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⁽¹⁾ Text with EEA relevance.

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(Acts whose publication is obligatory)

DECISION No 854/2005/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 11 May 2005
establishing a multiannual Community Programme on promoting safer use of the Internet and
new online technologies
 (Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 153(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽²⁾,

Whereas:

(1) Internet penetration and the use of new technologies such as mobile phones are still growing considerably in the Community. Alongside this, dangers, especially for children, and abuse of those technologies continue to exist, and new dangers and abuses are emerging. In order to encourage the exploitation of the opportunities offered by the Internet and new online technologies, measures are also needed to promote their safer use and protect the end-user from unwanted content.

(2) The eEurope 2005 Action Plan, developing the Lisbon strategy, aims to stimulate secure services, applications and content based on a widely available broadband infrastructure. Among its objectives, are a secure information

infrastructure, the development, analysis and dissemination of best practices, benchmarking and a coordination mechanism for e-policies.

(3) The legislative framework being established at Community level to deal with the challenges of digital content in the Information Society now includes rules relating to online services, notably those on unsolicited commercial e-mail in the Directive on privacy and electronic communications ⁽³⁾ and on important aspects of the liability of intermediary service providers in the Directive on electronic commerce ⁽⁴⁾, and recommendations for Member States, the industry and parties concerned and the Commission, together with the indicative guidelines on the protection of minors, in Recommendation 98/560/EC ⁽⁵⁾.

(4) There will be a continued need for action both in the area of content which is potentially harmful to children or unwanted by the end-user and in the area of illegal content, in particular child pornography and racist material.

(5) Reaching international agreement on legally binding basic rules is desirable but will not be easily achieved. Even if such agreement is reached, it will not be enough in itself to ensure that the rules are implemented or that those at risk are protected.

⁽³⁾ Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (OJ L 201, 31.7.2002, p. 37).

⁽⁴⁾ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (OJ L 178, 17.7.2000, p. 1).

⁽⁵⁾ Council Recommendation 98/560/EC of 24 September 1998 on the development of the competitiveness of the European audiovisual and information services industry by promoting national frameworks aimed at achieving a comparable and effective level of protection of minors and human dignity (OJ L 270, 7.10.1998, p. 48).

⁽¹⁾ Opinion of 16 December 2004 (not yet published in the Official Journal).

⁽²⁾ Opinion of the European Parliament of 2 December 2004 (not yet published in the Official Journal) and Council Decision of 12 April 2005.

- (6) The Safer Internet Action Plan (1999 to 2004) adopted by Decision No 276/1999/EC ⁽¹⁾ has provided Community financing, which has successfully encouraged a variety of initiatives and has given European added value. Further funding will help new initiatives to build on the work already accomplished.
- (7) Practical measures are still needed to encourage reporting of illegal content to those in a position to deal with it, to encourage assessment of the performance of filter technologies and the benchmarking of those technologies, to spread best practice for codes of conduct embodying generally agreed canons of behaviour, and to inform and educate parents and children on the best way to benefit from the potential of new online technologies in a safe way.
- (8) Action at Member State level involving a wide range of actors from national, regional and local government, network operators, parents, teachers and school administrators is essential. The Community can stimulate best practice in Member States by carrying out an orientation role both within the European Union and internationally and providing support for European-level benchmarking, networking and applied research.
- (9) International cooperation is also essential and can be stimulated, coordinated, relayed and implemented by action through the Community networking structures.
- (10) The measures that the Commission is empowered to adopt under the implementing powers, conferred on it by this Decision, are essentially management measures relating to the implementation of a programme with substantial budgetary implications within the meaning of Article 2(a) of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽²⁾. Those measures should therefore be adopted in accordance with the management procedure provided for in Article 4 of that Decision.
- (11) The Commission should ensure complementarity and synergy with related Community initiatives and programmes, including, inter alia, by taking into account the work performed by other bodies.
- (12) This Decision lays down, for the entire duration of the programme, a financial framework constituting the prime reference, within the meaning of point 33 of the Inter-institutional Agreement of 6 May 1999 between the European Parliament, the Council and the Commission on budgetary discipline and improvement of the budgetary procedure ⁽³⁾, for the budgetary authority during the annual budgetary procedure.
- (13) Since the objectives of this Decision, namely to promote safer use of the Internet and new online technologies and to fight against illegal content and content unwanted by the end-user, cannot be sufficiently achieved by the Member States owing to the transnational character of the issues at stake and can, therefore, by reason of the European scale and effects of the actions, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Decision does not go beyond what is necessary in order to achieve those objectives.
- (14) This Decision respects the fundamental rights and observes the principles reflected in the Charter of Fundamental Rights of the European Union, in particular Articles 7 and 8 thereof.

HAVE DECIDED AS FOLLOWS:

Article 1

Objective of the programme

1. This Decision establishes a Community programme for the period 2005 to 2008 to promote safer use of the Internet and new online technologies, particularly for children, and to fight against illegal content and content unwanted by the end-user.

The programme shall be known as the 'Safer Internet plus' programme (hereinafter the programme).

⁽¹⁾ Decision No 276/1999/EC of the European Parliament and of the Council of 25 January 1999 adopting a Multiannual Community Action Plan on promoting safer use of the Internet and new online technologies by combating illegal and harmful content primarily in the area of the protection of children and minors (OJ L 33, 6.2.1999, p. 1). Decision as last amended by Decision No 787/2004/EC (OJ L 138, 30.4.2004, p. 12).

⁽²⁾ OJ L 184, 17.7.1999, p. 23.

⁽³⁾ OJ C 172, 18.6.1999, p. 1. Agreement as amended by Decision 2003/429/EC of the European Parliament and of the Council (OJ L 147, 14.6.2003, p. 25).

2. In order to attain the aims of the programme referred to in paragraph 1, the following actions shall be addressed:

- (a) fighting against illegal content;
- (b) tackling unwanted and harmful content;
- (c) promoting a safer environment;
- (d) awareness-raising.

The activities to be carried out under those actions are set out in Annex I.

The programme shall be implemented in accordance with Annex III.

Article 2

Participation

1. Participation in the programme shall be open to legal entities established in the Member States.

Participation shall also be open to legal entities established in the candidate countries in accordance with bilateral agreements in existence or to be concluded with those countries.

2. Participation in the programme may be opened to legal entities established in EFTA States which are contracting parties to the EEA Agreement, in accordance with the provisions of Protocol 31 to that Agreement.

3. Participation in the programme may be opened, without financial support by the Community under the programme, to legal entities established in third countries and to international organisations, where such participation contributes effectively to the implementation of the programme. The decision to allow such participation shall be adopted in accordance with the procedure referred to in Article 4(2).

Article 3

Competences of the Commission

1. The Commission shall be responsible for the implementation of the programme.

2. The Commission shall draw up a work programme on the basis of this Decision.

3. In the implementation of the programme, the Commission shall, in close cooperation with the Member States, ensure that it is generally consistent with and complementary to other relevant Community policies, programmes and actions, in particular the Community research and technological development programmes and the Daphne II ⁽¹⁾, Modinis ⁽²⁾ and eContentplus ⁽³⁾ programmes.

4. The Commission shall act in accordance with the procedure referred to in Article 4(2) for the purposes of the following:

- (a) adoption and modifications of the work programme;
- (b) breakdown of budgetary expenditure;
- (c) determination of the criteria and content of calls for proposals, in accordance with the objectives set out in Article 1;
- (d) assessment of the projects proposed following calls for proposals for Community funding where the estimated Community contribution is equal to, or more than, EUR 500 000;
- (e) any departure from the rules set out in Annex III;
- (f) implementation of measures for evaluating the programme.

5. The Commission shall inform the Committee referred to in Article 4 of progress with the implementation of the programme.

Article 4

Committee

1. The Commission shall be assisted by a Committee.

2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

⁽¹⁾ Decision No 803/2004/EC of the European Parliament and of the Council of 21 April 2004 adopting a programme of Community action (2004 to 2008) to prevent and combat violence against children, young people and women and to protect victims and groups at risk (the Daphne II programme) (OJ L 143, 30.4.2004, p. 1).

⁽²⁾ Decision No 2256/2003/EC of the European Parliament and of the Council of 17 November 2003 adopting a multiannual programme (2003-2005) for the monitoring of the eEurope 2005 action plan, dissemination of good practices and the improvement of network and information security (Modinis) (OJ L 336, 23.12.2003, p. 1). Decision as amended by Decision No 787/2004/EC.

⁽³⁾ Decision No 456/2005/EC of the European Parliament and of the Council of 9 March 2005 establishing a multiannual Community programme to make digital content in Europe more accessible, usable and exploitable (OJ L 79, 24.3.2005, p. 1).

The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at three months.

3. The Committee shall adopt its rules of procedure.

Article 5

Monitoring and evaluation

1. In order to ensure that Community aid is used efficiently, the Commission shall ensure that actions under this Decision are subject to prior appraisal, follow-up and subsequent evaluation.

2. The Commission shall monitor the implementation of projects under the programme. The Commission shall evaluate the manner in which the projects have been carried out and the impact of their implementation in order to assess whether the original objectives have been achieved.

3. The Commission shall report on the implementation of the actions referred to in Article 1(2) to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, by mid-2006 at the latest. In this context, the Commission shall report on the consistency of the amount for 2007 to 2008 with the financial perspective. If applicable, the Commission shall take the necessary steps within the budgetary procedures for 2007 to 2008 to ensure the consistency of the annual appropriations with the financial perspective.

The Commission shall submit a final evaluation report at the end of the programme.

4. The Commission shall forward the results of its quantitative and qualitative evaluations to the European Parliament and the Council together with any appropriate proposals for the amendment of this Decision. The results shall be forwarded before presentation of the draft general budget of the European Union for the years 2007 and 2009 respectively.

Article 6

Financial provisions

1. The financial framework for the implementation of the Community actions under this Decision for the period from 1 January 2005 to 31 December 2008 is hereby set at EUR 45 million, of which EUR 20 050 000 is for the period until 31 December 2006.

For the period following 31 December 2006, the amount shall be deemed to be confirmed if it is consistent for this phase with the financial perspective in force for the period commencing in 2007.

The annual appropriations for the period from 2005 to 2008 shall be authorised by the budgetary authority within the limits of the financial perspective.

2. An indicative breakdown of expenditure is given in Annex II.

Article 7

Entry into force

This Decision shall enter into force on the date of its publication in the *Official Journal of the European Union*.

Done at Strasbourg, 11 May 2005.

For the European Parliament
The President
J. P. BORRELL FONTELLES

For the Council
The President
N. SCHMIT

ANNEX I

ACTIONS

1. ACTION 1: FIGHTING AGAINST ILLEGAL CONTENT

Hotlines allow members of the public to report illegal content. They pass the reports on to the appropriate body (an Internet Service Provider (ISP), the police or a correspondent hotline) for action. Civilian hotlines complement police hotlines, where these exist. Their role is distinct from that of the law enforcement authorities, since they do not investigate offences or arrest or prosecute offenders. They may constitute centres of expertise providing guidance to ISPs as to what content might be illegal.

The existing hotline network is a unique structure that would not have been set up without Community funding. As pointed out in the 2002 evaluation report for the Safer Internet Action Plan, the network has been very successful in expanding membership and has an international reach. In order for the hotlines to develop their full potential, it is necessary to ensure Europe-wide coverage and cooperation, and to increase effectiveness through exchange of information, best practice and experience. Community funds should also be used to raise public awareness of the hotlines, thereby making them more effective.

Funding will be provided for hotlines, selected following a call for proposals, to act as nodes of the network and to cooperate with the other nodes within the European network of hotlines.

If necessary, telephone helplines could be supported, where children could raise concerns about illegal and harmful content on the Internet.

For the purpose of evaluating the effectiveness of hotlines, several indicators should be taken into account. Qualitative and quantitative data should be collected on the establishment and operation of hotlines, the number of national nodes, the geographical coverage in the Member States, the number of reports received, the number and level of experience of hotline staff, the reports forwarded for action to the public authorities and ISPs, and, to the extent available, action taken as a result, in particular the number and kind of web pages withdrawn by ISPs as a result of information provided by the hotlines. Those data should be made public if possible and should be forwarded to the competent authorities.

To ensure that the programme is effective, hotlines are required in all Member States and candidate countries where none currently exist. These new hotlines must be incorporated quickly and effectively into the existing European network of hotlines. Incentives must be given to speed up the process of setting up hotlines. Links between this network and hotlines in third countries (particularly in other European countries where illegal content is hosted and produced) should be promoted, enabling common approaches to be developed and know-how and best practice to be transferred. In accordance with national legislation, and where appropriate and necessary, mechanisms for cooperation between civilian hotlines and law enforcement authorities must be further improved, including, for example, the development of codes of conduct for such hotlines. Where appropriate, there may be a need for hotline staff to receive legal and technical training. Active participation by hotlines in networking and cross-border activities will be mandatory.

Hotlines should be linked to Member State initiatives, supported at national level and should be financially viable to ensure continued operation beyond the duration of this Programme. Co-funding is intended for civilian hotlines and therefore will not be provided for hotlines run by the police. Hotlines will make clear to users the difference between their activities and those of public authorities, and will inform them of the existence of alternative ways of reporting illegal content.

In order to achieve maximum impact and effectiveness with available funding, the hotline network must operate as efficiently as possible. This can best be achieved by assigning a coordinating node to the network, which will facilitate agreement between the hotlines so as to develop European-level guidelines, working methods and practices which respect the limits of the national laws applying to the individual hotlines.

The coordinating node will:

- promote the network as a whole, so as to generate European-level visibility and raise public awareness thereof throughout the European Union, providing e.g. a single identity and entry point giving straightforward access to the appropriate national contact,

- make contact with appropriate bodies with a view to completing the network's coverage in the Member States and candidate countries,
- improve the operational effectiveness of the network,
- draw up best practice guidelines for hotlines and adapt them to new technology,
- organise regular exchanges of information and experience between hotlines,
- provide a pool of expertise for advice and a coaching process for start-up hotlines, particularly in candidate countries,
- ensure liaison with hotlines in third countries,
- maintain a close working relationship with the awareness-raising coordinating node (see point 4 below) so as to ensure the cohesion and effectiveness of overall programme operations and increase public awareness of the hotlines,
- participate in the Safer Internet Forum and other relevant events, coordinating input/feedback from hotlines.

The coordinating node will monitor the effectiveness of hotlines and collect accurate and meaningful statistics on their operation (number and type of reports received, action taken and result, etc.). These statistics should be comparable across Member States.

The hotline network should ensure coverage of and the exchange of reports on the major types of illegal content of concern — extending beyond the area of child pornography. Different mechanisms and expertise may be required to deal with other areas such as racist content, which might involve other types of node dealing with the various issues. Since the financial and administrative resources of the programme are limited, not all such nodes would necessarily receive funding, which might have to be concentrated on a reinforced role for the coordinating node in those areas.

2. ACTION 2: TACKLING UNWANTED AND HARMFUL CONTENT

In addition to action to fight illegal content at its source, users, responsible adults where the users are minors, may need technical tools. Accessibility to these tools may be promoted in order to enable users to make their own decisions on how to deal with unwanted and harmful content (user empowerment).

Further funding should be provided to increase the information available on the performance and effectiveness of filtering software and services to allow users to make an informed choice. User organisations and scientific research institutes can be valuable partners in this effort.

Rating systems and quality labels, in combination with filtering technologies, can help to enable users to select the content they wish to receive and provide European parents and educators with the necessary information to make decisions in accordance with their cultural and linguistic values. Taking account of the results of previous projects, funding could be given to projects which aim to adapt rating systems and quality labels to take account of the convergence of telecommunications, audio-visual media and information technology and to self-regulatory initiatives to back up the reliability of self-labelling and services for assessing the accuracy of self-rating labels. Further work may also be needed to encourage take-up of rating systems and quality labels by content providers.

It would be desirable to try to take account of safe use by children when developing new technologies, instead of trying to deal with any consequences of the new technologies after they have been devised. The safety of the end-user is a criterion to be taken into account along with technical and commercial considerations. One way of doing this would be to foster an exchange of views between child welfare specialists and technical experts. However, account should be taken of the fact that not every product developed for the online world is intended for use by children.

The programme will therefore provide funding for technological measures which meet the needs of users and enable them to limit the amount of unwanted and harmful content, and manage the unwanted spam, which they receive, including:

- assessing the effectiveness of available filtering technology and providing this information to the public in a clear, simple way that facilitates comparison,
- facilitating and coordinating exchanges of information and best practices on effective ways of tackling unwanted and harmful content,
- increasing take-up of content rating and quality site labels by content providers and adapting content rating and labels to take account of the availability of the same content through different delivery mechanisms (convergence),
- if necessary, contributing to the accessibility of filter technology notably in languages not adequately covered by the market. Where appropriate, the technologies used should safeguard the right to privacy pursuant to Directives 95/46/EC ⁽¹⁾ and 2002/58/EC.

The use of technological measures which enhance privacy will be encouraged. Activities under this action will take fully into account the provisions of Council Framework Decision 2005/222/JHA of 24 February 2005 on attacks against information systems ⁽²⁾.

Implementation of this action will be closely coordinated with the actions on promoting a safer environment (self-regulatory action) and awareness-raising (informing the public about how to deal with unwanted and harmful content).

3. ACTION 3: PROMOTING A SAFER ENVIRONMENT

A fully functioning system of self-regulation is an essential element in limiting the flow of unwanted, harmful and illegal content. Self-regulation involves a number of components: consultation and appropriate representation of the parties concerned; codes of conduct; national bodies facilitating cooperation at Community level; and national evaluation of self-regulation frameworks ⁽³⁾. There is a continuing need for Community work in this area to encourage the European Internet and new online technologies industries to implement codes of conduct.

The Safer Internet Forum developed in 2004 under the Safer Internet Action Plan is to become a discussion forum including representatives of industry, law enforcement authorities, policy-makers and user organisations (e.g. parent and teacher organisations, child protection groups, consumer protection bodies and civil and digital rights organisations). It will provide a platform for national co-regulatory or self-regulatory bodies to exchange experience and an opportunity to discuss ways in which industry can contribute to the fight against illegal content.

The Safer Internet Forum will provide a focal point for discussion at expert level and a platform to drive consensus, inputting conclusions, recommendations, guidelines etc. to relevant national and European channels.

The Safer Internet Forum will span all the actions, facilitating discussion and stimulating action relevant to illegal, unwanted and harmful content. Consisting of plenary sessions and, where necessary for specific issues, working groups with clear objectives and deadlines, it will be a meeting place for actors from all areas, including government agencies and programmes, standards bodies, industry, services within the Commission and user organisations (e.g. parent and teacher organisations, child protection groups, consumer protection bodies and civil and digital rights organisations). The Forum will provide an opportunity for people, active at national and European level, especially those involved in Member State programmes and initiatives, to exchange views, information and experience. Where appropriate, the Safer Internet Forum should exchange information and cooperate with relevant organisations active in related areas, such as network and information security.

⁽¹⁾ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31). Directive as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

⁽²⁾ OJ L 69, 16.3.2005, p. 67.

⁽³⁾ See the indicative guidelines for the implementation, at national level, of a self-regulation framework for the protection of minors and human dignity in online audiovisual and information services in Recommendation 98/560/EC.

The Safer Internet Forum will have the specific objectives of:

1. stimulating networking of the appropriate structures within Member States and developing links with self-regulatory bodies outside Europe;
2. stimulating consensus and self-regulation on issues such as quality rating of websites, cross-media content rating, rating and filtering techniques, extending them to new forms of content such as online games and new forms of access such as mobile phones;
3. encouraging service providers to draw up codes of conduct on issues such as handling notice and take down procedures in a transparent and conscientious manner and informing users about safer use of Internet and the existence of hotlines for reporting illegal content;
4. promoting research into the effectiveness of rating projects and filtering technologies. User organisations and scientific research institutes can be valuable partners in this effort.

Results and findings from ongoing and completed projects co-funded by the programme will feed into the process. By providing an open platform, the Forum will help to raise levels of awareness and attract the involvement of the candidate countries and other third countries, providing an international arena to address a global problem. It will, therefore, ensure that key associations, such as user organisations (e.g. parent and teacher organisations, child protection groups, consumer protection bodies and civil and digital rights organisations), industries and public bodies are aware of, are consulted on and contribute to safer-use initiatives within the Community and internationally.

Participation in the Safer Internet Forum will be open to interested parties from outside the Community and candidate countries. International cooperation will be enhanced by a round table linked to the Forum in order to ensure regular dialogue on best practice, codes of conduct, self-regulation and quality ratings. The Commission will ensure that synergies with related fora and similar initiatives are fully exploited.

A call for tenders may be organised in order to provide a secretariat to support the Safer Internet Forum, including subject-field experts, to suggest themes of study, prepare working papers, moderate discussions and record conclusions.

A further type of activity attracting financial support at Community level could for instance include self-regulatory projects to devise cross-border codes of conduct. Advice and assistance may be provided so as to ensure cooperation at Community level through networking of the appropriate bodies within Member States and candidate countries and through systematic review and reporting of relevant legal and regulatory issues, to help develop methods of assessment and certification of self-regulation, to provide practical assistance to countries wishing to set up self-regulatory bodies and to expand links with self-regulatory bodies outside Europe.

4. ACTION 4: AWARENESS-RAISING

Awareness-raising actions should address a range of categories of illegal, unwanted and harmful content (including, for example, content considered unsuitable for children and racist and xenophobic content) and, where appropriate, take into account related issues of consumer protection, data protection and information and network security (viruses/spam). They should deal with content distributed over the World Wide Web as well as new forms of interactive information and communication brought about by the rapid spread of the Internet and mobile telephony (e.g. peer-to-peer services, broadband video, instant messaging, chatrooms, etc.).

The Commission will continue to take steps to encourage cost-effective means of distribution of information to large numbers of users, notably by using multiplier organisations and electronic dissemination channels, so as to reach the intended target groups. The Commission could consider in particular the use of mass media and distribution of information material to schools and Internet cafés.

The programme will provide support to appropriate bodies, which will be selected following an open call for proposals to act as awareness-raising nodes in each Member State and candidate country and, which will carry out awareness-raising actions and programmes in close cooperation with all relevant actors at national, regional and local levels. European added value will be provided by a coordinating node, which will liaise closely with other nodes to ensure that best practice is exchanged.

Bodies seeking to act as awareness-raising nodes will need to show that they have the strong support of national authorities. They should have a clear mandate to educate the public in safer use of the Internet and new online technologies or in media and information literacy, and must have the necessary financial resources to implement that mandate.

Awareness-raising nodes will be expected to:

- devise a cohesive, hard-hitting and targeted awareness-raising campaign using the most appropriate media, taking into account best practice and experience in other countries,
- establish and maintain a partnership (formal or informal) with key players (government agencies, press and media groups, ISP associations, user organisations, education stakeholders) and actions in their country relating to safer use of the Internet and new online technologies,
- promote dialogue and exchange of information notably between stakeholders from the education and technological fields,
- where appropriate, cooperate with work in areas related to this programme such as in the wider fields of media and information literacy or consumer protection,
- inform users about European filtering software and services and about hotlines and self-regulation schemes,
- actively cooperate with other national nodes in the European network by exchanging information about best practices, participating in meetings and designing and implementing a European approach, adapted as necessary for national linguistic and cultural preferences,
- provide a pool of expertise and technical assistance to start up awareness-raising nodes (new nodes could be 'adopted' by a more experienced node).

To ensure maximum cooperation and effectiveness, the coordinating node will be funded to provide logistical and infrastructural support for nodes in each Member State, ensuring European-level visibility, good communication and exchange of experience so that lessons learnt can be applied on an ongoing basis (for instance by adapting material used for raising public awareness).

The coordinating node should:

- provide effective communication and ensure that information and best practice are exchanged within the network,
- provide training in safer use of the Internet and new online technologies for the staff of awareness-raising nodes (training for trainers),
- provide technical assistance to candidate countries wishing to set up awareness-raising actions,
- coordinate the provision by awareness-raising nodes of expertise and technical assistance to start up awareness-raising nodes,
- propose indicators and manage the collection, analysis and exchange of statistical information about awareness-raising activities, so as to assess their impact,

- provide infrastructure for a single, comprehensive transnational repository (web portal) of relevant information and awareness-raising and research resources with localised content (or local subsites, as appropriate), which may include news snippets, articles and monthly newsletters in several languages, and provide visibility for Safer Internet Forum activities,
- expand links with awareness-raising activities outside Europe,
- participate in the Safer Internet Forum and other relevant events, coordinating input/feedback from the awareness-raising network.

Research will also be carried out on a comparable basis into the way people, especially children, use new online technologies. Further action at Community level could for instance include support for specific child-friendly Internet services or an award for the best awareness-raising activity of the year.

ANNEX II

INDICATIVE BREAKDOWN OF EXPENDITURE

| | | |
|----|---------------------------------------|---------|
| 1. | Fighting against illegal content | 25-30 % |
| 2. | Tackling unwanted and harmful content | 10-17 % |
| 3. | Promoting a safer environment | 8-12 % |
| 4. | Awareness-raising | 47-51 % |

ANNEX III

THE MEANS FOR IMPLEMENTING THE PROGRAMME

1. The Commission will implement the programme in accordance with the technical content specified in Annex I.
2. The programme will be executed through indirect action comprising:
 - (a) shared-cost actions
 - (i) Pilot projects and best-practice actions. Ad hoc projects in areas relevant to the programme, including projects demonstrating best practice or involving innovative uses of existing technology.
 - (ii) Networks: networks bringing together a variety of stakeholders to ensure action throughout the European Union and to facilitate coordination activities and the transfer of knowledge. They may be linked to best-practice actions.
 - (iii) Applied Europe-wide research carried out on a comparable basis into the way people, especially children, use new online technologies.

Community funding will normally not exceed 50 % of the cost of the project. Public sector bodies may be reimbursed on the basis of 100 % of the additional costs;

- (b) accompanying measures

The following accompanying measures will contribute to the implementation of the programme or the preparation of future activities.

- (i) Benchmarking and opinion surveys to produce reliable data on safer use of the Internet and new online technologies for all Member States collected through a comparable methodology.
- (ii) Technical assessment of technologies, such as filtering, designed to promote safer use of the Internet and new online technologies. The assessment will also take into account whether or not these technologies enhance privacy.
- (iii) Studies in support of the programme and its actions, including self-regulation and the work of the Safer Internet Forum, or the preparation of future activities.
- (iv) Prize competitions for best practice.
- (v) Exchange of information, conferences, seminars, workshops or other meetings and the management of clustered activities.
- (vi) Dissemination, information and communication activities.

Measures devoted to the commercialisation of products, processes or services, marketing activities and sales promotion are excluded.

3. The selection of shared-cost actions will be based on calls for proposals published on the Commission's Internet site in accordance with the financial provisions in force.
 4. Applications for Community support should provide, where appropriate, a financial plan listing all the components of the funding of the projects, including the financial support requested from the Community, and any other requests for or grants of support from other sources.
 5. Accompanying measures will be implemented through calls for tenders in accordance with the financial provisions in force.
-

DIRECTIVE 2005/14/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 11 May 2005

amending Council Directives 72/166/EEC, 84/5/EEC, 88/357/EEC and 90/232/EEC and Directive 2000/26/EC of the European Parliament and of the Council relating to insurance against civil liability in respect of the use of motor vehicles

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular the first and third sentences of Article 47(2), Article 55 and Article 95(1) thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee ⁽²⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽³⁾,

Whereas:

(1) Insurance against civil liability in respect of the use of motor vehicles (motor insurance) is of special importance for European citizens, whether they are policyholders or victims of an accident. It is also a major concern for insurance undertakings as it constitutes an important part of non-life insurance business in the Community. Motor insurance also has an impact on the free movement of persons and vehicles. It should therefore be a key objective of Community action in the field of financial services to reinforce and consolidate the single insurance market in motor insurance.

(2) Very significant advances in this direction have already been achieved by Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability ⁽⁴⁾, by second Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles ⁽⁵⁾, by third Council Directive 90/232/EEC of 14 May 1990 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles ⁽⁶⁾ and by Directive 2000/26/EC of the European Parliament and of the Council of 16 May 2000 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles (fourth motor insurance Directive) ⁽⁷⁾.

(3) The Community system of motor insurance needs to be updated and improved. This need has been confirmed by the consultation conducted with the industry, consumers and victims' associations.

(4) In order to exclude any possible misinterpretation of the provisions of Directive 72/166/EEC and to make it easier to obtain insurance cover for vehicles bearing temporary plates, the definition of the territory in which the vehicle is normally based should refer to the territory of the State of which the vehicle bears a registration plate, irrespective of whether such a plate is permanent or temporary.

(5) In accordance with Directive 72/166/EEC, vehicles bearing false or illegal plates are considered to be normally based in the territory of the Member State that issued the original plates. This rule often means that national insurers' bureaux are obliged to deal with the economic consequences of accidents which do not have any connection

⁽¹⁾ OJ C 227 E, 24.9.2002, p. 387.

⁽²⁾ OJ C 95, 23.4.2003, p. 45.

⁽³⁾ Opinion of the European Parliament of 22 October 2003 (OJ C 82 E, 1.4.2004, p. 297), Council Common Position of 26 April 2004 (not yet published in the Official Journal) and Position of the European Parliament of 12 January 2005 (not yet published in the Official Journal), Council Decision of 18 April 2005.

⁽⁴⁾ OJ L 103, 2.5.1972, p. 1. Directive as last amended by Directive 84/5/EEC (OJ L 8, 11.1.1984, p. 17).

⁽⁵⁾ OJ L 8, 11.1.1984, p. 17. Directive as last amended by Directive 90/232/EEC (OJ L 129, 19.5.1990, p. 33).

⁽⁶⁾ OJ L 129, 19.5.1990, p. 33.

⁽⁷⁾ OJ L 181, 20.7.2000, p. 65.

with the Member State where they are established. Without altering the general criterion of the registration plate to determine the territory in which the vehicle is normally based, a special rule should be laid down for accidents caused by vehicles without a registration plate or bearing a registration plate which does not correspond or no longer corresponds to the vehicle. In this case and for the sole purpose of settling the claim, the territory in which the vehicle is normally based should be considered to be the territory in which the accident took place.

- (6) In order to facilitate the interpretation and application of the term 'random checks' in Directive 72/166/EEC, the relevant provision should be clarified. The prohibition of systematic checks on motor insurance should apply to vehicles normally based in the territory of another Member State as well as to vehicles normally based in the territory of a third country but entering from the territory of another Member State. Only non-systematic checks which are not discriminatory and are carried out as part of a control not aimed exclusively at insurance verification may be permitted.
- (7) Article 4(a) of Directive 72/166/EEC permits a Member State to act in derogation from the general obligation to take out compulsory insurance in respect of vehicles belonging to certain natural or public or private legal persons. For accidents caused by such vehicles, the Member State so derogating must designate an authority or body to compensate for the damage to victims of accidents caused in another Member State. In order to ensure that due compensation is paid not only to the victims of accidents caused by these vehicles abroad but also the victims of accidents occurring in the same Member State in which the vehicle is normally based, whether or not they are resident in its territory, the aforementioned Article should be amended. Furthermore, Member States should ensure that the list of persons exempt from compulsory insurance and the authorities or bodies responsible for compensation of victims of accidents caused by such vehicles is communicated to the Commission for publication.
- (8) Article 4(b) of Directive 72/166/EEC permits a Member State to act in derogation from the general obligation to take out compulsory insurance in respect of certain types of vehicles or certain vehicles having a special plate. In that case, the other Member States are allowed to require, at the entry into their territory, a valid green card or a frontier insurance contract, in order to ensure the provision of compensation to victims of any accident which may be caused by those vehicles in their territories. However, since the elimination of border controls within the Community means that it is not possible to ensure that vehicles crossing frontiers are covered by insurance, compensation for victims of accidents caused abroad can no longer be guaranteed. Furthermore, it should also be ensured that due compensation is awarded not only to the victims of accidents caused by those vehicles abroad, but also in the same Member State in which the vehicle is normally based. For this purpose, Member States should treat the victims of accidents caused by those vehicles in the same way as victims of accidents caused by non-insured vehicles. Indeed, as provided for in Directive 84/5/EEC, compensation to victims of accidents caused by uninsured vehicles should be paid by the compensation body of the Member State in which the accident took place. Where payments are made to victims of accidents caused by vehicles subject to the derogation, the compensation body should have a claim against the body of the Member State in which the vehicle is normally based. After a period of five years from the date of entry into force of this Directive, the Commission should, if appropriate, in view of the experience with the implementation and application of this derogation, submit proposals for its replacement or repeal. The corresponding provision in Directive 2000/26/EC should also be deleted.
- (9) In order to clarify the scope of application of the motor insurance directives in accordance with Article 299 of the Treaty, the reference to the non-European territory of the Member States in Articles 6 and 7(1) of Directive 72/166/EEC should be deleted.
- (10) Member States' obligations to guarantee insurance cover at least in respect of certain minimum amounts constitute an important element in ensuring the protection of victims. The minimum amounts provided for in Directive 84/5/EEC should not only be updated to take account of inflation, but also increased in real terms, to improve the protection of victims. The minimum amount of cover for personal injury should be calculated so as to compensate fully and fairly all victims who have suffered very serious injuries, whilst taking into account the low frequency of accidents involving several victims and the small number of accidents in which several victims suffer very serious injuries in the course of one and the same event. A minimum amount of cover of EUR 1 000 000 per victim or EUR 5 000 000 per claim, regardless of the number of victims, is a reasonable and adequate amount. With a view to facilitating the introduction of these minimum amounts, a transitional period of five years from the date of implementation of this Directive should be established. Member States should increase their amounts to at least a half of those levels within 30 months of the date of implementation.

- (11) In order to ensure that the minimum amount of cover is not eroded over time, a periodic review clause should be introduced using as a benchmark the European Index of Consumer Prices (EICP) published by Eurostat, as provided for in Council Regulation (EC) No 2494/95 of 23 October 1995 concerning harmonised indices of consumer prices ⁽¹⁾. The procedural rules governing such a review need to be established.
- (12) Directive 84/5/EEC, which allows Member States, in the interest of preventing fraud, to limit or exclude payments by the compensation body in the case of damage to property by an unidentified vehicle, may impede legitimate compensation of victims in some cases. The option of limiting or excluding compensation on the basis that the vehicle is not identified should not apply where the body has paid compensation for significant personal injuries to any victim of the same accident in which the damage to property was caused. Member States may provide for an excess up to the limit set out in the said Directive for which the victim of the damage to property may be responsible. The conditions in which personal injuries are to be considered significant should be determined by the national legislation or administrative provisions of the Member State where the accident takes place. In establishing these conditions, the Member State may take into account, *inter alia*, whether the injury has required hospital care.
- (13) At present, an option contained in Directive 84/5/EEC allows Member States to authorise, up to a specified ceiling, excesses for which the victim would be responsible in the event of damage to property caused by uninsured vehicles. That option unjustly reduces the protection of victims and creates discrimination with respect to victims of other accidents. It should therefore no longer be permitted.
- (14) Second Council Directive 88/357/EEC of 22 June 1988 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services ⁽²⁾ should be amended in order to permit branches of insurance undertakings to become representatives with respect to motor insurance activities, as already happens with respect to insurance services other than motor insurance.
- (15) The inclusion within the insurance cover of any passenger in the vehicle is a major achievement of the existing legislation. This objective would be placed in jeopardy if national legislation or any contractual clause contained in an insurance contract excluded passengers from insurance cover because they knew or should have known that the driver of the vehicle was under the influence of alcohol or of any other intoxicating agent at the time of the accident. The passenger is not usually in a position to assess properly the intoxication level of the driver. The objective of discouraging persons from driving whilst under the influence of intoxicating agents is not achieved by reducing the insurance cover for passengers who are victims of motor vehicle accidents. Cover of such passengers under the vehicle's compulsory motor insurance does not prejudice any liability they might incur pursuant to the applicable national legislation, nor the level of any award of damages in a specific accident.
- (16) Personal injuries and damage to property suffered by pedestrians, cyclists and other non-motorised users of the road, who are usually the weakest party in an accident, should be covered by the compulsory insurance of the vehicle involved in the accident where they are entitled to compensation under national civil law. This provision does not prejudice the civil liability or the level of awards for damages in a specific accident, under national legislation.
- (17) Some insurance undertakings insert into insurance policies clauses to the effect that the contract will be cancelled if the vehicle remains outside the Member State of registration for longer than a specified period. This practice is in conflict with the principle set out in Directive 90/232/EEC, according to which the compulsory motor insurance should cover, on the basis of a single premium, the entire territory of the Community. It should therefore be specified that the insurance cover is to remain valid during the whole term of the contract, irrespective of whether the vehicle remains in another Member State for a particular period, without prejudice to the obligations under Member States' national legislation with respect to the registration of vehicles.
- (18) Steps should be taken to make it easier to obtain insurance cover for vehicles imported from one Member State into another, even though the vehicle is not yet registered in the Member State of destination. A temporary derogation from the general rule determining the Member State where the risk is situated should be made available. For a period of 30 days from the date when the vehicle is delivered, made available or dispatched to the purchaser, the Member State of destination should be considered to be the Member State where the risk is situated.

⁽¹⁾ OJ L 257, 27.10.1995, p. 1. Regulation as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

⁽²⁾ OJ L 172, 4.7.1988, p. 1. Directive as last amended by Directive 2000/26/EC.

- (19) Any person wishing to take out a new motor insurance contract with another insurer should be in a position to justify his accident and claims record under the old contract. The policyholder should have the right to request at any time a statement concerning the claims, or the absence of claims, involving the vehicle or vehicles covered by the insurance contract at least during the preceding five years of the contractual relationship. The insurance undertaking, or any body which may have been appointed by a Member State to provide compulsory insurance or to supply such statements, should provide this statement to the policyholder within 15 days of the request.
- (20) In order to ensure due protection of victims of motor vehicle accidents, Member States should not permit insurance undertakings to rely on excesses against an injured party.
- (21) The right to invoke the insurance contract and to claim against the insurance undertaking directly is of great importance for the protection of victims of motor vehicle accidents. Directive 2000/26/EC already provides victims of accidents occurring in a Member State other than the Member State of residence of the injured party, which are caused by the use of vehicles insured and normally based in a Member State, with a right of direct action against the insurance undertaking covering the person responsible against civil liability. In order to facilitate an efficient and speedy settlement of claims and to avoid as far as possible costly legal proceedings, this right should be extended to victims of any motor vehicle accident.
- (22) To enhance the protection of victims of motor vehicle accidents, the 'reasoned offer' procedure provided for in Directive 2000/26/EC should be extended to any kind of motor vehicle accident. This same procedure should also apply *mutatis mutandis* where the accident is settled by the system of national insurers' bureaux provided for in Directive 72/166/EEC.
- (23) In order to make it easier for the injured party to seek compensation, the information centres set up in accordance with Directive 2000/26/EC should not be confined to providing information concerning the accidents covered by that Directive, but should be able to provide the same kind of information for any motor vehicle accident.
- (24) Under Article 11(2) read in conjunction with Article 9(1)(b) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ⁽¹⁾, injured parties may bring legal proceedings against the civil liability insurance provider in the Member State in which they are domiciled.
- (25) As Directive 2000/26/EC was adopted before the adoption of Regulation (EC) No 44/2001, which replaced the Brussels Convention of 27 September 1968 on the same matter for a number of Member States, the reference to that Convention in that Directive should be adapted as appropriate.
- (26) Council Directives 72/166/EEC, 84/5/EEC, 88/357/EEC and 90/232/EEC and Directive 2000/26/EC of the European Parliament and of the Council should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 72/166/EEC

Directive 72/166/EEC shall be amended as follows:

1. Article 1(4) is amended as follows:
 - (a) the first indent shall be replaced by the following:

‘— the territory of the State of which the vehicle bears a registration plate, irrespective of whether the plate is permanent or temporary, or’;
 - (b) the following indent shall be added:

‘— in cases where the vehicle does not bear any registration plate or bears a registration plate which does not correspond or no longer corresponds to the vehicle and has been involved in an accident, the territory of the State in which the accident took place, for the purpose of settling the claim as provided for in the first indent of Article 2(2) of this Directive or in Article 1(4) of Second Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles ^(*);

^(*) OJ L 8, 11.1.1984, p. 17.;

⁽¹⁾ OJ L 12, 16.1.2001, p. 1. Regulation as last amended by Regulation (EC) No 2245/2004 (OJ L 381, 28.12.2004, p. 10).

2. Article 2(1) is replaced by the following:

'1. Member States shall refrain from making checks on insurance against civil liability in respect of vehicles normally based in the territory of another Member State and in respect of vehicles normally based in the territory of a third country entering their territory from the territory of another Member State. However, they may carry out non-systematic checks on insurance provided that they are not discriminatory and are carried out as part of a control which is not aimed exclusively at insurance verification.'

3. Article 4 is amended as follows:

(a) in point (a), second subparagraph:

(i) the first sentence shall be replaced by the following:

'A Member State so derogating shall take the appropriate measures to ensure that compensation is paid in respect of any loss or injury caused in its territory and in the territory of other Member States by vehicles belonging to such persons.'

(ii) the last sentence shall be replaced by the following:

'It shall communicate to the Commission the list of persons exempt from compulsory insurance and the authorities or bodies responsible for compensation. The Commission shall publish the list.'

(b) in point (b), the second subparagraph shall be replaced by the following:

'In that case Member States shall ensure that vehicles as mentioned in the first subparagraph of this point are treated in the same way as vehicles for which the insurance obligation provided for in Article 3(1) has not been satisfied. The compensation body of the Member State in which the accident has taken place shall then have a claim against the guarantee fund provided for in Article 1(4) of Directive 84/5/EEC in the Member State where the vehicle is normally based.'

After a period of five years from the date of entry into force of Directive 2005/14/EC of the European Parliament and of the Council of 11 May 2005 amending Council Directives 72/166/EEC, 84/5/EEC, 88/357/EEC and 90/232/EEC and Directive 2000/26/EC of the European Parliament and of the Council relating to insurance against civil liability in respect of the use of motor vehicles (*), Member States shall report to the Commission on the implementation and practical application of this point. The Commission, after having examined these reports, shall, if appropriate, submit proposals on the replacement or repeal of this derogation.

(*) OJ L 149, 11.6.2005, p. 14.;

4. in Articles 6 and 7(1) 'or in the non-European territory of a Member State' shall be deleted.

Article 2

Amendments to Directive 84/5/EEC

Article 1 of Directive 84/5/EEC is replaced by the following:

'Article 1

1. The insurance referred to in Article 3(1) of Directive 72/166/EEC shall cover compulsorily both damage to property and personal injuries.

2. Without prejudice to any higher guarantees which Member States may lay down, each Member State shall require insurance to be compulsory at least in respect of the following amounts:

(a) in the case of personal injury, a minimum amount of cover of EUR 1 000 000 per victim or EUR 5 000 000 per claim, whatever the number of victims;

(b) in the case of damage to property, EUR 1 000 000 per claim, whatever the number of victims.

If necessary, Member States may establish a transitional period of up to five years from the date of implementation of Directive 2005/14/EC of the European Parliament and of the Council of 11 May 2005 amending Council Directives 72/166/EEC, 84/5/EEC, 88/357/EEC and 90/232/EEC and Directive 2000/26/EC of the European Parliament and of the Council relating to insurance against civil liability in respect of the use of motor vehicles (*), within which to adapt their minimum amounts of cover to the amounts provided for in this paragraph.

Member States establishing such a transitional period shall inform the Commission thereof and indicate the duration of the transitional period.

Within 30 months of the date of implementation of Directive 2005/14/EC Member States shall increase guarantees to at least a half of the levels provided for in this paragraph.

3. Every five years after the entry into force of Directive 2005/14/EC or the end of any transitional period as referred to in paragraph 2, the amounts referred to in that paragraph shall be reviewed, in line with the European Index of Consumer Prices (EICP), as set out in Council Regulation (EC) No 2494/95 of 23 October 1995 concerning harmonised indices of consumer prices (**).

The amounts shall be adjusted automatically. Such amounts shall be increased by the percentage change indicated by the EICP for the relevant period, that is to say, the five years immediately preceding the review, and rounded up to a multiple of EUR 10 000.

The Commission shall communicate the adjusted amounts to the European Parliament and the Council and shall ensure their publication in the *Official Journal of the European Union*.

4. Each Member State shall set up or authorise a body with the task of providing compensation, at least up to the limits of the insurance obligation for damage to property or personal injuries caused by an unidentified vehicle or a vehicle for which the insurance obligation provided for in paragraph 1 has not been satisfied.

The first subparagraph shall be without prejudice to the right of the Member States to regard compensation by the body as subsidiary or non-subsidiary and the right to make provision for the settlement of claims between the body and the person or persons responsible for the accident and other insurers or social security bodies required to compensate the victim in respect of the same accident. However, Member States may not allow the body to make the payment of compensation conditional on the victim establishing in any way that the person liable is unable or refuses to pay.

5. The victim may in any event apply directly to the body which, on the basis of information provided at its request by the victim, shall be obliged to give him a reasoned reply regarding the payment of any compensation.

Member States may, however, exclude the payment of compensation by that body in respect of persons who voluntarily entered the vehicle which caused the damage or injury when the body can prove that they knew it was uninsured.

6. Member States may limit or exclude the payment of compensation by the body in the event of damage to property by an unidentified vehicle.

However, where the body has paid compensation for significant personal injuries to any victim of the same accident in which damage to property was caused by an unidentified vehicle, Member States may not exclude the payment of compensation for damage to property on the basis that the vehicle is not identified. Nevertheless, Member States may provide for an excess of not more than EUR 500 for which the victim of such damage to property may be responsible.

The conditions in which personal injuries are to be considered significant shall be determined in accordance with the legislation or administrative provisions of the Member State in which the accident takes place. In this regard, Member States may take into account, *inter alia*, whether the injury has required hospital care.

7. Each Member State shall apply its laws, regulations and administrative provisions to the payment of compensation by the body, without prejudice to any other practice which is more favourable to the victim.

(*) OJ L 149, 11.6.2005, p. 14.

(**) OJ L 257, 27.10.1995, p. 1. Regulation as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).'

Article 3

Amendment to Directive 88/357/EEC

The second sentence in the fourth subparagraph of Article 12a(4) of Directive 88/357/EEC shall be deleted.

Article 4

Amendments to Directive 90/232/EEC

Directive 90/232/EEC shall be amended as follows:

1. in Article 1, the following paragraph shall be inserted between the first and second paragraphs:

'Member States shall take the necessary measures to ensure that any statutory provision or any contractual clause contained in an insurance policy which excludes a passenger from such cover on the basis that he knew or should have known that the driver of the vehicle was under the influence of alcohol or of any other intoxicating agent at the time of an accident, shall be deemed to be void in respect of the claims of such passenger.'

2. the following Article shall be inserted:

'Article 1a

The insurance referred to in Article 3(1) of Directive 72/166/EEC shall cover personal injuries and damage to property suffered by pedestrians, cyclists and other non-motorised users of the roads who, as a consequence of an accident in which a motor vehicle is involved, are entitled to compensation in accordance with national civil law. This Article shall be without prejudice either to civil liability or to the amount of damages.'

3. in Article 2, the first indent shall be replaced by the following:

'— cover, on the basis of a single premium and during the whole term of the contract, the entire territory of the Community, including for any period in which the vehicle remains in other Member States during the term of the contract; and'

4. the following Articles shall be inserted:

Article 4a

1. By way of derogation from the second indent of Article 2(d) of Directive 88/357/EEC (*), where a vehicle is dispatched from one Member State to another, the Member State where the risk is situated shall be considered to be the Member State of destination, immediately upon acceptance of delivery by the purchaser for a period of thirty days, even though the vehicle has not formally been registered in the Member State of destination.

2. In the event that the vehicle is involved in an accident during the period mentioned in paragraph 1 of this Article while being uninsured, the body referred to in Article 1(4) of Directive 84/5/EEC in the Member State of destination shall be liable for the compensation provided for in Article 1 of the said Directive.

Article 4b

Member States shall ensure that the policyholder has the right to request at any time a statement relating to the third party liability claims involving the vehicle or vehicles covered by the insurance contract at least during the preceding five years of the contractual relationship, or to the absence of such claims. The insurance undertaking, or a body which may have been appointed by a Member State to provide compulsory insurance or to supply such statements, shall provide this statement to the policyholder within 15 days of the request.

Article 4c

Insurance undertakings shall not rely on excesses against the injured party to an accident as far as the insurance referred to in Article 3(1) of Directive 72/166/EEC is concerned.

Article 4d

Member States shall ensure that injured parties to accidents caused by a vehicle covered by insurance as referred to in Article 3(1) of Directive 72/166/EEC enjoy a direct right of action against the insurance undertaking covering the person responsible against civil liability.

Article 4e

Member States shall establish the procedure provided for in Article 4(6) of Directive 2000/26/EC (**) for the settlement

of claims arising from any accident caused by a vehicle covered by insurance as referred to in Article 3(1) of Directive 72/166/EEC.

In the case of accidents which may be settled by the system of national insurers' bureaux provided for in Article 2(2) of Directive 72/166/EEC, Member States shall establish the same procedure as in Article 4(6) of Directive 2000/26/EC. For the purpose of applying this procedure, any reference to insurance undertaking shall be understood as a reference to national insurers' bureaux as defined in Article 1, point 3 of Directive 72/166/EEC.

(*) Second Council Directive 88/357/EEC of 22 June 1988 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services (OJ L 172, 4.7.1988, p. 1). Directive as last amended by Directive 2000/26/EC of the European Parliament and of the Council (OJ L 181, 20.7.2000, p. 65).

(**) Directive 2000/26/EC of the European Parliament and of the Council of 16 May 2000 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles (fourth motor insurance Directive) (OJ L 181, 20.7.2000, p. 65).';

5. Article 5(1) is replaced by the following:

'1. Member States shall ensure that, without prejudice to their obligations under Directive 2000/26/EC, the information centres established or approved in accordance with Article 5 of that Directive, provide the information specified in that Article to any party involved in any traffic accident caused by a vehicle covered by insurance as referred to in Article 3(1) of Directive 72/166/EEC.'

Article 5

Amendments to Directive 2000/26/EC

Directive 2000/26/EC shall be amended as follows:

1. the following recital 16a shall be inserted:

'(16a) Under Article 11(2) read in conjunction with Article 9(1)(b) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (*), injured parties may bring legal proceedings against the civil liability insurance provider in the Member State in which they are domiciled.

(*) OJ L 12, 16.1.2001, p. 1. Regulation as last amended by Regulation (EC) No 2245/2004 (J L 381, 28.12.2004, p.10).';

2. Article 4(8) is replaced by the following:

'8. The appointment of a claims representative shall not in itself constitute the opening of a branch within the meaning of Article 1(b) of Directive 92/49/EEC and the claims representative shall not be considered an establishment within the meaning of Article 2(c) of Directive 88/357/EEC or:

- an establishment within the meaning of the Brussels Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (*) — as far as Denmark is concerned,
- an establishment within the meaning of Regulation (EC) No 44/2001 — as far as the other Member States are concerned.

(*) OJ C 27, 26.1.1998, p. 1 (consolidated version).';

3. in Article 5(1)(a), point 2(ii) shall be deleted.
4. the following Article is inserted:

'Article 6a

Central body

Member States shall take all appropriate measures to facilitate the availability in due time to the victims, their insurers or their legal representatives of the basic data necessary for the settlement of claims.

This basic data shall, where appropriate, be made available in electronic form in a central repository in each Member State, and be accessible by parties involved in the case at their express request.'

Article 6

Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 11 June 2007 at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication.

The methods of making such reference shall be laid down by Member States.

2. Member States may, in accordance with the Treaty, maintain or bring into force provisions which are more favourable to the injured party than the provisions necessary to comply with this Directive.

3. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 7

Entry into force

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Union*.

Article 8

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 11 May 2005.

For the European Parliament
The President
J. P. BORRELL FONTELLES

For the Council
The President
N. SCHMIT

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 and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council

(‘Unfair Commercial Practices Directive’)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽²⁾,

Whereas:

- (1) Article 153(1) and (3)(a) of the Treaty provides that the Community is to contribute to the attainment of a high level of consumer protection by the measures it adopts pursuant to Article 95 thereof.
- (2) In accordance with Article 14(2) of the Treaty, the internal market comprises an area without internal frontiers in which the free movement of goods and services and freedom of establishment are ensured. The development of fair commercial practices within the area without internal frontiers is vital for the promotion of the development of cross-border activities.
- (3) The laws of the Member States relating to unfair commercial practices show marked differences which can generate appreciable distortions of competition and obstacles to the smooth functioning of the internal market. In the field of

advertising, Council Directive 84/450/EEC of 10 September 1984 concerning misleading and comparative advertising ⁽³⁾ establishes minimum criteria for harmonising legislation on misleading advertising, but does not prevent the Member States from retaining or adopting measures which provide more extensive protection for consumers. As a result, Member States’ provisions on misleading advertising diverge significantly.

- (4) These disparities cause uncertainty as to which national rules apply to unfair commercial practices harming consumers’ economic interests and create many barriers affecting business and consumers. These barriers increase the cost to business of exercising internal market freedoms, in particular when businesses wish to engage in cross border marketing, advertising campaigns and sales promotions. Such barriers also make consumers uncertain of their rights and undermine their confidence in the internal market.

- (5) In the absence of uniform rules at Community level, obstacles to the free movement of services and goods across borders or the freedom of establishment could be justified in the light of the case-law of the Court of Justice of the European Communities as long as they seek to protect recognised public interest objectives and are proportionate to those objectives. In view of the Community’s objectives, as set out in the provisions of the Treaty and in secondary Community law relating to freedom of movement, and in accordance with the Commission’s policy on commercial communications as indicated in the Communication from the Commission entitled ‘The follow-up to the Green Paper on Commercial Communications in the Internal Market’, such obstacles should be eliminated. These obstacles can only be eliminated by establishing uniform rules at Community level which establish a high level of consumer protection and by clarifying certain legal concepts at Community level to the extent necessary for the proper functioning of the internal market and to meet the requirement of legal certainty.

⁽¹⁾ OJ C 108, 30.4.2004, p. 81.

⁽²⁾ Opinion of the European Parliament of 20 April 2004 (OJ C 104 E, 30.4.2004, p. 260), Council Common Position of 15 November 2004 (OJ C 38 E, 15.2.2005, p. 1), Position of the European Parliament of 24 February 2005 (not yet published in the Official Journal) and Council Decision of 12 April 2005.

⁽³⁾ OJ L 250, 19.9.1984, p. 17. Directive as amended by Directive 97/55/EC of the European Parliament and of the Council (OJ L 290, 23.10.1997, p. 18).

- (6) This Directive therefore approximates the laws of the Member States on unfair commercial practices, including unfair advertising, which directly harm consumers' economic interests and thereby indirectly harm the economic interests of legitimate competitors. In line with the principle of proportionality, this Directive protects consumers from the consequences of such unfair commercial practices where they are material but recognises that in some cases the impact on consumers may be negligible. It neither covers nor affects the national laws on unfair commercial practices which harm only competitors' economic interests or which relate to a transaction between traders; taking full account of the principle of subsidiarity, Member States will continue to be able to regulate such practices, in conformity with Community law, if they choose to do so. Nor does this Directive cover or affect the provisions of Directive 84/450/EEC on advertising which misleads business but which is not misleading for consumers and on comparative advertising. Further, this Directive does not affect accepted advertising and marketing practices, such as legitimate product placement, brand differentiation or the offering of incentives which may legitimately affect consumers' perceptions of products and influence their behaviour without impairing the consumer's ability to make an informed decision.
- (7) This Directive addresses commercial practices directly related to influencing consumers' transactional decisions in relation to products. It does not address commercial practices carried out primarily for other purposes, including for example commercial communication aimed at investors, such as annual reports and corporate promotional literature. It does not address legal requirements related to taste and decency which vary widely among the Member States. Commercial practices such as, for example, commercial solicitation in the streets, may be undesirable in Member States for cultural reasons. Member States should accordingly be able to continue to ban commercial practices in their territory, in conformity with Community law, for reasons of taste and decency even where such practices do not limit consumers' freedom of choice. Full account should be taken of the context of the individual case concerned in applying this Directive, in particular the general clauses thereof.
- (8) This Directive directly protects consumer economic interests from unfair business-to-consumer commercial practices. Thereby, it also indirectly protects legitimate businesses from their competitors who do not play by the rules in this Directive and thus guarantees fair competition in fields coordinated by it. It is understood that there are other commercial practices which, although not harming consumers, may hurt competitors and business customers. The Commission should carefully examine the need for Community action in the field of unfair competition beyond the remit of this Directive and, if necessary, make a legislative proposal to cover these other aspects of unfair competition.
- (9) This Directive is without prejudice to individual actions brought by those who have been harmed by an unfair commercial practice. It is also without prejudice to Community and national rules on contract law, on intellectual property rights, on the health and safety aspects of products, on conditions of establishment and authorisation regimes, including those rules which, in conformity with Community law, relate to gambling activities, and to Community competition rules and the national provisions implementing them. The Member States will thus be able to retain or introduce restrictions and prohibitions of commercial practices on grounds of the protection of the health and safety of consumers in their territory wherever the trader is based, for example in relation to alcohol, tobacco or pharmaceuticals. Financial services and immovable property, by reason of their complexity and inherent serious risks, necessitate detailed requirements, including positive obligations on traders. For this reason, in the field of financial services and immovable property, this Directive is without prejudice to the right of Member States to go beyond its provisions to protect the economic interests of consumers. It is not appropriate to regulate here the certification and indication of the standard of fineness of articles of precious metal.
- (10) It is necessary to ensure that the relationship between this Directive and existing Community law is coherent, particularly where detailed provisions on unfair commercial practices apply to specific sectors. This Directive therefore amends Directive 84/450/EEC, Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts ⁽¹⁾, Directive 98/27/EC of the European Parliament and of the Council of 19 May 1998 on injunctions for the protection of consumers' interests ⁽²⁾ and Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services ⁽³⁾. This Directive accordingly applies only in so far as there are no

⁽¹⁾ OJ L 144, 4.6.1997, p. 19. Directive as amended by Directive 2002/65/EC (OJ L 271, 9.10.2002, p. 16).

⁽²⁾ OJ L 166, 11.6.1998, p. 51. Directive as last amended by Directive 2002/65/EC.

⁽³⁾ OJ L 271, 9.10.2002, p. 16.

- specific Community law provisions regulating specific aspects of unfair commercial practices, such as information requirements and rules on the way the information is presented to the consumer. It provides protection for consumers where there is no specific sectoral legislation at Community level and prohibits traders from creating a false impression of the nature of products. This is particularly important for complex products with high levels of risk to consumers, such as certain financial services products. This Directive consequently complements the Community *acquis*, which is applicable to commercial practices harming consumers' economic interests.
- (11) The high level of convergence achieved by the approximation of national provisions through this Directive creates a high common level of consumer protection. This Directive establishes a single general prohibition of those unfair commercial practices distorting consumers' economic behaviour. It also sets rules on aggressive commercial practices, which are currently not regulated at Community level.
- (12) Harmonisation will considerably increase legal certainty for both consumers and business. Both consumers and business will be able to rely on a single regulatory framework based on clearly defined legal concepts regulating all aspects of unfair commercial practices across the EU. The effect will be to eliminate the barriers stemming from the fragmentation of the rules on unfair commercial practices harming consumer economic interests and to enable the internal market to be achieved in this area.
- (13) In order to achieve the Community's objectives through the removal of internal market barriers, it is necessary to replace Member States' existing, divergent general clauses and legal principles. The single, common general prohibition established by this Directive therefore covers unfair commercial practices distorting consumers' economic behaviour. In order to support consumer confidence the general prohibition should apply equally to unfair commercial practices which occur outside any contractual relationship between a trader and a consumer or following the conclusion of a contract and during its execution. The general prohibition is elaborated by rules on the two types of commercial practices which are by far the most common, namely misleading commercial practices and aggressive commercial practices.
- (14) It is desirable that misleading commercial practices cover those practices, including misleading advertising, which by deceiving the consumer prevent him from making an informed and thus efficient choice. In conformity with the laws and practices of Member States on misleading advertising, this Directive classifies misleading practices into misleading actions and misleading omissions. In respect of omissions, this Directive sets out a limited number of key items of information which the consumer needs to make an informed transactional decision. Such information will not have to be disclosed in all advertisements, but only where the trader makes an invitation to purchase, which is a concept clearly defined in this Directive. The full harmonisation approach adopted in this Directive does not preclude the Member States from specifying in national law the main characteristics of particular products such as, for example, collectors' items or electrical goods, the omission of which would be material when an invitation to purchase is made. It is not the intention of this Directive to reduce consumer choice by prohibiting the promotion of products which look similar to other products unless this similarity confuses consumers as to the commercial origin of the product and is therefore misleading. This Directive should be without prejudice to existing Community law which expressly affords Member States the choice between several regulatory options for the protection of consumers in the field of commercial practices. In particular, this Directive should be without prejudice to Article 13(3) of Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector ⁽¹⁾.
- (15) Where Community law sets out information requirements in relation to commercial communication, advertising and marketing that information is considered as material under this Directive. Member States will be able to retain or add information requirements relating to contract law and having contract law consequences where this is allowed by the minimum clauses in the existing Community law instruments. A non-exhaustive list of such information requirements in the *acquis* is contained in Annex II. Given the full harmonisation introduced by this Directive only the information required in Community law is considered as material for the purpose of Article 7(5) thereof. Where Member States have introduced information requirements over and above what is specified in Community law, on the basis of minimum clauses, the omission of that extra information will not constitute a misleading omission under this Directive. By contrast Member States will be able, when allowed by the minimum clauses in Community law, to maintain or introduce more stringent provisions in conformity with Community law so as to ensure a higher level of protection of consumers' individual contractual rights.

⁽¹⁾ OJ L 201, 31.7.2002, p. 37.

- (16) The provisions on aggressive commercial practices should cover those practices which significantly impair the consumer's freedom of choice. Those are practices using harassment, coercion, including the use of physical force, and undue influence.
- (17) It is desirable that those commercial practices which are in all circumstances unfair be identified to provide greater legal certainty. Annex I therefore contains the full list of all such practices. These are the only commercial practices which can be deemed to be unfair without a case-by-case assessment against the provisions of Articles 5 to 9. The list may only be modified by revision of the Directive.
- (18) It is appropriate to protect all consumers from unfair commercial practices; however the Court of Justice has found it necessary in adjudicating on advertising cases since the enactment of Directive 84/450/EEC to examine the effect on a notional, typical consumer. In line with the principle of proportionality, and to permit the effective application of the protections contained in it, this Directive takes as a benchmark the average consumer, who is reasonably well-informed and reasonably observant and circumspect, taking into account social, cultural and linguistic factors, as interpreted by the Court of Justice, but also contains provisions aimed at preventing the exploitation of consumers whose characteristics make them particularly vulnerable to unfair commercial practices. Where a commercial practice is specifically aimed at a particular group of consumers, such as children, it is desirable that the impact of the commercial practice be assessed from the perspective of the average member of that group. It is therefore appropriate to include in the list of practices which are in all circumstances unfair a provision which, without imposing an outright ban on advertising directed at children, protects them from direct exhortations to purchase. The average consumer test is not a statistical test. National courts and authorities will have to exercise their own faculty of judgement, having regard to the case-law of the Court of Justice, to determine the typical reaction of the average consumer in a given case.
- (19) Where certain characteristics such as age, physical or mental infirmity or credulity make consumers particularly susceptible to a commercial practice or to the underlying product and the economic behaviour only of such consumers is likely to be distorted by the practice in a way that the trader can reasonably foresee, it is appropriate to ensure that they are adequately protected by assessing the practice from the perspective of the average member of that group.
- (20) It is appropriate to provide a role for codes of conduct, which enable traders to apply the principles of this Directive effectively in specific economic fields. In sectors where there are specific mandatory requirements regulating the behaviour of traders, it is appropriate that these will also provide evidence as to the requirements of professional diligence in that sector. The control exercised by code owners at national or Community level to eliminate unfair commercial practices may avoid the need for recourse to administrative or judicial action and should therefore be encouraged. With the aim of pursuing a high level of consumer protection, consumers' organisations could be informed and involved in the drafting of codes of conduct.
- (21) Persons or organisations regarded under national law as having a legitimate interest in the matter must have legal remedies for initiating proceedings against unfair commercial practices, either before a court or before an administrative authority which is competent to decide upon complaints or to initiate appropriate legal proceedings. While it is for national law to determine the burden of proof, it is appropriate to enable courts and administrative authorities to require traders to produce evidence as to the accuracy of factual claims they have made.
- (22) It is necessary that Member States lay down penalties for infringements of the provisions of this Directive and they must ensure that these are enforced. The penalties must be effective, proportionate and dissuasive.
- (23) Since the objectives of this Directive, namely to eliminate the barriers to the functioning of the internal market represented by national laws on unfair commercial practices and to provide a high common level of consumer protection, by approximating the laws, regulations and administrative provisions of the Member States on unfair commercial practices, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to eliminate the internal market barriers and achieve a high common level of consumer protection.
- (24) It is appropriate to review this Directive to ensure that barriers to the internal market have been addressed and a high level of consumer protection achieved. The review could lead to a Commission proposal to amend this Directive, which may include a limited extension to the derogation in

Article 3(5), and/or amendments to other consumer protection legislation reflecting the Commission's Consumer Policy Strategy commitment to review the existing *acquis* in order to achieve a high, common level of consumer protection.

- (25) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER 1

GENERAL PROVISIONS

Article 1

Purpose

The purpose of this Directive is to contribute to the proper functioning of the internal market and achieve a high level of consumer protection by approximating the laws, regulations and administrative provisions of the Member States on unfair commercial practices harming consumers' economic interests.

Article 2

Definitions

For the purposes of this Directive:

- (a) 'consumer' means any natural person who, in commercial practices covered by this Directive, is acting for purposes which are outside his trade, business, craft or profession;
- (b) 'trader' means any natural or legal person who, in commercial practices covered by this Directive, is acting for purposes relating to his trade, business, craft or profession and anyone acting in the name of or on behalf of a trader;
- (c) 'product' means any goods or service including immovable property, rights and obligations;
- (d) 'business-to-consumer commercial practices' (hereinafter also referred to as commercial practices) means any act, omission, course of conduct or representation, commercial communication including advertising and marketing, by a trader, directly connected with the promotion, sale or supply of a product to consumers;
- (e) 'to materially distort the economic behaviour of consumers' means using a commercial practice to appreciably impair the consumer's ability to make an informed decision, thereby causing the consumer to take a transactional decision that he would not have taken otherwise;
- (f) 'code of conduct' means an agreement or set of rules not imposed by law, regulation or administrative provision of a Member State which defines the behaviour of traders who undertake to be bound by the code in relation to one or more particular commercial practices or business sectors;
- (g) 'code owner' means any entity, including a trader or group of traders, which is responsible for the formulation and revision of a code of conduct and/or for monitoring compliance with the code by those who have undertaken to be bound by it;
- (h) 'professional diligence' means the standard of special skill and care which a trader may reasonably be expected to exercise towards consumers, commensurate with honest market practice and/or the general principle of good faith in the trader's field of activity;
- (i) 'invitation to purchase' means a commercial communication which indicates characteristics of the product and the price in a way appropriate to the means of the commercial communication used and thereby enables the consumer to make a purchase;
- (j) 'undue influence' means exploiting a position of power in relation to the consumer so as to apply pressure, even without using or threatening to use physical force, in a way which significantly limits the consumer's ability to make an informed decision;
- (k) 'transactional decision' means any decision taken by a consumer concerning whether, how and on what terms to purchase, make payment in whole or in part for, retain or dispose of a product or to exercise a contractual right in relation to the product, whether the consumer decides to act or to refrain from acting;
- (l) 'regulated profession' means a professional activity or a group of professional activities, access to which or the pursuit of which, or one of the modes of pursuing which, is conditional, directly or indirectly, upon possession of specific professional qualifications, pursuant to laws, regulations or administrative provisions.

*Article 3***Scope**

1. This Directive shall apply to unfair business-to-consumer commercial practices, as laid down in Article 5, before, during and after a commercial transaction in relation to a product.

2. This Directive is without prejudice to contract law and, in particular, to the rules on the validity, formation or effect of a contract.

3. This Directive is without prejudice to Community or national rules relating to the health and safety aspects of products.

4. In the case of conflict between the provisions of this Directive and other Community rules regulating specific aspects of unfair commercial practices, the latter shall prevail and apply to those specific aspects.

5. For a period of six years from 12 June 2007, Member States shall be able to continue to apply national provisions within the field approximated by this Directive which are more restrictive or prescriptive than this Directive and which implement directives containing minimum harmonisation clauses. These measures must be essential to ensure that consumers are adequately protected against unfair commercial practices and must be proportionate to the attainment of this objective. The review referred to in Article 18 may, if considered appropriate, include a proposal to prolong this derogation for a further limited period.

6. Member States shall notify the Commission without delay of any national provisions applied on the basis of paragraph 5.

7. This Directive is without prejudice to the rules determining the jurisdiction of the courts.

8. This Directive is without prejudice to any conditions of establishment or of authorisation regimes, or to the deontological codes of conduct or other specific rules governing regulated professions in order to uphold high standards of integrity on the part of the professional, which Member States may, in conformity with Community law, impose on professionals.

9. In relation to 'financial services', as defined in Directive 2002/65/EC, and immovable property, Member States may impose requirements which are more restrictive or prescriptive than this Directive in the field which it approximates.

10. This Directive shall not apply to the application of the laws, regulations and administrative provisions of Member States relating to the certification and indication of the standard of fineness of articles of precious metal.

*Article 4***Internal market**

Member States shall neither restrict the freedom to provide services nor restrict the free movement of goods for reasons falling within the field approximated by this Directive.

CHAPTER 2

UNFAIR COMMERCIAL PRACTICES*Article 5***Prohibition of unfair commercial practices**

1. Unfair commercial practices shall be prohibited.
2. A commercial practice shall be unfair if:
 - (a) it is contrary to the requirements of professional diligence,

and

 - (b) it materially distorts or is likely to materially distort the economic behaviour with regard to the product of the average consumer whom it reaches or to whom it is addressed, or of the average member of the group when a commercial practice is directed to a particular group of consumers.

3. Commercial practices which are likely to materially distort the economic behaviour only of a clearly identifiable group of consumers who are particularly vulnerable to the practice or the underlying product because of their mental or physical infirmity, age or credulity in a way which the trader could reasonably be expected to foresee, shall be assessed from the perspective of the average member of that group. This is without prejudice to the common and legitimate advertising practice of making exaggerated statements or statements which are not meant to be taken literally.

4. In particular, commercial practices shall be unfair which:

(a) are misleading as set out in Articles 6 and 7,

or

(b) are aggressive as set out in Articles 8 and 9.

5. Annex I contains the list of those commercial practices which shall in all circumstances be regarded as unfair. The same single list shall apply in all Member States and may only be modified by revision of this Directive.

Section 1

Misleading commercial practices

Article 6

Misleading actions

1. A commercial practice shall be regarded as misleading if it contains false information and is therefore untruthful or in any way, including overall presentation, deceives or is likely to deceive the average consumer, even if the information is factually correct, in relation to one or more of the following elements, and in either case causes or is likely to cause him to take a transactional decision that he would not have taken otherwise:

(a) the existence or nature of the product;

(b) the main characteristics of the product, such as its availability, benefits, risks, execution, composition, accessories, after-sale customer assistance and complaint handling, method and date of manufacture or provision, delivery, fitness for purpose, usage, quantity, specification, geographical or commercial origin or the results to be expected from its use, or the results and material features of tests or checks carried out on the product;

(c) the extent of the trader's commitments, the motives for the commercial practice and the nature of the sales process, any statement or symbol in relation to direct or indirect sponsorship or approval of the trader or the product;

(d) the price or the manner in which the price is calculated, or the existence of a specific price advantage;

(e) the need for a service, part, replacement or repair;

(f) the nature, attributes and rights of the trader or his agent, such as his identity and assets, his qualifications, status, approval, affiliation or connection and ownership of industrial, commercial or intellectual property rights or his awards and distinctions;

(g) the consumer's rights, including the right to replacement or reimbursement under Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees ⁽¹⁾, or the risks he may face.

2. A commercial practice shall also be regarded as misleading if, in its factual context, taking account of all its features and circumstances, it causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise, and it involves:

(a) any marketing of a product, including comparative advertising, which creates confusion with any products, trade marks, trade names or other distinguishing marks of a competitor;

(b) non-compliance by the trader with commitments contained in codes of conduct by which the trader has undertaken to be bound, where:

(i) the commitment is not aspirational but is firm and is capable of being verified,

and

(ii) the trader indicates in a commercial practice that he is bound by the code.

Article 7

Misleading omissions

1. A commercial practice shall be regarded as misleading if, in its factual context, taking account of all its features and circumstances and the limitations of the communication medium, it omits material information that the average consumer needs, according to the context, to take an informed transactional decision and thereby causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise.

⁽¹⁾ OJ L 171, 7.7.1999, p. 12.

2. It shall also be regarded as a misleading omission when, taking account of the matters described in paragraph 1, a trader hides or provides in an unclear, unintelligible, ambiguous or untimely manner such material information as referred to in that paragraph or fails to identify the commercial intent of the commercial practice if not already apparent from the context, and where, in either case, this causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise.

3. Where the medium used to communicate the commercial practice imposes limitations of space or time, these limitations and any measures taken by the trader to make the information available to consumers by other means shall be taken into account in deciding whether information has been omitted.

4. In the case of an invitation to purchase, the following information shall be regarded as material, if not already apparent from the context:

- (a) the main characteristics of the product, to an extent appropriate to the medium and the product;
- (b) the geographical address and the identity of the trader, such as his trading name and, where applicable, the geographical address and the identity of the trader on whose behalf he is acting;
- (c) the price inclusive of taxes, or where the nature of the product means that the price cannot reasonably be calculated in advance, the manner in which the price is calculated, as well as, where appropriate, all additional freight, delivery or postal charges or, where these charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable;
- (d) the arrangements for payment, delivery, performance and the complaint handling policy, if they depart from the requirements of professional diligence;
- (e) for products and transactions involving a right of withdrawal or cancellation, the existence of such a right.

5. Information requirements established by Community law in relation to commercial communication including advertising or marketing, a non-exhaustive list of which is contained in Annex II, shall be regarded as material.

Section 2

Aggressive commercial practices

Article 8

Aggressive commercial practices

A commercial practice shall be regarded as aggressive if, in its factual context, taking account of all its features and circumstances, by harassment, coercion, including the use of physical force, or undue influence, it significantly impairs or is likely to significantly impair the average consumer's freedom of choice or conduct with regard to the product and thereby causes him or is likely to cause him to take a transactional decision that he would not have taken otherwise.

Article 9

Use of harassment, coercion and undue influence

In determining whether a commercial practice uses harassment, coercion, including the use of physical force, or undue influence, account shall be taken of:

- (a) its timing, location, nature or persistence;
- (b) the use of threatening or abusive language or behaviour;
- (c) the exploitation by the trader of any specific misfortune or circumstance of such gravity as to impair the consumer's judgement, of which the trader is aware, to influence the consumer's decision with regard to the product;
- (d) any onerous or disproportionate non-contractual barriers imposed by the trader where a consumer wishes to exercise rights under the contract, including rights to terminate a contract or to switch to another product or another trader;
- (e) any threat to take any action that cannot legally be taken.

CHAPTER 3

CODES OF CONDUCT

Article 10

Codes of conduct

This Directive does not exclude the control, which Member States may encourage, of unfair commercial practices by code owners and recourse to such bodies by the persons or organisations referred to in Article 11 if proceedings before such bodies are in addition to the court or administrative proceedings referred to in that Article.

Recourse to such control bodies shall never be deemed the equivalent of foregoing a means of judicial or administrative recourse as provided for in Article 11.

CHAPTER 4

FINAL PROVISIONS

Article 11

Enforcement

1. Member States shall ensure that adequate and effective means exist to combat unfair commercial practices in order to enforce compliance with the provisions of this Directive in the interest of consumers.

Such means shall include legal provisions under which persons or organisations regarded under national law as having a legitimate interest in combating unfair commercial practices, including competitors, may:

(a) take legal action against such unfair commercial practices;

and/or

(b) bring such unfair commercial practices before an administrative authority competent either to decide on complaints or to initiate appropriate legal proceedings.

It shall be for each Member State to decide which of these facilities shall be available and whether to enable the courts or administrative authorities to require prior recourse to other established means of dealing with complaints, including those referred to in

Article 10. These facilities shall be available regardless of whether the consumers affected are in the territory of the Member State where the trader is located or in another Member State.

It shall be for each Member State to decide:

(a) whether these legal facilities may be directed separately or jointly against a number of traders from the same economic sector;

and

(b) whether these legal facilities may be directed against a code owner where the relevant code promotes non-compliance with legal requirements.

2. Under the legal provisions referred to in paragraph 1, Member States shall confer upon the courts or administrative authorities powers enabling them, in cases where they deem such measures to be necessary taking into account all the interests involved and in particular the public interest:

(a) to order the cessation of, or to institute appropriate legal proceedings for an order for the cessation of, unfair commercial practices;

or

(b) if the unfair commercial practice has not yet been carried out but is imminent, to order the prohibition of the practice, or to institute appropriate legal proceedings for an order for the prohibition of the practice,

even without proof of actual loss or damage or of intention or negligence on the part of the trader.

Member States shall also make provision for the measures referred to in the first subparagraph to be taken under an accelerated procedure:

— either with interim effect,

or

— with definitive effect,

on the understanding that it is for each Member State to decide which of the two options to select.

Furthermore, Member States may confer upon the courts or administrative authorities powers enabling them, with a view to eliminating the continuing effects of unfair commercial practices the cessation of which has been ordered by a final decision:

(a) to require publication of that decision in full or in part and in such form as they deem adequate;

(b) to require in addition the publication of a corrective statement.

3. The administrative authorities referred to in paragraph 1 must:

(a) be composed so as not to cast doubt on their impartiality;

(b) have adequate powers, where they decide on complaints, to monitor and enforce the observance of their decisions effectively;

(c) normally give reasons for their decisions.

Where the powers referred to in paragraph 2 are exercised exclusively by an administrative authority, reasons for its decisions shall always be given. Furthermore, in this case, provision must be made for procedures whereby improper or unreasonable exercise of its powers by the administrative authority or improper or unreasonable failure to exercise the said powers can be the subject of judicial review.

Article 12

Courts and administrative authorities: substantiation of claims

Member States shall confer upon the courts or administrative authorities powers enabling them in the civil or administrative proceedings provided for in Article 11:

(a) to require the trader to furnish evidence as to the accuracy of factual claims in relation to a commercial practice if, taking into account the legitimate interest of the trader and any other party to the proceedings, such a requirement appears appropriate on the basis of the circumstances of the particular case;

and

(b) to consider factual claims as inaccurate if the evidence demanded in accordance with (a) is not furnished or is deemed insufficient by the court or administrative authority.

Article 13

Penalties

Member States shall lay down penalties for infringements of national provisions adopted in application of this Directive and shall take all necessary measures to ensure that these are enforced. These penalties must be effective, proportionate and dissuasive.

Article 14

Amendments to Directive 84/450/EEC

Directive 84/450/EEC is hereby amended as follows:

1. Article 1 shall be replaced by the following:

'Article 1

The purpose of this Directive is to protect traders against misleading advertising and the unfair consequences thereof and to lay down the conditions under which comparative advertising is permitted.;

2. in Article 2:

— point 3 shall be replaced by the following:

'3. "trader" means any natural or legal person who is acting for purposes relating to his trade, craft, business or profession and any one acting in the name of or on behalf of a trader.;

— the following point shall be added:

'4. "code owner" means any entity, including a trader or group of traders, which is responsible for the formulation and revision of a code of conduct and/or for monitoring compliance with the code by those who have undertaken to be bound by it.;

3. Article 3a shall be replaced by the following:

'Article 3a

1. Comparative advertising shall, as far as the comparison is concerned, be permitted when the following conditions are met:

- (a) it is not misleading within the meaning of Articles 2(2), 3 and 7(1) of this Directive or Articles 6 and 7 of 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 (*);
- (b) it compares goods or services meeting the same needs or intended for the same purpose;
- (c) it objectively compares one or more material, relevant, verifiable and representative features of those goods and services, which may include price;
- (d) it does not discredit or denigrate the trade marks, trade names, other distinguishing marks, goods, services, activities, or circumstances of a competitor;
- (e) for products with designation of origin, it relates in each case to products with the same designation;
- (f) it does not take unfair advantage of the reputation of a trade mark, trade name or other distinguishing marks of a competitor or of the designation of origin of competing products;
- (g) it does not present goods or services as imitations or replicas of goods or services bearing a protected trade mark or trade name;
- (h) it does not create confusion among traders, between the advertiser and a competitor or between the advertiser's trade marks, trade names, other distinguishing marks, goods or services and those of a competitor.

4. Article 4(1) shall be replaced by the following:

'1. Member States shall ensure that adequate and effective means exist to combat misleading advertising in order to enforce compliance with the provisions on comparative advertising in the interest of traders and competitors. Such means shall include legal provisions under which persons or organisations regarded under national law as having a legitimate interest in combating misleading advertising or regulating comparative advertising may:

(a) take legal action against such advertising;

or

(b) bring such advertising before an administrative authority competent either to decide on complaints or to initiate appropriate legal proceedings.

It shall be for each Member State to decide which of these facilities shall be available and whether to enable the courts or administrative authorities to require prior recourse to other established means of dealing with complaints, including those referred to in Article 5.

It shall be for each Member State to decide:

(a) whether these legal facilities may be directed separately or jointly against a number of traders from the same economic sector;

and

(b) whether these legal facilities may be directed against a code owner where the relevant code promotes non-compliance with legal requirements.;

5. Article 7(1) shall be replaced by the following:

'1. This Directive shall not preclude Member States from retaining or adopting provisions with a view to ensuring more extensive protection, with regard to misleading advertising, for traders and competitors.'

(*) OJ L 149, 11.6.2005, p. 22.;

Article 15

Amendments to Directives 97/7/EC and 2002/65/EC

1. Article 9 of Directive 97/7/EC shall be replaced by the following:

'Article 9

Inertia selling

Given the prohibition of inertia selling practices laid down in Directive 2005/29/EC of 11 May 2005 of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market (*), Member States shall take the measures necessary to exempt the consumer from the provision of any consideration in cases of unsolicited supply, the absence of a response not constituting consent.

(*) OJ L 149, 11.6.2005, p. 22.;

2. Article 9 of Directive 2002/65/EC shall be replaced by the following:

'Article 9

Given the prohibition of inertia selling practices laid down in Directive 2005/29/EC of 11 May 2005 of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market (*) and without prejudice to the provisions of Member States' legislation on the tacit renewal of distance contracts, when such rules permit tacit renewal, Member States shall take measures to exempt the consumer from any obligation in the event of unsolicited supplies, the absence of a reply not constituting consent.

(*) OJ L 149, 11.6.2005, p. 22.'

Article 16

Amendments to Directive 98/27/EC and Regulation (EC) No 2006/2004

1. In the Annex to Directive 98/27/EC, point 1 shall be replaced by the following:

'1. 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 (OJ L 149, 11.6.2005, p. 22).'

2. In the Annex 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 the consumer protection law (the Regulation on consumer protection cooperation) ⁽¹⁾ the following point shall be added:

'16. 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 (OJ L 149, 11.6.2005, p. 22).'

Article 17

Information

Member States shall take appropriate measures to inform consumers of the national law transposing this Directive and shall, where appropriate, encourage traders and code owners to inform consumers of their codes of conduct.

Article 18

Review

1. By 12 June 2011 the Commission shall submit to the European Parliament and the Council a comprehensive report on the application of this Directive, in particular of Articles 3(9) and 4 and Annex I, on the scope for further harmonisation and simplification of Community law relating to consumer protection, and, having regard to Article 3(5), on any measures that need to be taken at Community level to ensure that appropriate levels of consumer protection are maintained. The report shall be accompanied, if necessary, by a proposal to revise this Directive or other relevant parts of Community law.

2. The European Parliament and the Council shall endeavour to act, in accordance with the Treaty, within two years of the presentation by the Commission of any proposal submitted under paragraph 1.

Article 19

Transposition

Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive by 12 June 2007. They shall forthwith inform the Commission thereof and inform the Commission of any subsequent amendments without delay.

(1) OJ L 364, 9.12.2004, p. 1.

They shall apply those measures by 12 December 2007. When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Article 20

Entry into force

This Directive shall enter into force on the day following its publication in the *Official Journal of the European Union*.

Article 21

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 11 May 2005.

For the European Parliament
The President
J. P. BORRELL FONTELES

For the Council
The President
N. SCHMIT

ANNEX I

**COMMERCIAL PRACTICES WHICH ARE IN ALL CIRCUMSTANCES
CONSIDERED UNFAIR**

Misleading commercial practices

1. Claiming to be a signatory to a code of conduct when the trader is not.
2. Displaying a trust mark, quality mark or equivalent without having obtained the necessary authorisation.
3. Claiming that a code of conduct has an endorsement from a public or other body which it does not have.
4. Claiming that a trader (including his commercial practices) or a product has been approved, endorsed or authorised by a public or private body when he/it has not or making such a claim without complying with the terms of the approval, endorsement or authorisation.
5. Making an invitation to purchase products at a specified price without disclosing the existence of any reasonable grounds the trader may have for believing that he will not be able to offer for supply or to procure another trader to supply, those products or equivalent products at that price for a period that is, and in quantities that are, reasonable having regard to the product, the scale of advertising of the product and the price offered (bait advertising).
6. Making an invitation to purchase products at a specified price and then:
 - (a) refusing to show the advertised item to consumers;
 - or
 - (b) refusing to take orders for it or deliver it within a reasonable time;
 - or
 - (c) demonstrating a defective sample of it,with the intention of promoting a different product (bait and switch)
7. Falsely stating that a product will only be available for a very limited time, or that it will only be available on particular terms for a very limited time, in order to elicit an immediate decision and deprive consumers of sufficient opportunity or time to make an informed choice.
8. Undertaking to provide after-sales service to consumers with whom the trader has communicated prior to a transaction in a language which is not an official language of the Member State where the trader is located and then making such service available only in another language without clearly disclosing this to the consumer before the consumer is committed to the transaction.
9. Stating or otherwise creating the impression that a product can legally be sold when it cannot.

10. Presenting rights given to consumers in law as a distinctive feature of the trader's offer.
11. Using editorial content in the media to promote a product where a trader has paid for the promotion without making that clear in the content or by images or sounds clearly identifiable by the consumer (advertorial). This is without prejudice to Council Directive 89/552/EEC ⁽¹⁾.
12. Making a materially inaccurate claim concerning the nature and extent of the risk to the personal security of the consumer or his family if the consumer does not purchase the product.
13. Promoting a product similar to a product made by a particular manufacturer in such a manner as deliberately to mislead the consumer into believing that the product is made by that same manufacturer when it is not.
14. Establishing, operating or promoting a pyramid promotional scheme where a consumer gives consideration for the opportunity to receive compensation that is derived primarily from the introduction of other consumers into the scheme rather than from the sale or consumption of products.
15. Claiming that the trader is about to cease trading or move premises when he is not.
16. Claiming that products are able to facilitate winning in games of chance.
17. Falsely claiming that a product is able to cure illnesses, dysfunction or malformations.
18. Passing on materially inaccurate information on market conditions or on the possibility of finding the product with the intention of inducing the consumer to acquire the product at conditions less favourable than normal market conditions.
19. Claiming in a commercial practice to offer a competition or prize promotion without awarding the prizes described or a reasonable equivalent.
20. Describing a product as 'gratis', 'free', 'without charge' or similar if the consumer has to pay anything other than the unavoidable cost of responding to the commercial practice and collecting or paying for delivery of the item.
21. 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.
22. Falsely claiming or creating the impression that the trader is not acting for purposes relating to his trade, business, craft or profession, or falsely representing oneself as a consumer.
23. Creating the false impression that after-sales service in relation to a product is available in a Member State other than the one in which the product is sold.

⁽¹⁾ Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities (OJ L 298, 17.10.1989, p. 23). Directive as amended by Directive 97/36/EC of the European Parliament and of the Council (OJ L 202, 30.7.1997, p. 60).

Aggressive commercial practices

24. Creating the impression that the consumer cannot leave the premises until a contract is formed.
25. Conducting personal visits to the consumer's home ignoring the consumer's request to leave or not to return except in circumstances and to the extent justified, under national law, to enforce a contractual obligation.
26. Making persistent and unwanted solicitations by telephone, fax, e-mail or other remote media except in circumstances and to the extent justified under national law to enforce a contractual obligation. This is without prejudice to Article 10 of Directive 97/7/EC and Directives 95/46/EC ⁽¹⁾ and 2002/58/EC.
27. Requiring a consumer who wishes to claim on an insurance policy to produce documents which could not reasonably be considered relevant as to whether the claim was valid, or failing systematically to respond to pertinent correspondence, in order to dissuade a consumer from exercising his contractual rights.
28. Including in an advertisement a direct exhortation to children to buy advertised products or persuade their parents or other adults to buy advertised products for them. This provision is without prejudice to Article 16 of Directive 89/552/EEC on television broadcasting.
29. Demanding immediate or deferred payment for or the return or safekeeping of products supplied by the trader, but not solicited by the consumer except where the product is a substitute supplied in conformity with Article 7(3) of Directive 97/7/EC (inertia selling).
30. Explicitly informing a consumer that if he does not buy the product or service, the trader's job or livelihood will be in jeopardy.
31. Creating the false impression that the consumer has already won, will win, or will on doing a particular act win, a prize or other equivalent benefit, when in fact either:
 - there is no prize or other equivalent benefit,
 - or
 - taking any action in relation to claiming the prize or other equivalent benefit is subject to the consumer paying money or incurring a cost.

⁽¹⁾ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31). Directive as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

ANNEX II

**COMMUNITY LAW PROVISIONS SETTING OUT RULES FOR ADVERTISING
AND COMMERCIAL COMMUNICATION**

Articles 4 and 5 of Directive 97/7/EC

Article 3 of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours ⁽¹⁾

Article 3(3) of Directive 94/47/EC of the European Parliament and of the Council of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of a right to use immovable properties on a timeshare basis ⁽²⁾

Article 3(4) of Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers ⁽³⁾

Articles 86 to 100 of Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use ⁽⁴⁾

Articles 5 and 6 of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) ⁽⁵⁾

Article 1(d) of Directive 98/7/EC of the European Parliament and of the Council of 16 February 1998 amending Council Directive 87/102/EEC for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit ⁽⁶⁾

Articles 3 and 4 of Directive 2002/65/EC

Article 1(9) of Directive 2001/107/EC of the European Parliament and of the Council of 21 January 2002 amending Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) with a view to regulating management companies and simplified prospectuses ⁽⁷⁾

Articles 12 and 13 of Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation ⁽⁸⁾

Article 36 of Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance ⁽⁹⁾

⁽¹⁾ OJ L 158, 23.6.1990, p. 59.

⁽²⁾ OJ L 280, 29.10.1994, p. 83.

⁽³⁾ OJ L 80, 18.3.1998, p. 27.

⁽⁴⁾ OJ L 311, 28.11.2001, p. 67. Directive as last amended by Directive 2004/27/EC (OJ L 136, 30.4.2004, p. 34).

⁽⁵⁾ OJ L 178, 17.7.2000, p. 1.

⁽⁶⁾ OJ L 101, 1.4.1998, p. 17.

⁽⁷⁾ OJ L 41, 13.2.2002, p. 20.

⁽⁸⁾ OJ L 9, 15.1.2003, p. 3.

⁽⁹⁾ OJ L 345, 19.12.2002, p. 1. Directive as amended by Council Directive 2004/66/EC. (OJ L 168, 1.5.2004, p. 35).

Article 19 of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments ⁽¹⁾

Articles 31 and 43 of Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance ⁽²⁾ (third non-life insurance Directive)

Articles 5, 7 and 8 of Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading ⁽³⁾

⁽¹⁾ OJ L 145, 30.4.2004, p. 1.

⁽²⁾ OJ L 228, 11.8.1992, p. 1. Directive as last amended by Directive 2002/87/EC of the European Parliament and of the Council (OJ L 35, 11.2.2003, p. 1).

⁽³⁾ OJ L 345, 31.12.2003, p. 64.