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REPORT

on the Misleading Directory Companies report
(Petitions 0045/2006, 1476/2006, 0079/2003, 0819/2003, 1010/2005,
0052/2007, 0306/2007, 0444/2007, 0562/2007 and others)
(2008/2126(INI))

Committee on Petitions

Rapporteur: Simon Busuttil

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

**on the Misleading Directory Companies report (Petitions 0045/2006, 1476/2006, 0079/2003, 0819/2003, 1010/2005, 0052/2007, 0306/2007, 0444/2007, 0562/2007 and others)
(2008/2126(INI))**

The European Parliament,

- having regard to Petitions 0045/2006, 1476/2006, 0079/2003, 0819/2003, 1010/2005, 0052/2007, 0306/2007, 0444/2007, 0562/2007 and others,
- having regard to previous deliberations of the Committee on Petitions on Petition 45/2006 and others,
- having regard to Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising (codified version)¹, which replaced Directive 84/450/EEC² as amended by Directive 97/55/EC³,
- having regard to 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 (“Unfair Commercial Practices Directive”)⁴,
- having regard to Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection cooperation)⁵,
- having regard to Directive 98/27/EC of the European Parliament and of the Council of 19 May 1998 on injunctions for the protection of consumers’ interests⁶,
- having regard to the study entitled “Misleading practices of ‘directory companies’ in the context of current and future internal market legislation aimed at the protection of consumers and SMEs” (IP/A/IMCO/FWC/2006-058/LOT4/C1/SC6), commissioned by its Committee on the Internal Market and Consumer Protection,
- having regard to Rule 192(1) of its Rules of Procedure,
- having regard to the report of the Committee on Petitions and the opinion of the

¹ OJ L 376, 27.12.2006, p. 21.

² Council Directive 84/450/EEC of 10 September 1984 relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising (OJ L 250, 19.9.1984, p. 17).

³ Directive 97/55/EC of the European Parliament and of the Council of 6 October 1997 amending Directive 84/450/EEC concerning misleading advertising so as to include comparative advertising (OJ L 290, 23.10.1997, p.18).

⁴ OJ L 149, 11.6.2005, p. 22.

⁵ OJ L 364, 9.12.2004, p. 1.

⁶ OJ L 166, 11.6.1998, p. 51.

- A. whereas Parliament has received more than 400 petitions from small businesses (reflecting only a fraction of their number) who claim to have fallen victim to misleading advertising by business-directory companies and to have suffered, in consequence, psychological stress, feelings of guilt, embarrassment, frustration and financial loss,
- B. whereas these complaints reflect a widespread and concerted pattern of misleading business practices on the part of certain business-directory companies affecting thousands of businesses that are organised across frontiers and thus involve activity in two or more Member States within the European Union and beyond, with a significant financial impact on such businesses, and whereas there is no administrative mechanism or legal instrument enabling the national law-enforcement agencies to work together across borders efficiently and effectively,
- C. whereas the misleading character of these practices becomes more obvious when they are of an electronic nature and are spread using the Internet (see Petition No 0079/2003),
- D. whereas the business practices complained of typically consist of an approach made, usually by mail, by a business-directory company to businesses inviting them to complete or update their business name and contact details and giving them the false impression that they will be listed in a business directory free of charge; whereas signatories later discover that they have, in fact, unintentionally signed up to a contract, normally binding them for a minimum of three years, to be listed in a business directory at a yearly charge of some EUR 1 000,
- E. whereas the forms used in such practices are usually ambiguous and difficult to understand, inducing the erroneous idea of a free listing in a business directory but in fact entrapping businesses into unwanted contracts for advertising in business directories,
- F. whereas neither specific EU legislation nor national legislation exists in Member States concerning directory companies in business-to-business relationships, and whereas Member States have a discretion to introduce more comprehensive and far-reaching legislation,
- G. whereas Directive 2006/114/EC also applies to business-to-business transactions and defines “misleading advertising” as “any advertising which in any way, including its presentation, deceives or is likely to deceive the persons to whom it is addressed or whom it reaches and which, by reason of its deceptive nature, is likely to affect their economic behaviour or which, for those reasons, injures or is likely to injure a competitor”; whereas, however, different interpretations of what is “misleading” seem to be a major practical impediment in combating such practices of directory companies in business-to-business relationships,
- H. whereas Directive 2005/29/EC prohibits the practice of “including in marketing material

an invoice or similar document seeking payment which gives the consumer the impression that he has already ordered the marketed product when he has not”; whereas, however, that Directive does not apply to business-to-business misleading practices and therefore, in its current form, cannot be relied upon to help the petitioners; whereas, however, that Directive does not preclude a system of national rules on unfair commercial practices that is equally applicable under all circumstances to consumers and enterprises,

- I. whereas Directive 2005/29/EC does not preclude Member States from extending its application also to businesses through national law, whereas, however, this leads to differing levels of protection for businesses which are victims of misleading practices by business-directory companies in different Member States,
- J. whereas Regulation (EC) No 2006/2004 defines “intra-Community infringement” as “any act or omission contrary to the laws that protect consumers’ interests ... that harms, or is likely to harm, the collective interests of consumers residing in a Member State or Member States other than the Member State where the act or omission originated or took place; or where the responsible seller or supplier is established; or where evidence or assets pertaining to the act or omission are to be found”; whereas, however, that Directive does not apply to business-to-business misleading practices and therefore, in its current form, cannot be relied upon either to help the petitioners,
- K. whereas most petitioners name the business directory known as “European City Guide” (the activities of which directory have been the subject of legal and administrative action), but other business-directory companies such as “Construct Data Verlag”, “Deutscher Adressdienst GmbH” and “NovaChannel” are also mentioned; whereas, however, other business-directory companies engage in legitimate business practices,
- L. whereas the targets of these misleading business practices are, in the main, small businesses but also include professionals and even non-profit making entities such as non-governmental organisations, charities, schools and libraries and local social clubs such as band clubs,
- M. whereas the business-directory companies are often established in a Member State other than the victim's, making it difficult for victims to turn to national authorities for protection due to the existence of different interpretations in Member States of what is considered misleading; whereas victims also often find no redress from national legislative frameworks and consumer protection authorities because they are told that the law is intended to protect consumers and not businesses; whereas, being small businesses, most victims often lack the resources to pursue an effective remedy through litigation, and whereas self-regulatory mechanisms for directories are of little relevance as they are disregarded by those that engage in misleading advertising,
- N. whereas victims of these practices are rigorously pursued to pay up by the business-directory companies themselves or even by debt-collection agencies engaged by them; whereas victims complain that they feel distressed and threatened by these approaches and many of them often end up paying unwillingly in order to avoid further harassment,
- O. whereas victims who refuse to pay have – with a few exceptions – seldom been pursued in court,

- P. whereas a number of Member States have adopted initiatives, notably of an awareness-raising nature, among potentially affected companies and whereas this includes information-sharing, advice, alerting state enforcement authorities and in some cases maintaining a complaints register in order to tackle this problem,
- Q. whereas Austria has since 2000 changed its national Unfair Commercial Practices Law, and whereas Section 28a thereof now states: “It shall be prohibited to advertise, in the scope of business and for the purpose of competition, for registration in directories, such as yellow pages, telephone directory or similar lists, by way of payment form, money order form, invoice, offer of correction or similar manner or to offer such registrations directly without unequivocally and also by clear and graphic means pointing out that such advertisement is solely an offer for a contract”,
- R. whereas such practices have been applied for a number of years, creating numerous victims and significantly damaging and distorting the internal market,
1. Expresses its concern at the problem raised by the petitioners, which appears to be widespread and of a cross-border nature and which has a significant financial impact, notably on small businesses;
 2. Considers that the cross-border nature of this problem imposes a duty on the Community institutions to provide an adequate remedy to victims, such that the validity of contracts concluded on the basis of misleading advertising can be effectively contested, annulled or terminated, and such that victims may obtain reimbursement of the money paid by them;
 3. Urges victims to report cases of business scams to national authorities, and calls on Member States to provide small and medium-sized enterprises with the know-how needed in order to enable them to file complaints with governmental and non-governmental authorities, by ensuring that communication pathways are open and that victims are aware that advice is available so that they can seek appropriate guidance before they settle fees demanded from them by misleading business-directory companies; urges Member States to set up and maintain a centralised database of these complaints;
 4. Regrets that, despite the widespread nature of these practices, EU and national legislation does not appear to be adequate when it comes to providing a significant means of protection and an effective remedy, or is not being adequately enforced at national level; regrets that national authorities also seem to be unable to provide a remedy;
 5. Welcomes the efforts made by European and national business organisations to raise awareness among their members, and calls on them to intensify their efforts in collaboration with grass-roots organisations so that fewer people become victims of misleading business-directory practices in the first place; expresses concern that some of these organisations have consequently been pursued through the courts by the misleading business-directory companies specified in their awareness-raising activities on the basis of alleged defamation or similar accusations;
 6. Welcomes the action taken by certain Member States such as Italy, Spain, the Netherlands, Belgium and the United Kingdom, but most notably by Austria, in trying to prevent business-directory companies from engaging in misleading practices; considers,

however, that these efforts remain insufficient and that there is still a need for the coordination of control at an international level;

7. Calls on the Commission and on Member States to step up their efforts, in full cooperation with national and European business representative organisations, to raise awareness of this problem so that more people are informed and empowered to avoid misleading advertising which can lure them into unwanted advertising contracts;
8. Calls on the Commission to address the problem of business scams in the context of its “Small Business Act for Europe” initiative, as proposed in its communication entitled “A Single Market for 21st Century Europe”, and to engage with the Enterprise Europe Network, the SOLVIT network and the relevant DG portals as a further means of delivering information and assistance regarding these problems;
9. Regrets that Directive 2006/114/EC, which applies to business-to-business transactions such as the one at issue in this case, appears to be either insufficient in terms of providing an effective remedy or inadequately enforced by Member States; requests the Commission to report by December 2009 on the feasibility and possible consequences of amending Directive 2006/114/EC in such a way as to include a “black” or “grey” list of practices that are to be regarded as misleading;
10. Recalls that, whereas the Commission has no power to enforce Directive 2006/114/EC directly against individuals or companies, it does have the duty, as the guardian of the Treaty, to ensure that that Directive is adequately and effectively implemented by Member States; therefore calls on the Commission to ensure that Member States fully and effectively transpose Directive 2005/29/EC so that protection is guaranteed in all Member States, and to influence the shape of the legal and procedural tools available, as in the case of Directive 84/450/EC, which provided tools to Austria, Spain and the Netherlands, thereby fulfilling its duty as guardian of the Treaty in terms of protection for businesses whilst ensuring that the right of establishment and freedom to provide services are not impaired;
11. Calls on the Commission to step up its monitoring of the implementation of Directive 2006/114/EC, most notably in those Member States where misleading business-directory companies are known to be based, but in particular in Spain, where the business-directory company that is most often named by petitioners is established, and in the Czech Republic and Slovakia where a court judgment has been delivered against victims in a manner which calls into question the implementation of Directive 2006/114/EC in those countries; calls on the Commission to report back to Parliament on its findings;
12. Regrets that Directive 2005/29/EC does not cover business-to-business transactions and that Member States appear reluctant to extend its scope; notes, however, that Member States may unilaterally extend the scope of their national consumer legislation to cover business-to-business transactions, and actively encourages them to do so and also to ensure cooperation between Member States' authorities as provided for in Regulation (EC) No 2006/2004 in order to make it possible to track down cross-border activities of this kind engaged in by business-directory companies established within the EU or in a third-country ; moreover, requests the Commission to report by December 2009 on the feasibility and possible consequences of extending the scope of Directive 2005/29/EC to

cover business-to-business contracts with specific regard to point 21 of Annex I thereto;

13. Welcomes the example set by Austria, which has introduced a specific prohibition in its national legislation on misleading business directories, and calls on the Commission, in the light of the cross-border nature of this problem, to propose legislation to extend the scope of Directive 2005/29/EC, based on the Austrian model, in a way that specifically prohibits advertising in business directories unless prospective clients are unequivocally and by clear and graphic means informed that such advertisement is solely an offer for a contract against payment;
14. Notes that national legislation is often inadequate to pursue remedies against business-directory companies that are based in other Member States and therefore urges the Commission to facilitate more active cross-border cooperation among national authorities in order to enable them to provide a more effective remedy to victims;
15. Regrets that Regulation (EC) 2006/2004 is not applicable to business-to-business transactions and therefore cannot be relied upon as a means of combating misleading business directories; calls on the Commission to propose legislation to extend its application accordingly;
16. Welcomes the example of Belgium, where all those affected by misleading practices are able to take legal action in their country of residence;
17. Notes that the Austrian experience shows that the right of victims to have collective legal action taken against directory companies by trade associations or similar bodies appears to be an effective remedy which could be replicated in the initiatives currently being contemplated by the Commission's DG COMP in relation to actions for damages for breach of the EC competition rules and DG SANCO on European-level collective redress for consumers;
18. Urges Member States to ensure that victims of misleading advertising have a clearly identifiable national authority to which they can make a complaint and from which they can seek a remedy even in cases, such as these, where the victims of misleading advertising are businesses;
19. Calls on the Commission to develop best-practice guidelines for national enforcement agencies which may be followed when cases of misleading advertising are brought to their attention;
20. Calls on the Commission to pursue international cooperation with third countries and with the competent international organisations so that misleading business-directory companies based in third countries do not cause harm to businesses based in the European Union;
21. Instructs its President to forward this resolution to the Council, the Commission and the governments and parliaments of the Member States.

EXPLANATORY STATEMENT

Introduction

Many enterprises, often small businesses, fall victim to scams operated through misleading advertising. A common scam is one whereby victims unwillingly sign up to an advertisement in a business directory after having been led to believe that this would be free of charge.

Victims typically receive forms from misleading business directory companies inviting them to complete, correct or update their business details. They are often told that updating the information is free-of-charge. This entices them to update it and send off the form. But they do not realise that by signing the form they are also signing up to a contract binding them to place an advertisement in a business directory for a minimum period of three years and at an annual cost of around €1,000. Victims realise the scam when they receive a letter from the business-directory company informing them that they had actually placed an advert in the directory, along with an invoice requesting payment. Those who do not pay up are often harassed and even threatened with legal action by the directory companies or their debt collection companies. Many simply give in and pay up in order to avoid further harassment.

Thousands of businesses have been affected across the European Union. Considering that the contract costs around €1,000 per year and lasts for a minimum of three years, the financial impact across the EU is considered to be significant.

While it is clear that there is an element of misleading business practice, which is usually illegal, it is not entirely clear whether EU law provides a remedy and if it does, whether this is being adequately enforced at national level in different Member States. So misleading directory companies often exploit grey zones in the law or weak enforcement at national level to push the scam. A common element is that misleading business directories are normally established in a country which is different from the country of the victim. This makes it difficult for victims to use national law and national authorities to stand up for them in another Member State. Moreover, businesses often find that national authorities responsible for consumer protection tend to brush off their complaints on the basis that consumer law applies to consumers and not to businesses. This leaves them without an effective remedy and opens the door to business scams of this nature to thrive.

Not all business directories are based on misleading advertising and many business-directory companies are perfectly legitimate. Indeed, they even operate on the basis of a Code of Conduct which makes it clear that orders must be clearly identifiable as an order and that free advertising cannot be mixed with advertising against payment. Yet, some business directories rely on misleading business practices. Most complaints received by the European have singled out the business directory known as the “European City Guide” which is based in Valencia, Spain but others, such as “Construct Data Verlag”, “Deutscher Adressdienst GmbH” and “NovaChannel” have also been mentioned. Some misleading business directories are also web-based. According to representatives of the European City Guide, some 6.5 million forms are issued this company alone every year.

Objectives of this report

The Petitions Committee and of the European Parliament received more than 400 petitions

from small businesses across the European Union and even from some third countries, who claim to have fallen victims. Moreover, several Members of the European Parliament have written to the European Commission about these complaints and a number of written and oral questions were also tabled by MEPs. On its part, the European Parliament authorised this report in order to investigate this problem further and propose ways forward. Consequently, through this report, your rapporteur wants to:

- Raise awareness on this issue so that fewer businesses fall victim to business scams;
- Urge EU countries to tighten national laws and ensure that existing EU law on misleading advertising and unfair commercial practices is adequately enforced;
- Urge the Commission to step up its monitoring of the implementation of EU law and to improve existing EU law where it is established that it is not adequate to stop these scams once and for all, and
- Provide support and guidance for those who have already fallen victim.

EU legislation

At Community level, there are three EU laws which are most relevant. These are the:

- Directive 2006/114/EC of the European Parliament and of the Council concerning misleading and comparative advertising which replaced Directive 84/450/EEC⁷ as amended by Directive 97/55/EC⁸;
- Directive 2005/29/EC⁹ of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market (the Unfair Commercial Practices Directive);
- Regulation (EC) 2006/2004¹⁰ of the European Parliament and of the Council on co-operation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection co-operation);

Consultation prior to the drawing up of the report

Prior to completing this report your rapporteur engaged in various consultation meetings, including with European Commissioner for Consumers Meglena Kuneva and with several MEPs who are interested in the issue because of several complaints that they received from their constituents. The rapporteur also had consultation meetings with business organisations representing businesses, especially small businesses in Europe, such as Eurochambres and UEAPME as well as the European Association of business Directories and of course, victims themselves.

A public workshop was organised by the Petitions Committee on Thursday, 11 September, 2008 in the European Parliament entitled “Stop the Scam: Combating Misleading Business Directories”. The session provided an opportunity for MEPs to listen to petitioners as well

⁷ OJ L 250, 19.9.1984, p. 17-20.

⁸ OJ L 290 of 23.10.1997, p.18-23.

⁹ OJ L 149 of 11.06.2005, p.22-39.

¹⁰ OJ L 364, 9.12.2004, p.1-11.

as representative organisations, Commission representatives and also representatives from the European City Guide business-directory which is the single most important company identified by the petitioners.

Findings of the report

Your rapporteur considers that the petitioners do indeed raise a serious problem which appears to be widespread, of a cross-border nature and which has a significant financial impact, notably on small businesses. Moreover, your rapporteur feels that the cross-border nature of this problem places a clear responsibility on Community institutions to provide an adequate remedy to victims. This remedy should enable victims to contest the validity of contracts concluded on the basis of misleading advertising and it should also enable victims to obtain a reimbursement of the money that they paid as a result of misleading practices.

The report regrets that existing national authorities seem to be unable to provide an adequate remedy to victims and also considers that despite the widespread nature of these misleading business practices, EU and national legislation also do not seem to be adequate to provide an effective remedy or are not being properly enforced.

Guidance for victims

The report urges victims to report cases of business scams to national authorities and to seek appropriate advice before settling fees demanded by misleading business-directory companies. Moreover, victims should bring their case to the attention of business and consumer associations as well as their representative in the European Parliament so that the action to combat misleading business directories can be strengthened at European level.

Raising awareness

The report welcomes the efforts made by European and national business organisations to raise awareness among their members and calls on them to intensify their efforts so that fewer people become victims of misleading business directories in the first place. It also welcomes the action taken by certain Member States such as Italy, Spain, Netherlands, Belgium, the United Kingdom but most especially Austria, in trying to prevent business-directory companies from undertaking misleading practices. However it notes that these efforts remain insufficient.

On awareness, the report calls on the European Commission and on Member States to step up their efforts, in full co-operation with national and European business representative organisations, in order to raise awareness about this problem so that more people are informed and empowered to avoid misleading advertising which can lure them into unwanted contracts.

The report also calls on the European Commission to address this complaint in the context of its “Small Business Act” initiative.

Directive 2006/114/EC¹¹ concerning misleading and comparative advertising

¹¹ OJ L 376 of 27.12.2006, p. 21–27.

The report notes that Directive 2006/114/EC¹² concerning misleading and comparative advertising applies to business-to-business transactions and therefore applies to the problem faced by victims of misleading business-directories. This Directive has been transposed in all Member States and provides for the use of cessation orders and other legal proceedings to prohibit the continued use of misleading advertising. However it appears to be either insufficient in providing an effective remedy or inadequately enforced by Member States.

The report therefore calls on the European Commission to step up its monitoring of the implementation of Directive 2006/114/EC¹³. This should be done most notably in Member States where misleading business directories are known to be based, but most especially in Spain where the business directory company which is most identified by the petitioners is established. Particular attention must also be paid to the Czech Republic where a court judgement has recently been delivered against the victims in a manner which appears to call into question the effectiveness of the implementation of this Directive in that country.

The report calls on the Commission to report back to the European Parliament on its findings.

Directive 2005/29/EC¹⁴ on unfair practices

The report notes with regret that Directive 2005/29/EC¹⁵ on unfair practices does not cover business-to-business transactions and that Member States appear reluctant to extend its scope. On the other hand, Member States may unilaterally extend the scope of their national consumer legislation to business-to-business transactions and therefore those that wish to provide protection in their national legislation can freely do so without waiting for a Commission legislative initiative to change EU law.

The best model for combating misleading business directories appears to be Austria which, since 2000, changed its national Unfair Commercial Practices legislation. Section 28a of this law now states that "It shall be prohibited to advertise, in the scope of business and for the purpose of competition, for registration in directories, such as yellow pages, telephone directory or similar lists, by way of payment form, money order form, invoice, offer of correction or similar manner or to offer such registrations directly without unequivocally and also by clear graphical means pointing out that such advertisement is solely an offer for a contract."

Your rapporteur feels that the Austrian model sets a good example and should be followed. Thus, the report calls on the European Commission to consider, in the light of the cross-border nature of this problem, bringing forward a new legislative initiative, based on the Austrian model, which specifically prohibits advertising in business directories unless prospective clients are unequivocally and by clear graphical means informed that such advertisement is solely an offer for a contract against payment.

Regulation (EC) 2006/2004¹⁶ on co-operation between national authorities responsible for the enforcement of consumer protection laws

¹² OJ L 376 of 27.12.2006, p. 21–27.

¹³ OJ L 376 of 27.12.2006, p. 21–27.

¹⁴ OJ L 149 of 11.06.2005, p.22-39.

¹⁵ OJ L 149 of 11.06.2005, p.22-39.

¹⁶ OJ L 364, 9.12.2004, , p.1-11.

The report also notes that national legislation is often inadequate to pursue remedies against business-directory companies that are based in other Member States and therefore urges the Commission to facilitate more active cross-border co-operation among national authorities in order to enable them to provide a more effective remedy to victims.

In Belgium, for instance, all those affected by misleading practices are able to take legal action in their country of residence and a case had indeed been won by the victims of one of the misleading business directories (a fine was imposed on the latter), although at the time of writing this case still appears to be *sub judice* at the appeal stage.

In Austria, there is evidence of court cases successfully brought by victims against business-directory companies.

On the other hand, in the Czech Republic victims appear to have lost a case brought against them by the directory company and this particular case raises serious questions on whether the Czech Republic is adequately implementing the provisions of Directive 2006/114/EC¹⁷.

In Spain, one of the most mentioned business directory companies, the European City Guide, was fined three times by the *Generalitat de Catalunya* when it was based in Barcelona and its temporary closure for one year was ordered. It eventually moved to Valencia where it now continues to operate under somewhat stricter conditions. For instance, victims are now informed of their right to cancel the order within seven days. However, they normally only become aware of what they truly signed up to after this period has lapsed. A so-called “Defensor del cliente” (ombudsman) was also set up by the company to receive complaint from clients. However, this office does not appear to be independent from the business-directory company itself and therefore does not inspire sufficient confidence. Your rapporteur therefore feels that this business-directory company has not done enough to ensure that its prospective clients are not misled into signing an advertising contract that they never wanted.

Moreover, there is no evidence of national authorities from other Member States seeking a remedy directly in Valencian courts on the basis of Regulation (EC) 2006/2004¹⁸ on co-operation between national authorities responsible for the enforcement of consumer protection laws.

In the United Kingdom, the Office of Fair Trading (OFT) is reported to have used the provisions of Regulation (EC) 2006/2004¹⁹ on co-operation between national authorities responsible for the enforcement of consumer protection laws. The OFT, which is also responsible for consumer protection, appears to have used this regulation successfully to seek an injunction against companies in Belgium and in the Netherlands which were found to be sending out unsolicited and misleading offers to British consumers. Although a positive step in the right direction, this case did not concern misleading business directories.

Other than this case there is little evidence that Regulation 2006/2004²⁰ has been sufficiently used by national authorities to seek a remedy, such as an injunction, for complaints which owe their origin in other Member States. This appears to be due to the cost of bringing action, to the complexity and the length of procedures and to the limited scope of the injunction.

¹⁷ OJ L 376 of 27.12.2006, p. 21–27.

¹⁸ OJ L 364, 9.12.2004, , p.1-11.

¹⁹ OJ L 364, 9.12.2004, , p.1-11.

²⁰ OJ L 364, 9.12.2004, , p.1-11.

The need to strengthen national authorities

The report urges Member States to ensure that businesses who are victims of misleading advertising have a clearly identifiable national authority with which they can make a complaint and seek a remedy. Currently, this is often not the case since national consumer protection authorities often do not cater for complaints from businesses, limiting themselves to complaints from consumers. The report also calls on the European Commission to develop best-practice guidelines for national enforcement agencies which may be followed when cases of misleading advertising are brought to their attention.

Misleading business-directories based in third countries

Finally, the report calls on the Commission to pursue international co-operation with third countries and with the competent international organisations so that misleading business directories based in third countries do not cause prejudice to businesses based in the European Union.

7.10.2008

OPINION OF THE COMMITTEE ON THE INTERNAL MARKET AND CONSUMER PROTECTION

for the Committee on Petitions

on the Misleading Directory Companies Report (Petition 45/2006)
(2008/2126(INI))

Draftswoman: Diana Wallis

SUGGESTIONS

The Committee on the Internal Market and Consumer Protection calls on the Committee on Petitions, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

- having regard to the Treaty establishing the European Community, and in particular the provisions thereof establishing the internal market and guaranteeing undertakings the freedom to provide services in other Member States,
 - having regard to the Presidency Conclusions of the Tampere European Council of 15 and 16 October 1999 on the creation of an area of freedom, security and justice in the European Union, which state that individuals and businesses should not be prevented or discouraged from exercising their rights by the incompatibility or complexity of legal and administrative systems in the Member States,
 - having regard to the 393 petitions on misleading directory companies from 24 Member States and 19 third countries received by its Committee on Petitions,
- A. whereas the dubious activities of the European City Guides company (ECG) and other, similar companies stretch back over a number of decades (with the companies concerned relocating over time in order to continue their activities and avoid penalties), and whereas many businesses have been affected,
- B. whereas the activities of ECG have been the subject of legal and administrative action, such as that taken by the High Court and the regional government in Catalonia (Spain), which resulted in the temporary suspension of the company's activities and the

imposition of a fine,

- C. whereas when a fraud such as this is organised across frontiers and thus involves activity in two or more Member States, there is no mechanism for the national law-enforcement agencies to work together across borders - nor any budget, nor even a telephone directory to discover police contacts across the border or in other distant Member States - and consequently national agencies understandably lose interest in pursuing the fraudsters because they are so well organised across borders which the national agencies themselves cannot cross,
1. Regrets that whilst the internal market brings new possibilities for bona fide commercial operations, it can give unwelcome opportunity to those who prey on SMEs; calls for action at EU level, in cooperation with the Member States, to prevent and limit this;
 2. Suggests that the Commission and Council ensure full implementation and enforcement of Council Directive 84/450/EEC of 10 September 1984 concerning misleading and comparative advertising²¹ (the Misleading Advertising Directive), along with 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 market²² (the Unfair Commercial Practices Directive), with particular attention to be paid to the deliberate use of ambiguous language, in order to end the practices of misleading directory companies;
 3. Highlights as a best practice §28a of the Austrian Gesetz gegen unlauteren Wettbewerb of 1984 (Statute against Unfair Commercial Practices - UWG), which prohibits the practices of misleading directory companies; urges the Member States to introduce similar provisions in their implementation of the Unfair Commercial Practices Directive in order to prevent harm to consumers and small businesses, and to ensure that competition prevails as it should, without detriment to the economic interests of legitimate competitors;
 4. Taking into account the Study on the Misleading Practices of Directory Companies commissioned by its Committee on the Internal Market and Consumer Protection, which indicates as possible legislative options for dealing with the problem of misleading directory companies amending Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising²³ to include a "black" list of practices that are to be considered misleading and extending the scope of the Unfair Commercial Practices Directive to cover B2B contracts with specific regard to point 21 of Annex I thereto, requests the Commission to report by December 2009 on the feasibility and possible consequences of such amendment or extension;
 5. Urges the Commission to consider the particular position of SMEs when defining the 'consumer' in its review of the consumer acquis; asks that this also form part of the work on the Common Frame of Reference on Contract Law, so that SMEs might benefit from a stronger protective regime in Community legislation on contractual issues;

²¹ OJ L 250, 19.9.1984, p. 17.

²² OJ L 149, 11.6.2005, p. 22.

²³ OJ L 376, 27.12.2006, p. 21.

6. Welcomes the Small Business Act's call for Member States to reinforce the SOLVIT network and to provide SMEs with advisory services and support to defend themselves against unfair commercial practices; calls for the Commission to become actively involved in the cooperation and provision of assistance to those who fall victim to the operators of misleading directory companies; calls further for the Commission and the Member States to cooperate on awareness raising campaigns regarding such misleading practices, with extensive use of the tools that the internet may offer and with the involvement of SME and consumer organisations, including the Enterprise Europe Network and the European Consumer Centres; looks forward to the Commission's proposed e-justice portal as a further means of delivering information and assistance regarding these problems;
7. Regrets that, whilst the European order for payment procedure rightly improves cross-border access to justice, unscrupulous debt-collecting bodies could use it to harass SMEs and individuals; advises that consideration be given to an EU-wide code of conduct for debt-collecting bodies;
8. Calls for Member States to cooperate actively to bring an end to the practices of misleading directory companies and any similar activities;
9. Notes that where Member States are unwilling or unable to act, mechanisms should be devised to allow individual victims to seek joint redress through the courts on a cross-border basis; calls, therefore, on the Member States and the Commission to consider bringing into operation a coherent system of collective redress for the settlement of cross-border complaints, based on both extensive research drawing on experience around the world and a thorough examination of existing problems and the envisaged benefits for consumers, and dealing clearly with the question of an appropriate legal base for such an instrument at EU level;
10. Regrets the fact that the difficulties involved in tracking down activities of this nature distort the internal market and affect the way in which competition operates;
11. Urges the Member States to take action against all the fraudulent activities engaged in by ECG and other, similar companies, as a last resort by suspending their activities in order to prevent consumers and businesses from being harmed;
12. Calls upon the Member States' supervisory bodies – in accordance with their mandate and with the responsibilities conferred upon them pursuant to their country's domestic law and to EU legislation, in particular Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection cooperation)²⁴ – to take joint action to prevent any further spread of directory companies' misleading practices and to introduce effective measures which will put directory companies out of business and enable those who run them to be punished;
13. Considers that directory companies' practices as described are not only inconsistent with

²⁴ OJ L 364, 9.12.2004, p. 1.

decent behaviour and with standards of fair trading, but also for the most part bear the hallmark of fraud and of other criminal acts and offences, and hence calls upon the appropriate supervisory bodies, police forces and public prosecutor's offices in the Member States – and also upon Europol and Eurojust – to carry out a detailed investigation into the organisers' practices, possibly leading to the bringing of charges against guilty parties coming from the EU; should they come from third countries, calls upon the Commission to make every effort to conclude international agreements with the countries concerned pursuant to Article 18 of Regulation (EC) No 2006/2004;

14. Calls upon the Commission – with a view to outlawing directory companies' misleading practices – to consider carefully the following measures:
 - that the mandatory section of an order be standardised in such a way as to ensure that it contains agreements which are in accordance with decent behaviour and which transparently define basic legal relationships (including a clear statement of price); the content of that section could be verified by the appropriate bodies within the Member States (such as the trading standards inspectorate or the authorities responsible for protecting personal data);
 - that form-based contracts or orders, where the weaker party to the contract or order has no possibility of altering it and can only accept or reject it, be subject to similar rules as apply to unfair commercial practices, even if the weaker party to the contract or order is not a consumer;
 - that form-based contracts or orders be subject to an 'average consumer' test similar to that which applies to unfair commercial practices, even if the weaker party to the contract or order is not a consumer;
 - that the principle be introduced whereby if a significant number of individuals is 'misled' by the text of a form-based contract or order, the burden of proof is reversed and the directory company bears the burden of proving that the text of the form-based contract or order would not mislead a 'sound financial manager';
15. Points out to the Commission that misleading practices of this nature on the part of directory companies are targeted not only at entrepreneurs but also at natural persons (including political representatives) who are not engaged in business practices but who receive offers concerning fictitious entries in biographical publications (such as 'Who's Who', Personality of the Year in a given field, and so on), and are based on the same dishonesty, and that hence future measures must also outlaw misleading practices of this kind.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	7.10.2008
Result of final vote	+: 35 -: 0 0: 0
Members present for the final vote	Cristian Silviu Buşoi, Charlotte Cederschiöld, Gabriela Creţu, Mia De Vits, Janelly Fourtou, Evelyne Gebhardt, Małgorzata Handzlik, Christopher Heaton-Harris, Anna Hedh, Iliana Malinova Iotova, Pierre Jonckheer, Kurt Lechner, Toine Manders, Catuscia Marini, Arlene McCarthy, Nickolay Mladenov, Catherine Neris, Zita Pleštinská, Karin Riis-Jørgensen, Zuzana Roithová, Heide Rühle, Leopold Józef Rutowicz, Christel Schaldemose, Andreas Schwab, Marianne Thyssen, Jacques Toubon, Barbara Weiler, Marian Złotea
Substitute(s) present for the final vote	Emmanouil Angelakas, Wolfgang Bulfon, Colm Burke, Giovanna Corda, José Ribeiro e Castro, Olle Schmidt, Diana Wallis

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	6.11.2008
Result of final vote	+: 19 -: 0 0: 0
Members present for the final vote	Sir Robert Atkins, Inés Ayala Sender, Simon Busuttil, Michael Cashman, Alexandra Dobolyi, Lidia Joanna Geringer de Oedenberg, David Hammerstein, Marian Harkin, Marcin Libicki, Manolis Mavrommatis, Kathy Sinnott
Substitute(s) present for the final vote	Marie-Hélène Descamps, Roger Helmer, Yiannakis Matsis, Juan Andrés Naranjo Escobar, Tatjana Ždanoka
Substitute(s) under Rule 178(2) present for the final vote	Richard Corbett, Luis de Grandes Pascual, Salvador Garriga Polledo