

# EU News

EUROPEAN NEWS ON ADVERTISING-RELATED ISSUES



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## TOBACCO



### EU STEPS UP FIGHT AGAINST TOBACCO

On the occasion on World No Tobacco Day at the end of May, John Dalli, European Commissioner for Health and Consumer Policy, stated: “On the eve of this year’s World No Tobacco Day, I would like to express my continued commitment to tackle tobacco consumption and its harmful effects in the EU and around the world.”

Commissioner Dalli added: “Next year, I hope to put forward a proposal for the strengthening of the 2001 Tobacco Products Directive. Measures being considered include a **review of the packaging provisions**, regulatory solutions for new products and tackling ingredients that make tobacco products more attractive.”

A central pillar of tobacco control is EU legislation on tobacco products and on tobacco advertising. These laws are meant to conciliate internal market objectives with the need to ensure a high level of public health protection across the EU. The European Commission is in charge of overseeing the implementation of these laws and of proposing necessary revisions.

Statement by John Dalli, European Commissioner for Health and Consumer Policy, on the occasion of World No Tobacco Day: [http://ec.europa.eu/health/tobacco/docs/statement\\_dalli\\_wntd\\_en.pdf](http://ec.europa.eu/health/tobacco/docs/statement_dalli_wntd_en.pdf)

Q&A: The Fight Against Tobacco in the EU: <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/11/349>

#### Next steps in EU tobacco control

At the moment, the European Commission is considering to put forward a proposal for the revision of the 2001 Tobacco Products Directive in 2012. Following a public consultation launched last year and the analysis of possible options for revision within an impact assessment, the **Tobacco Products Directive could be strengthened**, adapted to international tobacco control commitments, new developments in tobacco products and advances in science. Possible measures that are currently being examined are:

- Better consumer information. For example, **larger and double-sided picture warnings, standardized packaging, information on harmful substances.**
- Regulation of ingredients in tobacco products, in particular those which make tobacco products more attractive and addictive and appeal especially to young people such as vanilla and fruit flavours.
- Revising the rules on sales of tobacco products.
- Regulatory solutions to address novel smokeless tobacco and nicotine products.

Current legislation to protect citizens from tobacco smoke, per Member State, can be seen here: [http://ec.europa.eu/health/tobacco/law/free\\_environments/index\\_en.htm](http://ec.europa.eu/health/tobacco/law/free_environments/index_en.htm)

Pictorial health warnings for tobacco products in the EU, “Overview of the combined warnings designed for use in each Member State”:

[http://ec.europa.eu/health/tobacco/law/pictorial/index\\_en.htm](http://ec.europa.eu/health/tobacco/law/pictorial/index_en.htm)

## Background

• The **Directive on Tobacco Products** (2001) requires that all tobacco products sold in the EU display two **text warnings**: the first compulsory warning is either “**tobacco kills**” or “**tobacco can seriously harm you and others around you**”. The second warning, selected from a list of 14, includes “**smoking causes fatal lung cancer**”. The Directive also **bans misleading terms such as ‘light’, ‘mild’, or ‘low tar’**, and obliges manufacturers to report to Member States on the ingredients they use. It further bans oral tobacco and sets maximum limits for tar, nicotine and carbon monoxide in cigarettes.

Directive on Tobacco Products (2001): <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0037:EN:HTML>

• The **Directive on Tobacco Advertising** (2003) **bans cross-border advertising of tobacco products in printed media, radio, and online services**. It also **bans sponsorship of cross border events**. In addition, tobacco advertising and sponsorship on television has already been prohibited since 1989.

Directive on Tobacco Advertising (2003): <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:152:0016:0019:EN:PDF>

For other areas of tobacco control such as prevention, cessation and smoke-free environments, responsibility for providing the appropriate rules and structures lies with the individual Member States. In these areas, the EU’s role is to support, complement and coordinate national efforts. The EU has made the following recommendations to Member States:

• **Council Recommendation on Smoking Prevention** (2003): encourages EU Member States to **control all forms of tobacco promotion and sales to minors, as well as to improve awareness and health education**.

Council Recommendation on Smoking Prevention (2003): <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003H0054:EN:HTML>

• **Council Recommendation on Smoke-Free Environments** (2009): calls on EU Member States to adopt and implement laws to protect citizens from exposure to tobacco smoke in enclosed public places, workplaces, and public transport. It also calls for the enhancement of smoke-free laws with supporting measures to protect children, encourage efforts to quit smoking and display pictorial warnings on cigarette packages.

Council Recommendation on Smoke-Free Environments (2009): <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:296:0004:0014:EN:PDF>

• At international level, the driving force on tobacco control is the **Framework Convention on Tobacco Control of the World Health Organization (WHO)** which entered into force in 2005. This Convention is the first binding global health treaty of the World Health Organization. To date it comprises 172 parties, including the European Union and 26 EU Member States (except the Czech Republic).

The WHO Framework Convention includes provisions on packaging and labelling, advertising, promotion and sponsorship, protection from exposure to tobacco smoke, tobacco content regulation, illicit trade, pricing and tax measures and support for economically viable alternatives for growers.

WHO Framework Convention on Tobacco Control (FCTC): [http://www.who.int/tobacco/framework/WHO\\_FCTC\\_english.pdf](http://www.who.int/tobacco/framework/WHO_FCTC_english.pdf)

## ALCOHOL



### EUROCARE (EUROPEAN ALCOHOL POLICY ALLIANCE) WISHES EU BAN ON ALCOHOL MARKETING

Eurocare, the European Alcohol Policy Alliance, held a seminar in the European Parliament on “Protecting teens from the impact of alcohol marketing” in June 2011. As all previous Eurocare seminars and conferences, this meeting focussed on repeating systematically ill-interpreted academic research which shows “without doubt” that young people’s exposure to alcohol marketing has the effect of making young people start drinking earlier and more. The particularly annoying point made by most speakers is that “young people are the major target of alcohol marketing” – because they find that most alcohol ads appeal to them... There is an intentional confusion between what we have in law and self-regulation “targeted at” and what young people find “appealing to”.

Speakers at the event suggested that there is a need to further regulate:

#### • Alcohol advertising content:

Young people like the use of humour, dynamic music, cartoons or animations and vivid colours in advertisings – which therefore should be subject to bans.

#### • Alcohol advertising volume:

The 30% audience threshold was found to be too high. In this context it was said that work should focus on advertising volume and the ideal solution would be a total EU-wide ban for reasons of public health.

It was also said that legislation and self-regulation focussed particularly on certain media, such as television or the Internet, whereas young people were also influenced by the numerous other marketing elements and advertising techniques including packaging design, pricing, price promotions, social networks such as Facebook, text messages on mobile phones, creating new products such as alcopops... therefore further action was necessary, arguing that a total ban would be the simplest solution.

A representative from STAP, the Dutch anti-alcohol NGO, called upon the European Commission to **establish and EU-wide alcohol advertising ban on the grounds of public health**. Several Members of Parliament participated in the meeting and seemed rather convinced that alcohol marketing is bad for young people, even if it is not specifically targeted at

them. These included Anna Hedh, and two Irish MEPs Nessa Childers (S&D) and Marian Harkin (ALDE).

Eurocare website: <http://www.eurocare.org/>

## INTELLECTUAL PROPERTY RIGHTS



### A NEW STRATEGY FOR INTELLECTUAL PROPERTY RIGHTS (IPR)

The European Commission published a wide-ranging strategy – ‘A Single Market for Intellectual Property Rights’ (IPR Strategy) in May 2011. It covers all forms of IP protection, such as patents, designs, trademarks and copyright as well as possible rights enforcement practices or proposals. The IPR Strategy is complementary to and an essential element of the Europe 2020 Strategy, the Single Market Act and the Digital Agenda for Europe.

For media and advertising, the IPR Strategy outlines several projects and ideas:

- The European Commission will support measures, projects and ideas to improve collective licensing practices, such as publicly available online databases allowing identifying right holders (such as music authors, for example) and fostering the development of international licensing infrastructures.
- In the **second half of 2011**, the EU Commission will propose a **legal instrument**, to create a **European framework for online copyright licensing** in order to create a stable framework for the governance of EU rights at EU level.
- Also in the **second half of 2011**, the EU Commission intends to launch a **Green Paper consultation** on various issues relating to the **online distribution of audiovisual works** (such as copyright issues, video-on-demand services, the cross-border licensing of broadcasting services, licensing efficiency and the aspect of promotion of European works).
- **Starting in 2012**, the EU Commission will start consulting stakeholders on the idea of a **European Copyright Code**. This, says the Commission, could encompass a comprehensive codification of the present body of EU copyright directives in order to harmonise and consolidate the entitlements provided by copyright and related rights at EU level. This will also allow examining whether the exceptions and limitations to copyright, as granted by the Directive on copyright in the information society (2001) would need to be updated.

“A Single Market for Intellectual Property Rights” (Provisional version. The final text will be available soon): [http://ec.europa.eu/internal\\_market/copyright/docs/ipr\\_strategy/COM\\_2011\\_287\\_en.pdf](http://ec.europa.eu/internal_market/copyright/docs/ipr_strategy/COM_2011_287_en.pdf)

Intellectual Property Strategy – Frequently Asked Questions: <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/11/332>

### Next steps

The European Commission will continue working in the coming months to ensure timely and rapid delivery of the various policy proposals outlined in the Strategy. It will also continue to monitor and assess these policies and update them as and when necessary.

The proposal will likely come into effect at various times between 2011 and end 2014.

## What are Intellectual Property Rights?

Intellectual property rights (IPR) cover all forms of commercial activities and artistic creations. They fall into two categories: industrial property and copyright.

- **Industrial property** includes a diversity of rights such as patents (which protect inventions), trademarks, geographical indications and designs.
- **Copyright** - or authors' rights - protects literary and artistic works (books, plays, films, musical works, paintings, photographs, sculptures, maps etc.). Copyright also includes related or neighbouring rights such as those of performers, producers of films and sound recordings, and broadcasters.

IPR provides their owners with the means to decide, for a specific and limited time, how their inventions and creations are to be used, reproduced and commercialised. IPR rewards innovation and creativity and promotes the dissemination of goods and services. For many industries and sectors, well-managed intellectual property rights are a core element of their business strategy and a key factor for their European and global competitiveness.

### Background

IPR is a cornerstone of the EU economy and a key driver for its further growth. In 2009, the value of the top 10 brands in EU countries amounted to almost 9% of GDP on average. Copyright-based creative industries such as software, book and newspaper publishing, music and film, contributed 3.3% to EU GDP in 2006 and account for approximately 1.4 million SMEs, representing 8.5 million jobs. Employment in “knowledge-economy” industries increased by 24% between 1996 and 2006 compared to 6% for other industries.

## DIGITAL AGENDA



### NEW E-PRIVACY DIRECTIVE: EUROPEAN COMMISSION PUBLISHES MEMO ON MAIN CHANGES

The European Commission published a short Memo on changes brought by the new e-Privacy Directive that had to be implemented into national law by May 25, 2011. The new rules require operators to secure personal data properly and to inform their customers and data protection authorities promptly when personal data is lost. The rules also require Internet users to be better informed about data other parties store or access on their devices and improve the tools for fighting spam.

The text of the Memo says:

#### • Notification of personal data breaches

That “telecoms operators and internet service providers must take strong security measures to protect the names, email addresses and bank account information of their customers, along with data about every phone call and internet session they engage in.”

Operators, if security is breached and/or personal data is lost or stolen, must immediately inform the data protection authorities and their customers.

#### • Cookies and behavioural advertising

“Internet users have the right to be better informed about data stored and accessed in their computer, smartphones or other devices connected to the Internet (such as cookies - small text files stored by a user’s web browser).

In the case of data not related to the service currently accessed by the user, the new rules require Member States to **ensure users have given their consent before such data is stored or accessed**. Before being asked for their consent, the user must be given information about what the data collected about them is to be used for (e.g. targeted behavioural advertising).

The rules do not require websites to obtain consent from the user in the case of cookies that directly relate to the provision of a service explicitly requested by the user (e.g. cookies to remember language preferences or the content of shopping baskets on e-commerce websites).

**Industry associations and other interested parties are free to agree on codes of conduct to implement the new rules in user-friendly ways** (e.g. based on browser settings) on condition that they comply with the legal requirements of the Directive”, and ideally in cooperation with national data protection authorities.

## • Spam

"In order to tackle the fact that unsolicited commercial messages, so-called spam, have become a major burden for service providers and users, the new rules strengthen and clarify the legal requirements to counter spam. In particular, all commercial emails advertising web sites without full information about the company are now illegal.

As many spammers operate across borders, cooperation between enforcement authorities will be improved as they have now become part of an EU-wide Consumer Protection Cooperation network. Furthermore, the new rules give internet service providers the right to protect their business and their customers by taking legal action against spammers."

New e-Privacy Directive: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:337:0011:0036:EN:PDF>

## Background

The new rules are part of the EU Telecoms Reform Package adopted by the European Parliament and the Council in late 2009. The European Parliament and Council agreed that this rules must be implemented into Member States' national laws by May 25, 2011.

More information on the EU Telecoms Reform Package: <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/09/513&format=HTML&aged=1&language=EN&guiLanguage=en>

## EU CONSULTATION ON CLOUD COMPUTING

The European Commission launched a broad public consultation on cloud computing which will close on August 31, 2011. The purpose of this consultation is to obtain structured input from stakeholders and interested parties on the needs, barriers and opportunities of the use and provision of cloud computing. Responses will feed into the preparation of a European cloud computing strategy that the Commission will present in 2012.

The survey seeks feedback on the following issues:

- data protection and liability questions, in particular in cross-border situations;
- other legal and technical barriers that can slow down the development of cloud computing in Europe;
- standardisation and interoperability solutions;
- uptake of cloud services, in particular by small and medium-sized enterprises (SMEs);
- ways to promote research and innovation in cloud computing.

Cloud computing allows companies to access their data and software on computers located outside of their offices. This trend is growing and cloud services are expected to generate revenues of almost €35 billion in Europe by 2014.

Neelie Kroes, European Commission Vice President for the Digital Agenda, said: "I am excited about the potential benefits of cloud computing to cut costs, improve services and open up new business opportunities. We need a well-defined cloud computing strategy to ensure that we make the best use of this potential. The input we are requesting from all interested parties is important to get it right."

Cloud computing has the potential to develop into a major new service industry, presenting great opportunities for European telecoms and technology companies. Client companies and public administrations can benefit from lower costs and state-of-the-art services by using cloud computing rather than installing and maintaining software and computing equipment of their own.

Take part in the consultation on cloud computing here: <http://ec.europa.eu/yourvoice/ipm/forms/dispatch?form=cloudcomputing&lang=en>

## CONSUMER PROTECTION



## NEW CONSUMER RIGHTS DIRECTIVE ADOPTED BY EUROPEAN PARLIAMENT: STRONGER RIGHTS FOR ONLINE-SHOPPING

The European Parliament adopted the Consumer Rights Directive, which the European Commission proposed in October 2008. The vote follows a deal reached between the three EU institutions (European Commission, European Parliament and the Council of Ministers), and clears the final hurdle before the new rules can become reality for consumers. The new EU Consumer Rights Directive will give people stronger rights when they shop online.

### What the new rules will mean

The following are the 10 most important changes the new Consumers Rights Directive:

#### 1) The proposal will eliminate hidden charges and costs on the Internet

Consumers will be protected against "cost traps" on the Internet. This happens when fraudsters try to trick people into paying for 'free' services, such as horoscopes or recipes. From now on, consumers must explicitly confirm that they understand that they have to pay a price.

## 2) Increased price transparency

Traders have to disclose the **total cost** of the product or service, as well as any extra fees. Online shoppers will not have to pay charges or other costs if they were not properly informed before they place an order.

## 3) Banning pre-ticked boxes on websites

When shopping online – for instance buying a plane ticket – you may be offered additional options during the purchase process, such as travel insurance or car rental. These additional services may be offered through so-called ‘pre-ticked’ boxes. Consumers are currently often forced to untick those boxes if they do not want these extra services. With the new Directive, pre-ticked boxes will be banned across the European Union.

## 4) 14 Days to change your mind on a purchase

The **period under which consumers can withdraw from a sales contract is extended to 14 calendar days** (compared to the seven days legally prescribed by EU law today). This means that consumers can return the goods for whatever reason if they change their minds.

- Extra protection for **lack of information**: When a seller hasn't clearly informed the customer about the withdrawal right, the return period will be extended to a year.
- Consumers will also be protected and enjoy a right of withdrawal for **requested visits**, such as when a trader called beforehand and pressed the consumer to agree to a visit. In addition, a distinction no longer needs to be made between solicited and unsolicited visits; circumvention of the rules will thus be prevented.
- The right of withdrawal is extended to **online auctions**, such as eBay – though goods bought in auctions can only be returned when bought from a professional seller.
- The **withdrawal period** will start from the moment the consumer receives the goods, rather than at the time of conclusion of the contract, which is currently the case. The rules will apply to internet, phone and mail order sales, as well as to sales outside shops, for example on the consumer's doorstep, in the street, at a Tupperware party or during an excursion organised by the trader.

## 5) Refund rights

Traders must **refund** consumers for the product **within 14 days of the withdrawal**. This includes **the costs of delivery**. In general, the **trader will bear the risk for any damage** to goods during transportation, until the consumer takes possession of the goods

## 6) Introduction of an EU-wide model withdrawal form

Consumers will be provided with a model withdrawal form which they can (but are not obliged to) use if they change their mind and wish to withdraw from a contract concluded at a distance or at the doorstep. This will make it easier and faster to withdraw, wherever you have concluded a contract in the EU.

## 7) Eliminating surcharges for the use of credit cards and hotlines

Traders will not be able to charge consumers more for paying by **credit card** (or other means of payment) than what it actually costs the trader to offer such means of payment. Traders who operate **telephone hotlines** allowing the consumer to contact them in relation to the contract will not be able charge more than the basic telephone rate for the telephone calls.

## 8) Clearer information on who pays for returning goods

If traders want the consumer to bear the cost of returning goods after they change their mind, they have to **clearly inform** consumers about that beforehand, otherwise they have to pay for the return themselves. Traders must clearly give at least an estimate of the maximum costs of returning bulky goods bought by Internet or mail order, such as a sofa, before the purchase, so consumers can make an informed choice before deciding from whom to buy.

## 9) Consumer protection in relation to digital products

Information on **digital content** will also have to be clearer, including about its compatibility with hardware and software and the application of any technical protection measures, for example limiting the right for the consumers to make copies of the content.

Consumers will have a right to withdraw from purchases of digital content, such as music or video downloads, but only up until the moment the actual downloading process begins.

## 10) Common rules for businesses to make it easier for them to trade all over Europe.

These include:

- A single set of core rules for distance contracts (sales by phone, post or internet) and off-premises contracts (sales away from a company's premises, such as in the street or the doorstep) in the European Union, creating a **level playing field** and **reducing transaction costs** for cross-border traders, especially for sales by Internet.
- **Standard forms** will make life easier for businesses: a form to comply with the information requirements on the right of withdrawal;
- **Specific rules will apply to small businesses and craftsmen**, such as a plumber. There will be no right of withdrawal for urgent repairs and maintenance work. Member States may also decide to exempt traders who are requested by consumers to carry out repair and maintenance work in their home of a value below €200 from some of the information requirements.

Consumer Rights Directive – Consolidated Text (2011): <http://www.europarl.europa.eu/document/activities/cont/201106/201106ATT21551/20110616ATT21551EN.pdf>

## Next steps in the legislative procedure:

- Formal approval of the agreed text of the EU Consumer Rights Directive by the EU Council of Ministers (September 2011);
- Publication of the new Directive in the EU's Official Journal (this autumn);
- **Transposition of the new rules into the national laws before the end of 2013.**

(Source: European Parliament)

## Background

Current consumer protection rules are set out in four EU directives\* stipulating minimum requirements. Over the years, EU Member States have added further, uncoordinated requirements, making consumer rights law into a patchwork of 27 differing national regimes. Another problem is, that consumers today are poorly protected when shopping on line.

In October 2008 the European Commission tabled a proposal to update and merge the four existing EU consumer rights directives into one set of rules. The new consumer rules will cover almost all purchases, whether made in a shop, by phone, postal order or on the doorstep. However, these rules will improve the rights of on-line shoppers in particular, and hence should boost consumer confidence and cross-border online trade.

In 2010, nearly 60% of consumers bought goods or services via the Internet, up from almost 40% in 2009. Between 2004 and 2010, this percentage rose from 20% to 40%.

\*The four directives to be replaced by the Consumer Rights Directive:

[http://ec.europa.eu/consumers/rights/dir\\_replacing\\_en.htm](http://ec.europa.eu/consumers/rights/dir_replacing_en.htm)

## GAMBLING



## HEARING IN EU PARLIAMENT COMMITTEE ON ONLINE-GAMBLING

Among the topics discussed by Members of Parliament on the Internal Market Committee (IMCO), experts and stakeholders during a hearing on online-gambling in June 2011 were the benefits and risks of an EU regulation and various consumer protection issues (such as addiction and protecting vulnerable gamers) and a possible European legislative framework for online gambling. While online-gambling is available "throughout Europe", we have a "plethora of regulation" Jürgen Creutzmann (ALDE, DE) organiser of the public hearing said adding that this current situation is more "unsatisfactory than satisfactory". Striking the right balance between Member States' sovereignty and the need for clearer, common rules was a returning issue throughout the debate.

Member States' views on online gambling are diverse with some EU countries banning gambling, while others have monopoly systems or liberal regimes. The rapporteur\* in the Parliament's IMCO for the green paper on online gambling is Jürgen Creutzmann (Germany, ALDE), and the Rapporteur for Opinion for the ECON Committee (Economic and Monetary Affairs) is Sophie Auconie (France, EPP).

Mr Creutzmann said that the report should be based on the following elements:

- **Subsidiarity** must apply to online gambling, to give Member States the choice to allow or not allow online gambling. If they allow it, then they should have **similar rules** (unlimited licenses, transparency in the license attribution and regulation of the market).
- **Protection of minors and money laundering**
- Can **minimum standards be introduced for consumer protection in online gambling?**
- The **funding of sports** by gambling operators must be carefully considered, to ensure that sports will not lack funding.

Christel Schaldemose (Denmark, S&D) said that since her own-initiative report in 2009, not much has changed. Subsidiarity is still the most important element, but gamblers should be protected. She asked whether enforcement was being done properly and whether action can be undertaken against illegal service providers.

\* A rapporteur is the Member of European Parliament (MEP) responsible for preparing a report.



Legal and Research Director of the company GamblingCompliance, Laurie Korpi, made a short presentation pointing out that:

- the European online gambling market is fragmented,
- there are very different regulatory models,
- reliable and official data across the EU is very limited and fragmented, which makes it difficult to assess the effectiveness of regulatory measures. The only good and extensive data were currently found in Italy and France.

Laurie Korpi stated EU Member States are working more towards bi-lateral agreements, for example France and Italy are signing a bi-lateral agreement on licenses, other countries are also negotiating with each other. This issue cannot be solved by legislation.

A EU gambling law expert made a brief analysis of European Court of Justice rulings. Through the various Cases, the Court has ruled that:

- **Gambling is an economic activity of a very particular nature**, and Member States have a strong discretionary power (in shaping gambling legislation),
- **Online gambling has higher addiction levels** than traditional gambling, therefore they require strict regulation,
- **Restrictive gambling policies must be consistent**,
- **Licensing must be transparent and non-discriminatory**,
- **Intellectual property of sports events organisers**: can they claim compensation for any use? In France, the 2010 Gambling Act introduced a "sports-owner right" according to which online gambling operators must conclude an agreement with the organisers of a sports event if they wish to offer their clients bets on that event.

The president of the French regulating authority ARJEL (Jean-François Vilotte), gave a brief outline of the new French gambling law from 2010. France has found that when there is a very strong demand for a specific type of gambling, such as online gambling for example, and there is a blanket ban or a State Monopoly, the illegal market will be very important.

France opened the online market to:

- Skills-based games,
- Sports betting,
- Poker.

50 licenses have been awarded to 35 companies (with the right to advertise). As France has a good data collection system, it has evidence that the new law is effective, as now 80-90% of the online gambling offer is legal.

## Next steps

The report prepared by MEP Creutzmann is scheduled for a IMCO committee vote in September 2011 followed by a plenary vote in October 2011.

## Background

The hearing was held in response to the European Commission Green Paper on online-gambling (March 2011) and in view of the Committee's current preparation of a non-legislative report on the same topic (rapporteur Jürgen Creutzmann, ALDE, DE).

"Integrity of online gambling" by Member of Parliament Christel Schaldemose (2009): <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2009-0097&language=EN>

Presentation by Laurie Korpi:

<http://www.europarl.europa.eu/document/activities/cont/2011/06/20110615ATT21465/20110615ATT21465EN.pdf>

Presentation by EU gambling law expert:

<http://www.europarl.europa.eu/document/activities/cont/2011/06/20110615ATT21467/20110615ATT21467EN.pdf>

Green Paper on-online gambling in the Internal Market: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0128:FIN:en:PDF>

## ADVERTISING



### HEARING ON THE MISLEADING AND COMPARATIVE ADVERTISING DIRECTIVE FOR B2B

In June the European Commission organized a meeting on the application of the Misleading and Comparative Advertising Directive (2006, MCAD) in order to discuss misleading and comparative advertising and the implementation of the 2006 codified version of the Directive, which now only covers B2B advertising. It was the first time the Commission was discussing these issues after the codification of the Directive in 2006.

It was said the technological development and the growing use of online media and marketing practices could lead to an update of the Directive. So far the European Commission had received 13,000 complaints relating to misleading directories, practice which is already banned in the Unfair Commercial Practices Directive (UCP), only that UCP only covers B2C relations and practices. Often these complaints refer to cases having a cross-border aspect, making enforcement more difficult.

The Commission has asked EU Member States to report on the implementation of the Misleading and Comparative Advertising Directive (MCAD). The closing date for replies was May 20, 2011.

Following this meeting, the European Commission will decide whether to hold a public or a more closed stakeholder consultation on the issue.

The consultation will enquire about:

- New misleading practices
- Misleading directories
- Enforcement and redress mechanisms and the scope for improvement.

Although the Commission was not aware of misleading online practices affecting businesses, any useful information on the existence of such problems would be most welcome.

The Commission had already identified misleading practices, such as:

- Companies sending misleading payment forms, making the form look like a reminder for a due payment or a debt which does not exist,
- Companies offering extensions of trademarks or domain names in foreign countries,
- Misleading environmental claims.

All participants fully agreed that the biggest problem was misleading directory advertisements, not only for small and medium sized enterprises (SMEs) but also for big companies, institutions and NGOs. The issue here is about criminal activity by individuals operating through fictitious companies, who change country – and start again from somewhere else, as soon as there are legal orders issued by Courts against them. One difficulty about such tricks was a lack of recognition by police or judicial authorities, which need to be informed and educated about the functioning of these practices. The idea of an EU database or a sort of blacklist was discussed, but several participants warned about the difficulty of establishing such a public list, because of data protection rules and the danger of being accused of defamation.

Generally, speakers were extremely cautious about re-opening existing legislation and warned the Commission that this might not be proportional.

The Commission recognized that **advertising self-regulation was an effective means to fight misleading advertising**, in terms of obtaining enforcement, also in cross-border cases.

The meeting ended with the invitation to participate actively in the consultation and submit positions and suggestions to solve the problem of misleading practices for business.

EU homepage for more information on misleading and comparative advertising:

[http://europa.eu/legislation\\_summaries/consumers/consumer\\_information/l32010\\_en.htm](http://europa.eu/legislation_summaries/consumers/consumer_information/l32010_en.htm)

#### Next steps

By the **end of 2011, the European Commission will publish a Communication on the application of the Misleading and Comparative Advertising Directive**, presenting options for revision and enforcement cooperation between Member States.

## CONTRACT LAW



### EU PARLIAMENT SUPPORTS OPTIONAL EUROPE-WIDE CONTRACT LAW

The European Parliament voted with an overwhelming majority in favour for optional EU-wide rules for businesses and consumers who are concluding contracts in the Single Market. The vote by the European Parliament follows a recent policy announcement by European Commission Vice-President Viviane Reding that she is considering proposing such an optional European contract law in the autumn. Her objective is to bring more coherence to contract law in Europe while easing cross-border transactions, notably for Europe's small businesses and its 500 million consumers.

"I welcome today's vote by the European Parliament to back an optional European contract law," said Vice-President Reding, the EU's Justice Commissioner. "I am looking closely at all the possibilities to ease cross-border transactions, and I believe the option favoured by the European Parliament could be a very good choice. It would give Europe's 500 million consumers more opportunities to shop across borders while cutting transaction costs for small businesses – the backbone of our economy. I will work closely with the European Parliament and all Member States to see how to turn today's vote into an attractive legal reality."

Transaction costs (like adapting contractual terms and commercial policies or obtaining translation of the rules) and legal uncertainty involved in dealing with foreign contract laws make it particularly hard for small and medium-sized enterprises (which make up 99% of all enterprises in the EU), to expand within the Single Market. **An optional European contract law could be chosen freely by consumers and businesses in their contractual relations as an alternative to the existing national contract laws when they want to buy or sell goods across a national border.** It could save a small online business wishing to trade in Europe an estimated €9,000 in legal and translation fees per market – or over €230,000 if they wanted to take their business EU-wide.

#### Background

Contracts are essential for running businesses and making sales to consumers. They formalise an agreement between parties and can cover a broad range of matters, including

the sale of goods and associated services such as repairs and maintenance.

Companies use a wide variety of contracts that are governed by different national contract laws when operating in Europe's Single Market. The 27 different sets of national rules can lead to additional transaction costs, increased legal uncertainty for businesses and lack of consumer confidence. These can act as a deterrent for both consumers and businesses to shopping and trading across EU borders. Small and medium-sized companies are particularly affected by higher transaction costs.

- Under the Europe 2020 strategy, the European Commission is tackling bottleneck in the Single Market to drive economic recovery. This includes working on harmonised solutions for consumer contracts, EU model contract clauses and making progress towards a European contract law.

Europe 2020 strategy: [http://ec.europa.eu/europe2020/index\\_en.htm](http://ec.europa.eu/europe2020/index_en.htm)

- In July 2010, the European Commission presented several options in a Green Paper for a more coherent approach to contract law. The Commission then held a public consultation that ran until January 2011 and resulted in 320 responses.

Green Paper on policy options for progress towards a European Contract law for consumers and business: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52010DC0348:EN:NOT>

- In April 2011, the European Parliament's Legal Affairs Committee (JURI) approved an own-initiative report (by MEP Diana Wallis) that supports an optional European contract law and was the basis for the vote in plenary. Parliamentarians have now approved the committee's view that an optional instrument could be complemented with a reference 'toolbox' to ensure the coherence and quality of legislation on European contract law.

More information on the own-initiative report by Diane Wallis here: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A7-2011-0164+0+DOC+PDF+V0//EN&language=EN>

- In May 2011, an expert group established by the Commission delivered a feasibility study on a future initiative on European contract law (IP/11/523). This study is currently being analysed by the Commission as to whether and how it can serve as a starting point for a political follow-up initiative on European contract law.

Feasibility study "A European contract law for consumers and businesses": [http://ec.europa.eu/justice/policies/consumer/docs/explanatory\\_note\\_results\\_feasibility\\_study\\_05\\_2011\\_en.pdf](http://ec.europa.eu/justice/policies/consumer/docs/explanatory_note_results_feasibility_study_05_2011_en.pdf)

For more information consult the European Contract Law website:

[http://ec.europa.eu/justice/policies/consumer/policies\\_consumer\\_intro\\_en.htm](http://ec.europa.eu/justice/policies/consumer/policies_consumer_intro_en.htm)

## FOOD



### FOOD LABELLING: COMPROMISE REACHED BETWEEN THE HUNGARIAN PRESIDENCY, THE EUROPEAN PARLIAMENT AND THE COMMISSION

The draft regulation on food labelling has been agreed between the Hungarian Presidency, the European Parliament and the Commission, and was approved by the Council. The deal, which aims to ensure that food labels become clearer in future, now needs to be approved by Parliament in a plenary vote in July 2011. "The deal is a milestone in the EU's food legislation that will benefit both the consumer and food business operators", commented Parliament's rapporteur Renate Sommer (EPP, DE), adding that "In future, European citizens will find much more information on the packages than before".

#### What the new rules will mean

It is compulsory on all labels, such as list of ingredients, "best before" or "use by" dates, specific conditions of use, and add a requirement to list key nutritional information.

#### • Compulsory nutrition information on prepacked foods

Under the new rules, the energy value and the amounts of fat, saturates, carbohydrates, protein, sugars and salt (which together form the "mandatory nutrition declaration") must be indicated in the same field of vision per 100g or per 100ml and may, additionally, also be expressed per portion.

Another important element of the draft regulation is the introduction of a **minimum font size of 1.2 mm (for the x-height) for all mandatory information** which is aimed to improve legibility of food labels.

#### • Alcoholic beverages

**Alcoholic beverages containing more than 1,2 % by volume of alcohol are**, for the time being, **exempted from the obligation to bear a nutrition declaration and a list of ingredients**. This includes also ready to drink mixed alcoholic beverages (alcopops). The Commission must, however, examine within three years after the entry into force of the new regulation whether alcoholic beverages should in future be covered, in particular, by the requirement to indicate the energy value, and make legislative proposals, if appropriate. At the same occasion, the European Commission must consider the need to propose a definition of alcopops.

#### • To avoid misleading consumers

Rules to ensure that consumers are not misled by the **presentation of food packaging with regard to its appearance, description or pictorial presentation will be strengthened**.

This is why foods should not be labelled in a way that could create the impression that they are a different food. Where an ingredient that would normally be expected has been replaced, this should be clearly stated on the label and next to the brand name, the agreement says.

Meat consisting of **combined meat parts must be labelled "formed meat"**, and the same will apply to **"formed fish"**.

#### • "Country of origin" labelling

Another important element is the **extension of compulsory country of origin labelling** to fresh meat of swine, sheep and goats, and poultry (in addition to beef, for which a separate piece of legislation was introduced during the BSE crisis, and to fruits and vegetables, honey, olive oils, and cases where the failure to do so misleads the consumer).

#### • Allergen labelling

The agreement says that **allergenic substances must be highlighted in the ingredient list**, so that consumers can find the information on allergens at first glance. They have to be emphasised through a typeset that clearly distinguishes them from the rest of the list of ingredients. Allergens will always have to be indicated for non-prepacked foods which are sold to the final consumer.

#### • Vegetable oils

Under the new rules, oils of vegetable origin may be grouped together in the list of ingredients under the designation "vegetable oils", followed by the indication of the specific vegetable origin. It will be possible to state that the proportions of the oils may vary.

#### • Labelling of transfats

Concerning the labelling of transfats, Members of Parliament agreed that before introducing any obligation to label food containing transfats, the Commission will have to submit within three years a report on the presence of transfats in food in the EU, which evaluates possible ways to tackle the problem. If necessary, this report should be accompanied by a legislative proposal.

#### Entry into force

Once the legislation is adopted, food businesses will have three years to adapt to the rules. They will have two more years, so five years in total, to apply the rules on the nutritional declaration.

## Next steps

The European Parliament is expected to vote on the agreement at its July plenary session and Council needs to formally approve it as well. If it is not backed either by Council or by the majority of Parliament, the dossier will go to conciliation.

## Further information:

Q&A on food labelling and the compromise reached between the Hungarian Presidency, the European Parliament and the Commission: [http://www.eu2011.hu/files/bveu/documents/QA\\_foodlabelling\\_EN.pdf](http://www.eu2011.hu/files/bveu/documents/QA_foodlabelling_EN.pdf)

Food labelling: final deal one step closer (Press Release European Parliament): <http://www.europarl.europa.eu/de/press-room/content/20110615IPR21422/html/Food-labelling-final-deal-one-step-closer>

## SPECIALIZED FOOD PRODUCTS: EUROPEAN COMMISSION'S ADOPTED DRAFT REGULATION TO PROVIDE BETTER INFORMATION TO CONSUMERS

The European Commission adopted a draft regulation that will better inform consumers across the EU and achieving the aim of better and clearer legislation. The draft regulation strengthens and clarifies provisions for foods intended for vulnerable groups of the population who need particular protection – namely infants and children up to three years old, and people with specific medical conditions, such as cancer patients or individuals with metabolism disorders.

For example, at the moment lactose-free food, slimming products or protein bars could be covered by the "Directive on foodstuffs intended for particular nutritional uses". The draft regulation repeals this directive and abolishes the concept of dietetic foods because its application differs significantly between EU Member States and creates distortions in the internal market. Dietetic foods will be solely covered by other already existing legislation, such as, for instance, the "Regulation on nutrition and health claims made on foods" and/or the regulation on the addition of vitamins, minerals and other substances to foods.

The draft directive maintains the existing compositional and labelling rules applicable to infant and follow-on formulae, processed cereal-based foods and other baby foods and foods for special medical purposes. Further, the proposal **establishes a single EU list of substances, instead of the existing three, that can be added to these foods.** The substances

covered in the list include, among others, minerals and vitamins.

"Thanks to our new approach, consumers will be able to compare food products more easily as the foods concerned will be covered by the same rules in the 27 Member States providing the same high level of protection for all European citizens and fair and accurate information," John Dalli, Health and Consumer Policy Commissioner, said. "The abolishing of general rules on dietetic foods that have become unnecessary or confusing should also contribute to fair competition between similar products, allow SMEs to gain easier access to the market and support innovation," he added.

The new framework will result in less administrative burden, more clarity and consistency within the EU and consequently allow for more flexibility for the evolving, innovative food market.

No products will have to be withdrawn from the market as a result of the new rules. Those covered by the dietetic food legislation can remain on the market but will be legislated fully by the other pieces of existing food legislation. In order to facilitate the adaptation of products and reduce costs for operators, mainly in terms of **re-labelling, a two-year transitional period is foreseen.**

Regulation on nutrition and health claims made on foods: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:012:0003:0018:EN:PDF>

Directive on foodstuffs intended for particular nutritional uses: [http://europa.eu/legislation\\_summaries/consumers/product\\_labelling\\_and\\_packaging/sa0010\\_en.htm](http://europa.eu/legislation_summaries/consumers/product_labelling_and_packaging/sa0010_en.htm)  
*Next steps*

## Next steps

The draft regulation will be now submitted to the European Parliament and the Council. If these Institutions reach an agreement on the proposal the new regulation should be in force by the end of 2012.



## Background

Foods for particular nutritional uses are defined by the existing framework legislation on dietetic foods, as foods that are different from foods for normal consumption and are specially manufactured products intended to satisfy the particular nutritional requirements of specific groups of the population.

The designation under which a dietetic food is sold is accompanied by a suitability statement for the particular nutritional use and the specific group of the population to whom the food is intended (for example: gluten-free food for celiac people, processed cereal-based food for young children, infant formulae for infants from birth, food for sports people etc).

After more than 30 years of application, and given the evolution of food products and the evolution of EU food legislation, a review of the dietetic food legislation became necessary. Specialised "normal" foods have increasingly been targeting sub-groups of the general population (e.g. protein bar supporting muscle building for sportspeople, food supplements for pregnant women, fortified food in calcium and vitamin D suitable for older adults, slimming products etc).

Consequently, the difference between "dietetic foods" for specific groups of the population and "specialised foods" for the general population or sub-groups is no longer clear for citizens, stakeholders and enforcement authorities. Therefore, it became clear that the existence of a specific EU framework for "dietetic foods" existing in parallel with other, more recent, pieces of legislation was no longer justified.

For more information on the issue:

[http://ec.europa.eu/food/food/labellingnutrition/nutritional/index\\_en.htm](http://ec.europa.eu/food/food/labellingnutrition/nutritional/index_en.htm)

(Source: European Commission)