



# EALG

## EURO-AMERICAN LAWYERS GROUP

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### ***EU DIRECTIVE ON UNFAIR COMMERCIAL PRACTICES***

*AN EURO-AMERICAN LAWYERS GROUP BRIEFING ARTICLE*

*PREPARED BY EALG MEMBER*

*BARROS, SOBRAL. G. GOMES E ASSOCIADOS*

*LISBON, PORTUGAL*

Last June 11<sup>th</sup> 2005 the European Commission published the Parliament and Counsel's Directive 2005/29/CE regarding unfair business-to-consumer commercial practices.

The Directive's main objectives are to unify the rights of consumers before merchants, whether it involves the consumer's relationship with regional merchants; a consumer ordering goods over the Internet; or whether it involves advertising, marketing and post-sale service. The Directive was voted and sanctioned in order to unify the Member-States' legislation on this subject, including on unlawful advertisement, which directly harm the lawful businessmen's economical interests.

Such commandment regulates unfair commercial practices with the purpose of distorting the consumers' economic behaviour. It generally forbids the unfair commercial practices and specifically prohibits the misleading practices (either through action or omission) and the aggressive practices (through harassment, coercion and undue influence).

In order to classify a commercial practice as unfair, the plaintiff must prove that:

- the practice is contrary to the requirements of professional diligence (unlawful/deceiving/aggressive);
- the practice materially distorts the consumer's behaviour.

From a summarized analysis of the diploma, we would stand out the following articles:

- **article 2<sup>nd</sup>, section e)** (concept of distorting the consumers' economic behaviour) and **j)** (concept of undue influence);
- **article 5<sup>th</sup>, paragraph 2** (concept of unfair practice: the one that is contrary to the requirements of professional diligence and that materially distorts the consumer's behaviour);
- **article 5<sup>th</sup>, paragraph 3** (exemption to the regular regime: when the consumer is particularly vulnerable to the practice or to the product due to psychic syndrome or to the consumer's age);
- **article 6<sup>th</sup>, paragraph 1** (concept of misleading practice: when the commercial practice makes use of false information, which misleads the average consumer or it is possible to mislead the consumer to take a decision he would not otherwise);



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- **article 7<sup>th</sup>, paragraph 1** (concept of misleading practice through omission: when someone omits a relevant information, necessary to the average consumer to take a cleared up decision);
- **article 8<sup>th</sup>, paragraph 1** (concept of aggressive practice: if such practice is deemed to withdraw the consumer's freedom of choice namely due to harassment, coercion or undue influence);
- **Annex I** – contains the behaviours deemed misleading and aggressive practices.

Despite the main objective that presided the Directive's drafting – to regulate the business relations between companies – it ended up regulating the relations between merchants and consumers, thus turning out to be a defence mechanism for consumers. Therefore, its application on Portuguese Jurisdiction is eagerly awaited.

*For further details, please contact Barros, Sobral. G. Gomes e Associados, Lisbon, Portugal;*  
[law@bsgg.pt](mailto:law@bsgg.pt); <http://www.bsgg.pt>

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