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Lesson 3 (2). Unfair competition

Directive [2005/29/EC](#) of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Directives 84/450/EEC, 97/7/EC, 98/27/EC and 2002/65/EC and Regulation (EC) No 2006/2004 (Unfair Commercial Practices Directive), defines the **commercial practices** which are prohibited in the European Union (EU). It thus protects the economic **interests of consumers, competitors and markets before, during and after a commercial transaction has taken place.**

- The Directive has been amended by [Directive \(EU\) 2019/2161](#) of 27 November 2019 on better enforcement and modernisation of Union consumer protection rules, part of the ‘New Deal for Consumers’

1. The framework for Unfair Competition in the EU, sets out a GENERAL CLAUSE in accordance to which Unfair Commercial Practices are those which:

- do not comply with the requirements of professional diligence, and
- are likely to materially distort the economic behaviour of the average consumer.

2. It also grants SPECIAL PROTECTION TO SOME POPULATION GROUPS which are especially vulnerable (because of their age -children, elderly-, credulity, mental or physical illness, etc.)

3. The Directives also DEFINE TWO SPECIFIC CATEGORIES OF UNFAIR COMMERCIAL PRACTICES: misleading practices (by action or omission) and aggressive practices.

I- MISLEADING PRACTICES

1. **By action.** A practice is misleading if it contains false or untrue information or is likely to deceive the average consumer, even though the information given may be correct, and is likely to cause him to take a transactional decision he would not have taken otherwise. Examples of such actions include false or

deceiving information on:

- the existence or nature of the product;
- the main characteristics of the product (its availability, benefits, risks, composition, geographical origin, results to be expected from its use, etc.);
- the extent of the trader's commitments;
- the price or the existence of a specific price advantage;
- the need for a service, or repair.

B. By omission. Such occur when material information that the average consumer needs to make an informed transactional decision is omitted or provided in an unclear, unintelligible, ambiguous or untimely manner and thereby causes (or might cause) that consumer to take a purchase decision that he or she would not have otherwise taken. To evaluate such «omissions» the context is taken into account,

II.- AGGRESSIVE COMMERCIAL PRACTICES

On the one hand, and in accordance with this legal EU framework, several elements must be taken into consideration in order to determine whether an aggressive commercial practice occurs:

- the nature, location and duration of the aggressive practice;
- the use of threatening or abusive language or behaviour;
- the exploitation by the trader of any specific circumstance affecting the consumer in order to influence his/her decision;
- any disproportionate non-contractual conditions imposed on the consumer who wishes to exercise his/her contractual rights (such as to terminate or switch a contract).

On the other hand, a number of practices are directly classified as aggressive because they are included in a «blacklist» within the Directive. Annexe I to the Directive contains a list of 31 commercial practices which should be considered unfair in all circumstances.

- In Spain, the Directive was transposed by Law 3/91, which has been modified. [Please find here](#) the consolidated version on the Spanish Law