10: Extension of the Scope of the Directive Is there a need, in your opinion, to extend the scope of the Directive to some business-to-business, consumer-to-business or consumer-to-consumer transactions? *In reply to this question, please provide concrete examples of transactions which, in your opinion, should be included.*

There is no need to extend the scope of the Directive to some business-to-business, consumer-to-business or consumer-to-consumer transactions.

Question 11: Do you consider that there are any legislative gaps in certain areas (e.g. sales promotions) which have affected the effective enforcement against certain unfair commercial practices? Should specific commercial practices be excluded from the scope of the Directive? *In reply to this question, please*

¹ 3 December 2009, SEC(2009) 1666, Commission staff working document "Guidance on the implementation / application of Directive 2005/29/EC on Unfair Commercial Practices".

provide a detailed description of the problems encountered and motivate your response as extensively as possible.

We are not aware of any legislative gaps.

Question 12: Environmental claims Have you encountered any problems in the application / interpretation of the Directive in relation to misleading environmental claims? *In the affirmative please describe the problems encountered by giving some concrete examples.*

We are not aware of such problems.

Question 13: Social networks and other kinds of digital environments

a) Have you come across any unfair practices in the context of social networks (such as, for instance, Facebook or Twitter), in particular in relation to hidden traders / advertising? *In the affirmative please provide concrete examples of the unfair practices encountered.*

We have no evidence of unfair practices in the context of social networks.

b) Have you come across any (emerging or established) unfair practices in the context of other digital (on-line) environments which should, in your view, be addressed in a possible future revision of the Directive? *In the affirmative please provide concrete examples of the unfair practices encountered*

We are not come across such unfair practices.

Question 14: Is there any other subject you would like to raise in the context of the Report on the application of the UCPD? In particular, have you encountered any (emerging or current) unfair commercial practices (outside the digital (on-line) environments) which should, in your view, be addressed in a possible future revision of the Directive?

There is no special subject we would like to raise. The consumer protection is in a high level in Finland. We have not encountered unfair commercial practices which should cause for concern.

Question 15: Effectiveness of national enforcement of the UCPD:

a) In general terms, how would you assess the effectiveness of the enforcement action against unfair commercial practices in your country (or in other EU countries in case of a multi-country association or entity):

- i. Do you think that your national authorities have sufficient enforcement powers and/or resources at their disposal in this respect?

National authorities in Finland have sufficient enforcement powers at their disposal.

The most relevant statutory authorities related to the UCPD are the Consumer Ombudsman and the Finnish Consumer Agency. Responsible for consumer affairs the Consumer Agency is headed by the Consumer Ombudsman. Consumers may complain to the Ombudsman. The consumer Agency also provides administrative services for other units in its field.

- ii. Are the available sanctions and remedies adequate to prevent unfair commercial practices?

The sanctions and remedies available are adequate.

- b) Please indicate whether there are any measures that, in your opinion, would allow a better enforcement of the UCPD.

We do not see any need to a better enforcement of the UCPD.

Question 16: Enforcement of the UCPD and Self Regulation / ADR mechanisms

- a) Please indicate whether you or the association (or entity you belong to) owns or adhere to codes of conduct concerning unfair commercial practices (Article 10 of the UCPD). If applicable, please provide a short description of the role of the respective self-regulatory bodies and their competences. In particular, please indicate how well, in your opinion, self-regulatory bodies cooperate with enforcement agencies.

Self Regulation

The Finnish self-regulatory system is characterised by having two advertising self-regulatory bodies. The Council of Ethics in Advertising (Mainonnan eettinen neuvosto, or MEN) considers issues regarding the ethical dimension of advertisements and the Board of Business Practice (Liiketapalautakunta, or LTL) deals with business-to-business disputes on unfair commercial practice, e.g. misleading and comparative advertising. Both bodies apply the ICC International Code of Advertising Practice and Marketing Communication. Finland Chamber of Commerce provides Secretariat services for both bodies.

The Council of Ethics in Advertising issues opinions as to whether or not advertisements are ethically acceptable on the basis of the Consolidated ICC Code and its own Principles of Good Marketing Practices. The MEN does not take a view whether an advertisement is legal. Anyone – consumers,

companies, associations and authorities – can ask the MEN for an opinion regarding an advertisement. Statements of the MEN are made public and are available on its website.

The member companies of the Finnish Direct Marketing Association have committed to follow the self-regulatory codes published by the Association. The Finnish Direct Marketing Association has published for example the following codes: “Telemarketing Codes of Conduct” and “Direct Selling Industry Code of Conduct for Companies”.

ADR mechanisms

In Finland we have good experiences of ADR mechanisms. In Finland almost all consumer disputes are covered by ADR mechanisms and the decisions (recommendations) are also well complied with.

The Consumer Disputes Board is a state financed authority based on law. Its sphere of competence is very broad. Its decisions are recommendations but in general well complied with by traders.

In financial sector we have self-regulatory bodies funded and organized by the private sector but run in cooperation with consumer authorities. These three bodies (the Insurance Complaints Board, the Banking Complaints Board and the Securities Complaints Board) have a common secretariat, the Finnish Financial Ombudsman Bureau.

- b) How effective is, in your opinion, the enforcement and compliance to these codes by the operators in the sector concerned?

All statements of The Council of Ethics in Advertising along with the annual complain statistics and the annual report are published on the MEN website (www.mainonnaneettinenneuvosto.fi). Total number of complaints in 2010 was 80 and total number of statements given by the MEN in 2010 was 22. The MEN’s statements are well complied with and the MEN is respected and well known self-regulatory body in Finland.

The Consumer Disputes Board handles 4200–4500 cases per year. Its decisions are recommendations but in general well complied with by traders, over 80 per cent of the cases.

The recommendations given by the Insurance Complaints Board, the Banking Complaints Board and the Securities Complaints Board are complied with by businesses in 98 to 100 per cent of the cases. For example, at the Insurance Complaints Board a solution was found for 847 cases in 2010. Of these cases 143 lapsed before the case was handled by the board. In 132 of the lapsed cases the insurance company paid the demanded compensation and in 11 cases the client cancelled the proceedings or they were ended for some other reason. So the Board handled and resolved 692 cases (in 12 cases the Board did not issue a recommendation). In 199 cases the recommendation differed from the insurance company’s view to the

benefit of a client. Insurance companies complied with the recommendations in 98 per cent of the cases. These figures show how well a consensual dispute resolution mechanism can function.

c) Please indicate whether measures have been taken in your country to encourage self-regulation.

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Question 13: Most frequent unfair commercial practices Please indicate whether there are specific aspects of your activity / area of interest where, to your knowledge, there is frequency or risk of unfair commercial practices. Please use the table in the Annex to provide information on the most frequent unfair commercial practices you have encountered.

We are not aware of such risks.

FINLAND CHAMBER OF COMMERCE

Leena Linnainmaa
Deputy Director General