

Unfair Commercial Practices Directive

Background

[The Unfair Commercial Practices Directive](#) (UCPD) is a major legislation concerning unfair business practices in the European Union. The Directive outlines "sharp practices" which are prohibited throughout the EU, such as misleading and aggressive marketing. The Directive introduces a concept of 'invitation to purchase' (Article 2). Under the Directive, whenever an 'invitation to purchase' is made, traders must provide consumers with certain pieces of information (Article 7(4)). Although the Directive states that 'invitation to purchase' is clearly defined within the Directive, this is not the case. Article 2 is very much open to interpretation and unfortunately the recitals provide no further clarification. The strictest interpretation of Article 2 would mean that any ad clearly depicting the characteristics of a product and including a price could become an 'invitation to purchase' and subject to Art 7(4). Detailed issues arising Article 7 covers misleading omissions generally and Article 7(3) allows enforcers some flexibility to take into account limitations of space and time in media, as long as the trader makes the information available to consumers by other means. The implementation of the Directive had a substantial impact on commercial communications in all media (including those outside the remit of the Advertising Codes) including TV ads; radio ads; SMS; press; shop window; websites.

Guidance on the UCPD

Since the adoption of the Directive, the Commission and the national enforcers have cooperated regularly to ensure a common understanding of its provisions. This Guidance aims at developing a convergence of Practices while implementing the Directive. [The updated Guidance](#) was published on 25 May 2016.

Consumer law REFIT process

The Commission launched a public consultation with a view of reviewing EU consumer law, among which, the UCPD as well. EACA responded to the public consultation and our position is summarised below.

EACA position

- Principles of honest advertising have always been at the forefront of our efforts. They are enshrined in the UCPD and in well-developed and effective self-regulation. EACA members uphold these standards throughout their work.
- EACA advocates legal, decent, honest, truthful advertising. To that end, advertising and media agencies across Europe comply with all relevant legislation. We believe that the transparency of the advertising chain improves evaluation and thereby makes fraud discovery easier.
- EACA asks the Commission not to change the Directive as we believe that the existing principle-based directive is the right solution because it allows businesses to conduct cross-border trade and self-regulation to complement the legislation. We also argue against any additional information requirements in advertising materials because it would suffocate the ad space and reduce creative options.