

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') (Text with EEA relevance)

CHAPTER 2

UNFAIR COMMERCIAL PRACTICES

Article 5

Prohibition of unfair commercial practices

- 1 Unfair commercial practices shall be prohibited.
- 2 A commercial practice shall be unfair if:
 - a it is contrary to the requirements of professional diligence,
and
 - b it materially distorts or is likely to materially distort the economic behaviour with regard to the product of the average consumer whom it reaches or to whom it is addressed, or of the average member of the group when a commercial practice is directed to a particular group of consumers.
- 3 Commercial practices which are likely to materially distort the economic behaviour only of a clearly identifiable group of consumers who are particularly vulnerable to the practice or the underlying product because of their mental or physical infirmity, age or credulity in a way which the trader could reasonably be expected to foresee, shall be assessed from the perspective of the average member of that group. This is without prejudice to the common and legitimate advertising practice of making exaggerated statements or statements which are not meant to be taken literally.
- 4 In particular, commercial practices shall be unfair which:
 - a are misleading as set out in Articles 6 and 7,
or
 - b are aggressive as set out in Articles 8 and 9.
- 5 Annex I contains the list of those commercial practices which shall in all circumstances be regarded as unfair. The same single list shall apply in all Member States and may only be modified by revision of this Directive.