

# The Unfair Commercial Practices Directive In The Uk

Recoge:1. Time for clear legislation - 2. Unfair commercial practices - 3. Who is concerned? - 4. The black list - 5. Implementing the directive.

Despite the increasingly market-friendly approach to unfair competition law (UCL) adopted by EU law, the protection of competitors from unfair trading practices (B2B) remains a salient feature in certain jurisdictions. Such a feature can be the source of tension with European law on at least two accounts: on the one hand, the harmonisation of unfair competition at the EU level and its (un)intended constraining effects upon national regulation of B2B commercial practices; on the other hand, the convergence of national competition laws under Article 3 of Regulation no. 1/2003 vis-à-vis unfair unilateral conduct adopted by non-dominant undertakings. Behinds such tension stands an indirect conflict (diagonal conflict) between EU and national law that is highly, though not exclusively, dependent upon the national approach to UCL. This contribution deals with these topics in two separate parts that can be read as independent pieces depending on the reader's interests and patience. The first part (I-III) consists of a comparative analysis of three (for the time being) Member States (the UK, France and Germany) whose legal systems (British common law, and French and German law) can be

## Access PDF The Unfair Commercial Practices Directive In The UK

taken as having paradigmatic interest in what concerns different takes on unfair competition and, consequently, on the interplay between the latter and competition law. The second part (IV and V) will address the impact of EU law on the previous topics, focussing on the Europeanisation of UCL through the Unfair Commercial Practices Directive (UCPD) and the convergence of national competition laws brought about by Regulation no. 1/2003. One of the conclusions to be drawn is, it seems, that the combined effect of these two layers of EU law does not favour the protection of competitors from B2B unfair commercial practices, nor does it look too kindly upon an integrated approach to unfair competition and competition law.

To encourage cross-border transactions in the Single Market of the European Community, the Commission has proposed general framework legislation to set general standards that forbid unfair marketing practices towards consumers, thereby increasing consumer confidence when deciding whether or not to shop abroad in the Community, either in person or through modern methods of electronic purchasing through the Internet. The essays in this volume critically examine the proposed Directive that prohibits unfair commercial practices, and in particular they consider the potential legal and economic implications of a legal duty to trade fairly in the context of general contract law, the protection of consumers, and the needs of competition policy. The distinguished authors of

## Access PDF The Unfair Commercial Practices Directive In The UK

these essays, from Finland, Germany, Italy, The Netherlands, Spain, and the United Kingdom, explain the different approaches of national legal systems to the legal regulation of marketing practices, and assess the compatibility of the proposed Directive with national law and its likely success in achieving the promotion of trade in the Single Market. About the author Hugh Collins is Professor of English Law at the London School of Economics. He studied law at Oxford and Harvard. He has published extensively in the field of contract law including *The Law of Contract* 4th ed (London, Butterworths, 2003), and *Regulating Contracts* (Oxford, Oxford University Press, 1999).

The 'Average Consumer Test' in the Unfair Commercial Practices Directive

The Regulation of Market Communication and Market Behaviour

Remedying Economic Torts?

The European Unfair Commercial Practices Directive  
The Yearbook of Consumer Law 2007

European Unfair Commercial Practices Directive  
European Fair Trading Law  
The Unfair Commercial Practices Directive  
Routledge

Of great interest to practitioners, policymakers and academics - as well as to consumers and traders in general - this timely work addresses all important legal and practical issues that arise in connection with online trading. This important work outlines the existing legislation and legal jurisprudence in the EU

## Acces PDF The Unfair Commercial Practices Directive In The Uk

and the US and exposes the potential for unfair commercial practices to arise from online contracts, electronic agents, disclosure of information, online advertising and online dispute resolution in cross-border transactions. The continuing prevalence of unfair commercial practices will ensure this book remains in great demand.

First published in 2007, *The Yearbook of Consumer Law* provides a valuable guide to developments in the consumer law field with a domestic, regional and international dimension. The volume presents a range of peer-reviewed scholarly articles, analytical in approach and focusing on specific areas of consumer law such as sales, credit and safety, as well as more general issues, such as consumer law theory. The book also includes a section dedicated to significant developments during the period covered, such as key legislative developments or important court decisions. The book provides an essential resource for all those, academic and practitioner, working in the areas of consumer law and policy.

The Costs and Benefits to Business of Simplifying Consumer Protection Legislation

The EU Unfair Commercial Practices Directive Final Report

Unfair Commercial Practice Directive

An Evaluation of the Legal Framework Surrounding Unsafe and Unfair Foodstuffs

## Access PDF The Unfair Commercial Practices Directive In The UK

Corporate Social Responsibility and the Directives on Unfair Commercial Practices and Unfair Contract Terms

***Commercial practices between businesses and consumers within the internal market are benefited today by a uniform set of rules: Council Directive 2005/29/EC ('Commercial Practice Directive' hereinafter'). The Commercial Practices Directive fully harmonises measures seeking to curb unfair commercial practices harmful to the economic interests of consumers. Furthermore, the Commercial Practices Directive pursues the double aim of contributing to the smooth functioning of the internal market, and providing consumers a high level of protection. This paper first outlines the limited scope of the Commercial Practices Directive, its general prohibition, its notion of misleading and aggressive practice, and its failure to address fully the potential of codes of conduct in the field of unfair commercial practice. Secondly, this paper analyzes the developing notion of an 'average consumer,' and how it will play a pivotal role in the application of the Commercial Practices Directive. Finally, the US experience with fair trade laws is examined with some concluding remarks on the relationship between the consumer, competition, and unfair practice laws.***

***The book examines the ambiguous relationship between the European law on unfair commercial practices and contract law. In particular, the manuscript demonstrates that the Directive 2005/29/EC on unfair commercial practices (UCPD) has had a major impact on contract law, despite the declaration concerning the formal independence between the two branches of law established by Article 3(2) UCPD. The insights and conclusions identified in the book contribute to a better understanding of European private law and the general process of Europeanisation of private law in the European Union, and in particular of contract law.***

***This book represents the fruit of a conference held in Oxford on March 3, 2006 under the auspices of the Institute of European and Comparative Law in the Oxford University Law Faculty. Directive 2005/29 is an important new measure in the construction of a legal framework apt to promote an integrated economic space in the European Union. It establishes a harmonised regime governing the control of unfair commercial practices. As such it represents an important exercise in the use of new rules and new techniques, and therefore poses new challenges to EU lawyers. The purpose of this book is to inform and to explore the issues raised by the Directive, issues which are of***

***academic and practical interest, in helping to understand the evolution of European consumer law within the broader programme of European market regulation. The intense practical significance of this Directive, which heralds a new regime, is likely to provoke commercial operators to seek to exploit opportunities to pursue practices previously suppressed.***

***A Critical Overview of the Unfair Commercial Practices Directive***

***European Law on Unfair Commercial Practices and Contract Law***

***The Regulation of Unfair Commercial Practices under EC Directive 2005/29***

***New Rules and New Techniques***

***The Unfair Commercial Practices (UCP) Directive  
Cyber Consumer Law and Unfair Trading Practices***

**One of the most important EU consumer protection directives of the past decade, the 2005 Unfair Commercial Practices Directive, or UCPD, is brought under examination in this stimulating volume. Bringing together leading experts in the comparative law and consumer law domain, the book discusses the impact of the Directive and whether the many possible issues identified at its inception have been borne out in practice. Divided into four parts of 'Implementation, Approximation and**

**Harmonization', 'Vulnerability', 'The UCP Directive and Other Regimes', and finally 'Enforcement', the volume examines the various policy developments, the growing body of case law, the decisions of relevant national enforcement authorities, as well as the legislative debates which have surrounded the implementation of the UCPD in Member States. This book provides a valuable assessment of the impact of a major EU directive almost ten years after its adoption, and as such will be of interest to academics, legal practitioners and the judiciary working in the areas of European and Consumer law. Consumers may find it difficult to identify potentially harmful or unfair practices when entering into a transactional relationship with traders. Similarly, businesses and enforcement authorities may sometimes have problems applying and interpreting EU legislation in relation to commercial practices. While it is the Court of Justice that has competence to interpret EU legislation, the European Commission published legally non-binding guidance on the implementation/application of the Directive on Unfair Commercial Practices in May 2016, which aims to clarify some of the issues that have arisen since the adoption of the**



**directive.**

**The Unfair Commercial Practices Directive is the most important directive in the field of trade practices to have emerged from the EC but it builds upon European activity which has sought to regulate trade practices on both a sectoral and horizontal level. It is an umbrella provision, which uses general clauses to protect consumers. How effective this approach is and how it relates the existing acquis are fundamental issues for debate. This work provides a critical appraisal of the Unfair Commercial Practices Directive linking discussion of it to general debates about how fair trading should be regulated. It explains how the Directive fits into the existing acquis. It also examines national traditions where these are necessary to explain the European approach, as in the case of general clauses. The book will be a valuable tool for any student of consumer law seeking to understand the thinking behind the directive and how it will affect national laws. It will also influence policy makers by suggesting how the directive should be interpreted and what policy lies behind its formulation. Businesses and their advisers will use the book as a means of understanding the new regulatory climate post-the directive.**

**On Free and Fair Competition  
Response to the DTI Consultation on the  
Draft EU Directive COM (2003) 356  
The Consumer Benchmarks in the Unfair  
Commercial Practices Directive  
Communication from the Commission to the  
European Parliament, the Council and the  
European Economic and Social Committee :  
Achieving a High Level of Consumer  
Protection Building Trust in the Internal  
Market  
Imprints of Behavioural Research in EU  
Consumer Protection Legislation**

This volume is concerned with explaining the Unfair Commercial Practices Directive, exploring the many ambiguities in its drafting and considering its implications for trading and consumer protection within Europe as well as the relationship between European and national trade practices law.

The current report evaluates consumer awareness, perception and experience with five consumer rights directives: the Consumer Rights Directive (CRD), the Unfair Contract Terms Directive (UCTD), the Unfair Commercial Practices Directive (UCPD), the Consumer Sales Directive (CSD) and the Price Indication Directive (PID). The results of these evaluations provide evidence for the European Commission's Fitness Check of

## Acces PDF The Unfair Commercial Practices Directive In The Uk

consumer and marketing law directives and the CRD evaluation report. This report is based on the results of a consumer survey, two mystery shopping exercises and four experiments that were carried out between June 2016 and January 2017. The survey assessed consumer experiences with consumer rights issues in a wide range of markets in 28 Member States plus Norway and Iceland. Mystery shopping exercises investigated consumers' ability to obtain redress in case of misleading commercial practices (i.e. practices prohibited by the UCPD) and traders' compliance with the CRD regarding pre-contractual information requirements, the ban on extra fees and pre-ticked boxes, as well as the consumers' right of withdrawal. Behavioural experiments explored consumers understanding and use in their purchasing decisions of (1) unit price information (as required by the PID), (2) fair versus unfair standard contract terms and conditions, (3) durability and reparability information and (4) information to be provided under the CRD and the UCPD.

Despite the frequent insistence in EU policies on corporate social responsibility (CSR) being voluntary, this paper argues that under EU consumer law CSR can be interpreted as legally binding. CSR is a strategic form of market communication as well as an inherent aspect of the market behaviour of companies. Since EU consumer law regulates the market communication and the market

## Acces PDF The Unfair Commercial Practices Directive In The Uk

behaviour of traders, this area of law can be used to interpret CSR as a legally binding obligation, resulting in remedies available to consumers. This paper uses the Unfair Commercial Practices Directive (UCPD) to show how the ECJ could, in a suitable case, consider the breach of a CSR policy either as a form of misleading market communication or as unfair trading behaviour. This interpretation would allow for the additional regulation of CSR by the UCTD, which overlaps with the UCPD in terms of scope, interpretation and remedies. Once CSR is subject to EU market regulation laws, it can result additionally in contract regulation through EU consumer sales law.

Is the Unfair Commercial Practices Directive Fit to Effectively Tackle Abusive Debt Collection? A Critical Evaluation

Transposition of Directive of the European Parliament and of the Council Concerning Unfair Business-to-consumer Commercial Practices in the Internal Market

The effects of the Unfair Commercial Practices Directive on Irish law

Balancing the Pursuit of a Uniform Internal Market with a European Union United in Diversity

The Unfair Commercial Practices Directive

The Impact of the Unfair Commercial Practices Directive (2005/29/EC) on Contract Law

*This book investigates the regime of consumer benchmarks in the Unfair*

## Acces PDF The Unfair Commercial Practices Directive In The Uk

*Commercial Practices Directive and explores to what extent this regime meets each of the goals of the Directive. In particular, it assesses whether the consumer benchmarks are suitable in terms of achieving the three goals of the Directive: achieving a high level of consumer protection, increasing the smooth functioning of the internal market, and improving competition in the market as such. In addition to providing a thorough analysis of the consumer benchmarks and their relationship to the goals of the Directive, at a more practical level, the book provides insight into the working and consequences of the benchmarks that can be used in the evaluation of the Unfair Commercial Practices Directive and its application by the CJEU. This assessment is important because the Directive, while promising to regulate unfair commercial practices in a way that achieves the Directive's goals, has removed the possibility for Member States to regulate unfair commercial practices themselves. The EU legislator's main concern with Directive 2005/29 has been to facilitate intra-Community trade and liberalise unfair competition law in EU Member States. This is evident both in the exhausting list of per se unfair commercial practices in Annex I of the*

## Access PDF The Unfair Commercial Practices Directive In The UK

*Directive, as well as in the 'average consumer test', based on which the unfair character of any other commercial practice is assessed. The EU legislator evaluates the traders' behaviour by taking as a reference point a notional consumer who is rational, perceptive and discerning. Thus, it has become more difficult for a commercial practice to be deemed unfair. It is argued that this stance sacrifices the real needs of consumers for the benefit of European integration. Modern consumer protection law should take into account consumers' diversity, instead of levelling their particularities on the basis of judicial presumptions. It is therefore suggested that the notion of the average consumer should be re-considered in light of behavioural science findings. This study endeavours to 'dedemonise' the average consumer model. It conducts a critical review of Directive 2005/29 to draw attention on certain provisions, on the basis of which court decisions can be customised in any given case to the individualities of marketing's actual addressees.*

*This article examines the merit of the test of the average consumer as a basis for judicial and regulatory action. In the first part, we describe the origin of the test, its application*

## Access PDF The Unfair Commercial Practices Directive In The UK

*in the Unfair Commercial Practices Directive and its possible developments. In the second part, we discuss the theoretical grounds of the average consumer test (i.e., information and rationality), drawing upon the studies of cognitive psychology and behavioural economics concerning consumers' behaviour. The result of our analysis is that we call into serious question the practical workability of the test of the average consumer, which requires consumers an overly demanding standard of rationality and information without dedicating much attention to the real functioning of consumer behaviour. The average consumer may be described as an interesting, anti-paternalistic and, to some extent, useful notion. It is, however, an overly simplistic concept with little correspondence with the real world of individual consumer behaviour and should be reinterpreted more flexibly, or even abandoned to mirror consumer behaviour more effectively.*

*Food Safety Under the Unfair Commercial Practices Directive*

*Consultation on Framing and Enforcing Criminal Sanctions in the Regulations Implementing the Unfair Commercial Practices Directive*

*Summary of Responses to the Consultation on*

*Implementing the EU Directive on Unfair Commercial Practices and Amending Existing Consumer Legislation*

*Consultation on the Draft Consumer Protection from Unfair Trading Regulations 2007*

*A Faltering First Step*

*The Forthcoming EC Directive on Unfair Commercial Practices*

*This thesis examines the relationship between the law on unfair commercial practices and consumer contract law.*

*The thesis develops the claim that Directive 2005/29/EC, on unfair commercial practices (UCPD) has had a strong impact on the content of consumer contract law, despite the declaration concerning the independence between both branches of law contained in Article 3(2) UCPD. In order to substantiate this claim, the thesis examines the implications for consumer contract law of the main components of the regulatory regime laid down by the UCPD, namely, (1) the notion of average consumer, (2) the duty to trade fairly, (3) the duty of information and (4) the remedies. By looking both at the theoretical underpinnings and at the actual operation of this regulatory regime, the thesis casts light on the way in which the UCPD has shaped consumer contract law.*

*The thesis further shows that this is an ongoing phenomenon whose ramifications may be far-reaching, for it implies that the UCPD is powerfully fuelling the Europeanization of contract law.*

*The law on marketing and advertising has undergone*



## Acces PDF The Unfair Commercial Practices Directive In The Uk

*profound changes based on the EU directives on unfair commercial practices and misleading and comparative advertising. The legislation partially requires full harmonisation and contains a comprehensive blacklist of prohibited practices. However, in other areas, only minimum harmonisation is required. A comprehensive case law from the CJEU has emerged, but still many issues remain open, unclear and debated. The EU Commission has an active interest in the field and has published numerous reports on the question. In addition it has developed revised, comprehensive guidelines on marketing business to consumer (B2C), which are fully discussed here. Further Commission initiatives in the area on business to business (B2B) marketing are also in the making, underlining the importance of this new collection.*

*The paper evaluates the adequacy of the existing EU legal framework - the Unfair Commercial Practices Directive - and the case law of the Court of Justice of the EU's in tackling abusive non-judicial debt collection practices. For this purpose, it uses a matrix of analysis consisting of several building blocks required for an efficient regulation of non-judicial debt collection practices. The paper concludes that the current legal framework is insufficient and a harmonized sector-specific regulation is needed at EU level.*

*A Clash Between Legal Families : a Comparative Study of English, German and Dutch Law in Light of Existing European and International Legal Instruments  
Government Response to the Consultation Paper on Implementing the Unfair Commercial Practices Directive*

## Acces PDF The Unfair Commercial Practices Directive In The Uk

*Consumer Market Study to Support the Fitness Check of EU Consumer and Marketing Law*

*Some Comparative Notes on the Interplay Between Unfair Competition and Competition Law*

*Unfair Commercial Practices*

*The Options for Change in the UK Following the Introduction of the Unfair Commercial Practices Directive*

This research focuses on unfair and unsafe foods under the Unfair Commercial Practices Directive (UCPD) and answers the research question: To what extent is the Unfair Commercial Practices Directive equipped to protect the “average consumer” from unsafe food products?

The main aim of this book is to discuss the state of unfair competition law in the European Union. In this respect, the various efforts that have been made in the past to come to harmonization of this area of law and the reasons that they were only partially successful are reviewed. In addition, the International and European regulations that refer to unfair competition, like, e.g., the Paris Convention, the TRIPs and the recent 2004 Unfair Commercial Practices Directive are discussed. Also an overview is given of the unfair competition laws in the United Kingdom, Germany and the Netherlands with respect to the 'problem-areas' of slavish imitation, misleading advertising, denigrating one's competitor, trade secrets and finally, misappropriation of valuable trade assets. Unfair competition law is traditionally considered part of intellectual property law. Not only the relation of unfair competition law to intellectual property laws are therefore part of the

## Acces PDF The Unfair Commercial Practices Directive In The Uk

discussion but also the areas of consumer protection law (since unfair competition law is partly orientated towards consumer protection) and competition (as an economic concept) is the topic of thorough review.

The aim of the UCPD is to harmonise the laws on unfair commercial practices and with it bring adequate remedies for consumers victim of such practices. The text provided for maximum harmonisation, yet, the implementation raised considerable difficulty across Europe over the manner in which to transpose the text. One particular problem was that of enforceability which this chapter explores. While in the UK, the implementation appears to be positive some criticisms can be raised as to the application of the UTRs which come to fill a gap in the 'tort family' and simplifies actions to stop unfair commercial practices. In particular, the general approach of the UTRs in combatting unfair commercial practices is attractive compared to the 'punctual approach' of tort. It is important to note however that in the UK very few cases have been heard by the courts and thus only the tip of the iceberg seem to be taken care of. All cases also stem from administrative action and not yet from the right of private redress open to consumers. But it bodes well for any private action to see the way judges have received and used the UTRs. It is therefore possible to anticipate that the UTRs can remedy economic torts, should consumers be able to bring their cases to court. This of course is contentious given the restrictions imposed on the right of private action and the usual obstacles consumers face when

# Acces PDF The Unfair Commercial Practices Directive In The Uk

trying to access justice.

The Average Consumer, the Unfair Commercial Practices Directive, and the Cognitive Revolution

Overview of the Commission's May 2016 Guidance

Document : In-depth Analysis

Government Response to the Consultation on how to Frame Criminal Offences

Impact, Enforcement

Consultation on a Draft EU Directive COM (2003) 356

European Fair Trading Law