



UNFAIR COMMERCIAL PRACTICES

An analysis of the existing national laws on unfair commercial practices between
business and consumers in the new Member States

Coordinated by

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General Report

Preface

This report was compiled between December 2004 and September 2005 by a group of academics and practitioners from the ten new EU Member States. It was commissioned by the Directorate-General Health and Consumer Protection of the European Commission (DG SANCO) and it was coordinated by the British Institute of International and Comparative Law in London. The report is not intended as a contribution to the academic discussion, but rather as assistance and advice for the European Commission.

The report provides an analysis of the existing national rules, including case law, on unfair commercial practices between businesses and consumers in the ten new Member States. It complements the *Analysis of National Fairness Laws Aimed at Protecting Consumers in Relation to Commercial Practices*, coordinated by Prof. Dr. Reiner Schulze and Prof. Dr. Hans Schulte-Nölke. This analysis was published on the EU website in June 2003.¹ However, the focus of the reports is slightly different. The 2003 Report was carried out to aid the Commission in the preparation of a possible European legal framework on fair commercial practices. This report aims to assist the European Commission in supervising the implementation by the Member States of the Directive on Unfair Commercial Practices which was adopted (June 2005) when this research was carried out.

This report consists of two parts. The first part contains a comparative analysis of the national laws on unfair commercial practices between business and consumers and brings together the relevant information from the Member States. It does so in three chapters. The first chapter will deal with general provisions on unfair commercial practices. It provides an overview of the legislation by which the current business-to-consumer Directives have been transposed into national law, of the national frameworks on unfair commercial practices, the question whether there is a general clause regarding these practices, definitions of consumers, traders and the like, as well as an overview of cases, decisions and codes of conduct. The second chapter covers provisions on specific issues such as misleading and comparative advertising, aggressive practices, distance marketing and selling, face to face marketing, price reduction techniques, information requirements and after sales practices. The third chapter sets out the main obstacles for implementation of the Directive and suggests possible means by which the Directive could be implemented into national law. In addition, this chapter gives an overview of the existing differences in sanctions and enforcement and highlights the nexuses between the law on unfair commercial practices and several other fields of law. These analyses will be followed by brief summaries of the state of affairs in the Member States concerning the particular issue.

The second part of the study sets out the National Reports which provide more detailed information on the national laws on commercial fairness in several Member States. The reports were produced in response to a questionnaire on the national legal systems which can be found in the annex to the second part.

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http://europa.eu.int/comm/consumers/cons_int/safe_shop/fair_bus_pract/green_pap_comm/studies/unfair_practices_e_n.pdf.

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0 EXECUTIVE SUMMARY

(1) The national legal systems vary greatly in the way they deal with the regulation of unfair commercial practices. The transposition into the national laws of the relevant EC Directives in the consumer protection area or internal market Directives with a business-to-consumer emphasis has taken place in different ways. Most of these Directives only provided for minimum harmonisation.

(2) As regards unfair commercial practices the legislation in the Member States provides for both general and specific rules. A general clause on unfair commercial practices is found in a vast majority of the Member States' laws. All of these clauses are supplemented and specified by a number of more specific rules which, to a great extent, follow the EC Directives on consumer protection and the internal market. In this respect it goes without saying that the general clause only applies if there is no special provision covering the particular case (*lex specialis derogat legi generali*).

(3) The content of the existing general clauses of the legal systems of the Member States refer to concepts such as good trading practices, more specifically to the *bonos mores* of the competition, honesty and good morals, business integrity, the principle of good faith or good business practices.

(4) The national rules on unfair commercial practices also differ in scope. They can be aimed to protect market players such as consumers (or customers) and traders, as well as the proper functioning of the market. It is assumed that protection of the proper functioning of the market is, in the end, in the interest of both business and consumers.

(5) The legislation in the Member States contains various definitions of *consumer*, *business* and *trader*, although the variations are not very significant since their meaning is often analogous to the definitions of 'consumer' and 'trader' set out in the various EC Directives.

(6) There are various provisions on commercial practices directed at vulnerable groups of consumers. These particularly the termination of contracts that concern children and those that

relate to the supply of energy. It is a general principle in all Member States' legislation that stricter standards must apply to marketing addressed to children. These provisions are to be found in the laws on advertising.

(7) The legislative provisions dealing directly or indirectly with practices that might be considered unfair are interpreted by courts. Although in theory the highest court of each Member State plays the role of leading authority, in practice the number of cases decided by courts of second instance or the highest court is very low. Hence the new Member States do not have a well established body of case law.

(8) The national reports show that the answer to the question of whether an advertisement is misleading very much depends on the circumstances of the case. A majority of the Member States have issued legislation enumerating the circumstances which can be taken into account when establishing the misleading character of an advertisement. One of the essential features for fair advertising is that the information provided about the product should be factually correct, although some exaggeration may be permitted in accordance with commercial usage.

(9) A common model concerning comparative advertising is envisaged through the implementation of Directive 97/55/EC (amending Directive 84/450/EEC) in Member States' laws in this field. In accordance with this Directive comparative advertising is allowed in the Member States provided certain conditions and requirements are met.

(10) Aggressive practices are related to other areas of unfair commercial practices. One may think of advertising law, as well as the more specific marketing techniques that can be aggressive but not necessarily so, such as distance marketing, face-to-face marketing and price reduction techniques. Most Member States do not provide for specific legislation to tackle aggressive practices but in a number of them these practices can be sanctioned with the help of general contract law or tort law provisions in the relevant commercial or civil code.

(11) Enforcement of provisions on unfair commercial practices and the imposition of sanctions are achieved in various ways. In a number of Member States civil enforcement is carried out by public authorities; in others the emphasis is on private enforcement. Other Member States also impose criminal sanctions on business conducting unfair commercial practices. Some of the Member States have a general public authority or specific public authorities to deal with

complaints launched by affected individuals (consumers and businesses) or organisations. Complaints can also be dealt with at a self-regulatory level whereby a consumer can claim a remedy through another independent body. In addition, private enforcement is foreseen in all the Member States by the lodging of a civil claim for infringement of fair commercial practice rules. Such claims can be filed by consumers, competitors, business, and consumer associations and the claim can involve damages or an injunction order. Furthermore, some Member States provide for criminal sanctions where certain unfair commercial practices are punishable by a fine and/or imprisonment.

(12) A general concern in all Member States concerning the process of transposition is to reconcile the existing detailed legislation in relation to business-to-consumer practices with the Unfair Commercial Practices (UCP) Directive. Given the Directive's maximum harmonisation character, such legislation has to be amended or revoked, for example Poland applies a broader concept of 'consumer' than the Directive does.

(13) The general view in the new Member States on the implementation of the Unfair Commercial Practices Directive is that no substantial obstacles are foreseen. However, some countries have reported that the implementation - and further enforcement - of the Directive could cause problems because of current legal practice in the new Member States. After the implementation stage, problems could arise in application of the Directive. Some Member States have less experience in applying rules of a general nature, which might affect the application of the new legislation. The interpretation of consumer protection laws as well as practical application of the new terminology such as 'average consumer', 'professional diligence' and 'material distortion of the economic behaviour of consumers' could cause problems for the courts and for the enforcing agencies.

1. GENERAL PROVISIONS ON UNFAIR COMMERCIAL PRACTICES

1.1 National legal frameworks dealing with unfair commercial practices

1.1.1 Overview

After a brief introduction and a delimitation of the problem, this chapter will provide an overview of the various ways in which ‘business-to-consumer’ law is structured in the Member States (*see section B*). The national frameworks regarding unfair commercial practices will then be set out (*see section C*).

The national legal systems show a great variety of the ways in which they deal with the regulation of unfair commercial practices in the broad sense of the word. It goes without saying that they have all transposed the relevant EC Directives into their national laws (*see section B*). Pursuant to that legislation, Member States provide general and specific national rules on unfair commercial practices (*see section C*).

Most New Member States have a fairly recent practice of market regulation and consumer protection in accordance with the western European model. This means that they have only just started to build up their own body of consumer protection law.

1.1.2 Constitutional aspects

In the new Member States the importance of the general notion of consumer protection is underpinned by the fact that in some of them the Constitution itself contains a provision on consumer protection. These are set out briefly below.

Lithuania

Article 46 (5) of the Lithuanian Constitution provides that the State shall protect the interests of consumers.

Poland

Article 76 of the Polish Constitution of 1997 expressly stipulates that ‘public authorities protect consumers, users and tenants from activities jeopardizing their health, privacy and safety and from unfair commercial practices’. Although, according to many authoritative writers, this is a crucial provision it does not give consumers a direct constitutional right to sue the authorities in vertical proceedings, or to sue undertakings in horizontal proceedings. The Article indicates that the level of protection provided shall be determined by Acts of Parliament. It has also been said that Article 76 cannot, as for the time being, constitute a basis for abstract control of Acts of Parliament. The Article has been used, albeit modestly and without detailed analysis, in court judgments – the Constitutional Tribunal has mentioned it on a few occasions. The crucial role of Article 76 can therefore be seen in its potential rather than in what it directly changes at the moment. In particular, the Article may in future be used as a guide in the interpretation of Acts of Parliament or in the assessment (by the Constitutional Tribunal or the General Administrative Court), of activities of public authorities or by ordinary courts in deciding upon cases involving protected persons.

1.1.3 *Unfair competition in the sense of the Articles 81 and 82 EC Treaty*

An important body of legislation and case law regulating unfair commercial practices throughout the EU is provided by Articles 81 and 82 EC Treaty and their equivalents in the national laws concerning unfair competition. However, these provisions fall outside the scope of this research.

1.1.4 *National legal frameworks regarding consumer related law*

The following (consumer protection and internal market EC Directives are of relevance with regard to the Unfair Commercial Practices Directive:

- Directive 84/450 (Misleading Advertising) *to be amended under UCP Directive*
- Directive 85/374 (Liability for Defective Products)
- Directive 85/577 (Contracts Negotiated Away from Business Premises)
- Directive 90/314 (Package Travel and Holiday Tours)
- Directive 93/13 (Unfair Terms in Consumer Contracts)
- Directive 94/47 (Purchase of the Right to Use Immovable Properties on a Timeshare Basis)
- Directive 97/7 (Distance Contracts) *to be amended under UCP Directive*
- Directive 98/6 (Indication of Prices of Products)
- Directive 98/27 (Injunctions for the Protection of Consumers' Interests)
- Directive 99/44 (Certain Aspects of the Sale of Consumer Goods and Associated Guarantees)
- Directive 2002/65/EC (Distance Marketing of Consumer Financial Services) amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC; *to be amended under UCP Directive*

Most of these Directives deal with specific aspects of unfair commercial conduct and unfair commercial practices. The Directive on Unfair Commercial Practices deals partly with other specific, and partly with more general and overarching, aspects of commercial conduct towards consumers. This intertwining is also illustrated by the fact that three existing Directives are amended by the Unfair Commercial Practices Directive. In this sense the above Directives, that aim to regulate business-to-consumer (“B2C”) practices, also regulate several aspects of unfair commercial practices and impose duties to trade fairly in specific circumstances.

An important difference between the UCP Directive and most of the other Directives, particularly the consumer protection Directives, is that the former provides maximum (or total) harmonisation. In the EC’s latest Communication on European Contract Law the Commission suggests that it will reconsider the principle of minimum harmonisation. This discussion is framed within the broader context of a European Contract Law, which as such is not the goal of the Commission. It has, however, come out with several proposals and ideas to further the discussion. Moving from minimum to maximum harmonisation is one of these ideas next to, for instance, the development of a Common Frame of References (COM (2001) 398 def, OJ 2001, C 255/1; COM (2003) 68 def OJ 2003, C-63/01; COM (2004) 651 def.).

The legal frameworks in which consumer law is set out in the new Member States differ considerably. Three different approaches can be distinguished:

- (i) Most countries have transposed the Directives into their national laws in separate Acts.
- (ii) Some countries have adopted a general Consumer Protection Act in which a number of the Directives have been implemented.
- (iii) Other countries have implemented various Directives in the Civil Code or its equivalent.

Below is a brief overview of the way in which the various Member States have transposed the B2C Directives into their national laws. This may also be an indication for the way in which the Unfair Commercial Practices Directive will be transposed into national law.

1.1.5 Country overview

See Annex: Overview of new Member States legislation implementing B2C Directives

1.1.6 National legislation on unfair commercial practices

The legislation of most of the new Member States dealing with unfair commercial practices varies considerably. In a number of countries the legislation combines elements of private law, administrative law and criminal law.

Various approaches can be distinguished in the legal frameworks in which business-to-consumer legislation is adopted in the Member States.

1. Most countries have brought together the main commercial fairness rules in one or two statutes on market practices aimed at protecting consumers and competitors against unfair commercial practices: the *Czech* Commercial Code and the Act on Consumer Protection, the *Estonian* Consumer Protection Act, the *Hungarian* Act on Prohibition of Unfair and Restrictive Market Practices and the Act on Consumer Protection, the *Lithuanian* Law on Consumer Protection, the *Maltese* Consumer Affairs Act, the *Polish* Act on Combating Unfair Competition, the *Slovakian* Commercial Code and the Act on Consumer Protection and the *Slovenian* Law on the Protection of Consumers and the Code on Commercial and Civil Obligations.

The approach taken in Slovenia is slightly different. Here the scope of the general legislation is limited to business-to-business situations and the rules do not apply to business-to-consumer situations.

2. Cyprus and Latvia do not have a general statutory framework for protection against unfair commercial practices. These countries have only specific legislation in this area. The specific legislation is supplemented by the possibility of legal action on the basis of general tort law or general contract law.

This can be illustrated with the following overview of the national legal frameworks dealing with unfair commercial practices.

1.1.7 Country overview

Cyprus

There is neither a comprehensive codification of market practices nor general legislation on unfair commercial practices. A number of more specific legislative provisions deal with several aspects of unfair commercial practices.

First, fairness of commercial practices can be challenged under common law because an unfair commercial practice may, in appropriate cases, constitute a breach of contract or duress or undue influence. It can also be the basis for other tortious claims, such as passing off or injurious falsehood depending on the nature of the case.

Secondly, under s. 3(1) of the *Trade Description Act of 1987-2000* a false or inaccurate trade description of goods and supply of, or offer to supply, goods to which an inaccurate trade description has been applied are prohibited. The offender is liable to a fine not exceeding CYP 750 or imprisonment not exceeding twelve months or to both (under section 16 of the Trade Description Act of 1987 - 2000) depending on the facts of the case. Under s.5 of the above Act, importation into or supply within Cyprus of any goods which are not labelled or accompanied in an obvious and clear manner with an indication of the country of production or manufacture is prohibited. Further, the Minister of Commerce, Industry and Tourism is empowered under s. 14 of this Act to make an order for the labelling of any goods or any order that certain goods must be accompanied by a clear indication of certain information. In particular, under s.18 of this Act, the authorities may confiscate products with an inaccurate trade description, which are imported into Cyprus. These provisions have the effect of protecting the interests of competitors. Also, under s. 9 A of the same Act a person who, in the course of a trade, business or profession, commits an offence to consumers involving the provision of any misleading indication as to the price of any product or services is subject to a fine or imprisonment or to both, as aforesaid. The Inscription of the Sale of Price and the Unitary Price of Products Act of 2000 implements Directive 98/6/EC on consumer protection with regard to the indication of the prices of products offered to consumers. False representations and false or misleading statements of services are prohibited under sections 10 and 11 of the Trade Description Act of 1987- 2000.

S. 10 of the Trade Description Act of 1987-2000 provides that no person shall in the course of any trade or business give by whatever means any false indication, direct or indirect, that any goods or services supplied by him are of a kind supplied to any person. S. 11 (1) of the Trade Description Act of 1987-2000 provides that, subject to the provisions of any other law, no person shall, in the course of any trade or business, (a) make a statement which he knows to be false; or (b) recklessly make a statement, which is false as to any of the following matters, that is to say (i) the provision in the course of any trade or business of any services, accommodation or facilities, (ii) the nature of any services, accommodation or facilities provided in the course of any trade or business, (iii) the time at which, manner in which or any persons by whom any services, accommodation or facilities, are so provided, as well as the qualifications and capacity of such persons; (iv) the examination, approval or evaluation by any person of any services, accommodation or facilities so provided; (v) the location or amenities of any accommodation so provided; or (vi) the terms of payment and generally the cost of such services, accommodation, or facilities so provided. Any person who contravenes sections 10 and 11(1) of the Trade Description Act of 1987-2000 commits an offence under s.16 of the latter and shall on conviction be liable to a fine not exceeding CYP 750 or to a term of imprisonment not exceeding twelve months or to both such fine and imprisonment.

Czech Republic

The legal means for the protection of economic competition and protection against unfair competition are strictly separate. The Commercial Code expressly relegates the protection of economic competition to a special Act, the Act on the Protection of Competition, which, in its turn, entirely excludes protection against unfair competition. Pursuant to the Commercial Code, the Civil Code also provides protection against unfair competition. An equally important part of the law against unfair competition is contained in the Consumer Protection Act, which regulates in detail certain kinds of unfair competition and provides for the taking of administrative action against them. A Regulation of Advertising provides specific protection against certain unfair competition: see the Act on Regulation of Advertising and the Act on Radio and Television Broadcasting Operation.

§§ 41-43 of the Commercial Code contain general provisions, such as the definition of participants in economic competition (competitors), a ban on abuse of participation in competition (§ 41 of the Commercial Code states that ‘...competitors...may not abuse their participation in...economic competition’) which is divided into unfair competition (§§ 44 to 52) and unlawful limitation of competition. The latter is governed by the Act on the Protection of Economic Competition (see above).

§§ 44-52 of the Commercial Code deal with unfair competition. The first provision contains the general clause, that is, the general criteria of unfair competition and a listing of different categories of unfair competition. The following provisions of § 44 specify more precisely possible cases of unfair competition. § 44 sub 2 of the Commercial Code is not exhaustive; that other unforeseen conduct may be also considered unfair competition, if it fulfils the conditions laid down in the general clause.

§§ 53-55 stipulate the legal means of protection against unfair competition, particularly the scope of claims for loss caused by unfair competition and specific procedural rules for application to such claims. The unfair conduct identified in §§ 45-52 Commercial Code can be classified into four categories:

- Causing possible confusion about goods or services of another competitor (misleading advertising and causing possibility of confusion).
- Providing misleading information about the qualities of goods or services (misleading labelling of goods or services and sponging on a competitor’s reputation).
- Providing incorrect information about other undertaking’s business which could cause harm to it (discrediting and comparative advertising).
- Conduct close to criminal activities (bribery and breach of business secrets).

A fifth rule which does not fit into this categorisation because it is much broader is the prohibition of unfair competitive conduct causing health or environmental hazard. This is a fairly new rule which requires to be further developed in practice.

The Civil Code provides another relevant legal instrument of protection against unfair commercial practices. On the one hand, the Code is applied as a *lex generalis* as compared to the Commercial Code. On the other hand, it contains provisions on consumers’ contracts as well as general provisions on liability for damage.

A damages claim for unfair competition should be filed on the basis of the Commercial Code rather than the Civil Code, because where the claimant is a consumer and the conduct in question falls within § 44 to 47 and § 52 of the Commercial Code, § 54 sub 2 of the Commercial Code reverses the usual burden of evidence so that the defendant has to prove that the conduct

in question was not unfair. The only provision of the Civil Code that could theoretically be applied to claim damages for unfair competition is the general obligation of prevention of damage provided by § 415 CC (there is no similar provision in the Commercial Code) but it is much harder to prove the violation of this obligation.

The Act on Consumer Protection deals with some unfair competitive conduct in detail and allows the imposition of administrative sanctions. However, it is primarily designed to protect consumers whereas the earlier cited Acts are mainly dedicated to protection of the competitive environment and competition as such, although under certain circumstances they also protect consumers.

The only provisions of the Civil Code which are dedicated to consumer protection are the provisions dealing with consumer contracts and provisions on specific types of contracts (contracts of sale, contracts of work) concerning product liability. Other relevant provisions of the Civil Code (such as liability in damages and general provisions on contracts) are of a general nature and have no special application with regard to consumer protection or unfair competition.

The Act on Consumer Protection as an independent legislative measure provides for the imposition of specific sanctions in respect of the conduct that harms consumers. It also contains a stand-alone definition of the consumer.

As mentioned above, the Commercial Code prohibits unfair competitive conduct and its foremost objective is to protect competition. All kinds of conduct described in §§ 44-52 Commercial Code are considered to be unfair competition only if they fulfil the conditions of the general clause (that is, the conduct has to be competitive conduct, contrary to *bonos mores* of competition and capable of harming other competitors or consumers). These provisions are not designed to protect consumers and it is therefore hard for consumers to make use of them. On the other hand, the Act on Consumer Protection contains clear obligations for the protection of consumers (for example, information that must be provided to consumers, or a ban on misleading consumers). The Act on Consumer protection is not related to economic competition at all. Moreover, the protection provided by the Act on Consumer Protection is realized by a public authority (the Czech Business Inspection), which acts on its own initiative, while protection under the Commercial Code has to be enforced in the Courts by the person harmed by the unlawful conduct.

This also reflects in prohibited kinds of commercial practices. On the one hand, § 44 sub. 2 of the Commercial Code bans (a) misleading advertising; (b) misleading labelling of goods and services; (c) causing possibility of confusion; (d) sponging on the reputation of another competitor's enterprise, products or services; (e) bribery; (f) discrediting; (g) comparative advertising; (i) breach of business secrets; (j) endangering the health of consumers and the environment. By contrast the Act on Consumer Protection bans (a) discrimination between consumers; (b) misleading consumers; (c) producing, exporting, importing, selling, supplying or offering of goods that are dangerous due to the possibility of their confusion with food products and (e) exporting, offering or selling humanitarian material and sets numerous obligations regarding providing information about goods.

Estonia

In Estonia there are a number of relevant laws, such as the Consumer Protection Act, the Competition Act and the Law of Obligations Act (LOA). The last of these includes a number of

clauses regarding consumer contracts and transactions with consumers. The sections dealing with consumer transactions of the Law of Obligations are also mandatory, whereas other sections can usually be departed from by mutual agreement.

The main legal instrument relating to unfair commercial practices is the Consumer Protection Act (*Tarbijakaitseadus*). The purpose of that Act is ‘to safeguard consumer rights’ and its scope is to regulate ‘the offer and sale, or marketing in any other manner, of goods or services to consumers by traders’, to determine ‘the rights of consumers as the purchasers or users of goods or services’, and to provide for ‘the organisation and supervision of consumer protection and liability for violations of this Act.’

Article 12 of the Consumer Protection Act states that ‘the offer and sale of goods and services to consumers shall follow good trade practice and be honest with regard to the consumer’. This provision can be characterised as a general clause, although ‘good trade practice’ and being ‘honest with regard to the consumer’ have yet to be defined by the courts or legislation. One of the weaknesses of this provision is that it applies only to sales and offers to consumers, which may not cover unfair practices by which consumers are disadvantaged otherwise than through sales or marketing, but indirectly.

Chapter 7 of the Competition Act (*Konkurentsiseadus*) deals with unfair competition. § 50 (2) simply states that unfair competition is prohibited. Unfair competition is defined as ‘... dishonest trading practices and acts which are contrary to good morals and practices’.

The Law of Obligations Act (*Võlaõigusseadus*) (LOA) is a new Act which entered into force on 1 July 2002 and replaced a number of instruments, including provisions of the Civil Code which partly dated back to the Soviet era. The Law of Obligations Act is the main instrument for regulating contractual and non-contractual relationships. Its general part includes provisions such as the principle of good faith. The Law of Obligations Act contains a number of consumer-oriented specific provisions, but also general provisions.

First, the principle of good faith is enshrined in Article 6 of the Law of Obligations Act which states that ‘obligees and obligors shall act in good faith in their relations with one another’ and: ‘Nothing arising from law, a usage or a transaction shall be applied to an obligation if it is contrary to the principle of good faith.’ The good faith principle has been used in Estonian legal practice in the absence of specific laws. Therefore it could also be applied to unfair commercial practices. There is no case law where only the good faith principle was used to base a claim against a trader. It is usually used as a supporting argument. A damages claim can be based also on the general tort law provisions in the Law of Obligations Act.

Hungary

Article 2 of the Competition Act states that it is prohibited to conduct economic activities in an unfair manner, in particular in a manner that violates or jeopardises the lawful interests of competitors and consumers, or in a way which is in conflict with the requirements of business integrity. By virtue of the generality of Art. 2, the Competition Act applies to business-to-business (B2B) and business-to-consumer (B2C) relations. The Act provides separately classified provisions in this respect.

Concerning the B2B relations, Article 3 of the Competition Act prohibits undertaking violating or jeopardising the good reputation or credit worthiness of a competitor by stating or spreading untrue facts, and by misrepresenting true facts, as well as in any other way. Article 4 prohibits

the gaining of access to, or use of business secrets in an unfair manner and disclose use of such secrets in an unauthorised way to third parties or their publication. The Competition Act prohibits making unfair appeals to somebody with the intention of disrupting existing economic relationships with third parties or preventing the formation of such relationships (Article 5). Article 6 prohibits manufacture, distribution or advertising of goods and services without the consent of competitors if such goods have a characteristic presentation, packaging or labelling, or use of a name, mark or designation, by which a competitor or its goods are usually recognised. Article 7 prohibits infringement of any manner of the fairness of any bidding process - in particular in respect of competitive tenders - and that of auctions or stock exchange deals as well.

The Competition Act includes a general prohibition of unfair influencing of consumer decisions (Chapter III). In order to achieve a high level of consumer protection, the Competition Act covers practices which harm consumers' economic interest directly and may have an indirect effect on competitors' interests (B2C). Article 8 of the Competition Act prohibits misleading consumers in economic competition. For the purposes of the Competition Act, consumers are customers, buyers and users. The Competition Act provisions are directed to protecting consumers and the goal is to avoid material distortion of the economic behaviour of consumers and use of undue influence towards consumers by the trader.

Act CLV of 1997 on Consumer Protection "Consumer Protection Act" contains general provisions on information given to consumers, including labelling (Articles 9-11), user manuals and instructions (Article 12), conformity assessment (Article 13), indication of price (Article 14) and packaging (Article 15). Article 8 of the Consumer Protection Act provides that the purpose of information is the following.

'Consumer information shall be suitable for providing consumers:

- a) with *adequate knowledge* for selecting goods or services, and *with basic knowledge* regarding the basic attributes and characteristics of the goods and services necessary for their use and for the maintenance of the goods; the quality, price or fee of the goods and services; *instructions* relating to the use of goods and any hazards associated with such use,
- b) *with basic information* necessary for enforcing their rights.'

Lithuania

The relevant law in this respect is the Law on Consumer Protection. That Law implements a number of Consumer Directives (see above). It also contains provisions on information for consumers, quality and safety of goods, consumer credit, consumer protection institutions and liability for infringement of the law. Article 6 of the draft law contains a general clause on unfair commercial practices (see below).

Malta

There is no general legal prohibition of all forms of unfair commercial practices. Various laws deal with specific unfair commercial practices.

i. The main piece of legislation for the protection of consumers against unfair commercial practices in B2C relations is the Consumer Affairs Act, Chapter 378 of the Laws of Malta. Passed in 1994, that Act sets out General Principles in Part V, and deals with unfair practices in Part VI, sale of goods to consumers in Part VIII, and compliance orders and enforcement in Parts IX and X.

Article 51 Consumer Affairs Act makes the promotional offer of gifts, prizes and other free items a criminal offence in circumstances where the trader fails to provide them or fails to disclose all the terms and conditions for obtaining them or fails to give a clear and full description of the gifts, prizes or items being offered. Likewise, Article 52 prohibits all forms of pyramid selling schemes and makes the operation or promotion of such schemes a criminal offence.

ii. Articles 32-37 Commercial Code, Chapter 13 of the Laws of Malta, prohibit various forms of unfair competition between traders.

iii. Trademarks Act, Chapter 416 of the Laws of Malta. Articles 6 and 10 prohibits the registration or use of trademarks which, being identical or similar to earlier trademarks would enable the holder to take unfair advantage of, or to damage, the distinctive character or the reputation of the earlier trademark. Use of such trademarks in such circumstances would amount to a criminal offence punishable by a fine and/or imprisonment (Article 72). Art 14 states that an infringement of a registered trademark is actionable by the proprietor of the trademark before the Civil Court First Hall and that in such an action all such relief is available as is available in respect of the infringement of any other property right. Moreover Art 85 states that the provisions of the Act on criminal offences apply without prejudice to the right of any person to claim damages in consequence of any act constituting an offence.

iv. The Trade Descriptions Act, Chapter 313 of the Laws of Malta, likewise makes the application of false trade descriptions and the provision of false or misleading price indications and the making of false or misleading representations and statements a criminal offence for which even imprisonment may be imposed.

v. Article 298 Criminal Code, Chapter 9 of the Laws of Malta, makes the use of misleading advertising and false trade descriptions a similarly punishable criminal offence.

vi. The Food Safety Act, Chapter 449 of the Laws of Malta, and the Labelling, Presentation and Advertising of Foodstuffs Regulations, 2004, LN 483 of 2004, issued under the Act, prohibit misleading claims on labels attached to foodstuffs, advertising and other forms of presentation regarding the characteristics of the foodstuff or attributing to it effects and properties that it does not possess. Non-compliance is a criminal offence.

A damages claim for unfair commercial practices can be based on the general tort law provision(s), if it can be shown that there was fault on the part of the trader and damages were suffered as a result of the practices. In tort, Articles 1031-1033 of the Civil Code provide that a person is liable for the damages caused through his fault. A person is deemed to be at fault if in his own conduct he does not use the prudence, diligence or attention of a *bonus paterfamilias*. Moreover, any person who, with or without intent to injure, voluntarily or through negligence, imprudence or want of attention, is guilty of any act or omission constituting a breach of the duty imposed by law is liable for any resulting damage. This right to a remedy under tort law is specifically stated in Article 37 of the Commercial Code to be available to the injured trader in instances concerning unfair competition but the right to the remedy exists in all other instances to any aggrieved person, be he a trader or consumer, in terms of the criteria laid down in Articles 1031-1033 of the Civil Code and referred to above.

Articles 1424-1432 of the Civil Code also provide that the seller is bound to warrant the thing sold against any latent defects which render it unfit for the use for which it is intended or which diminish its value to such an extent that the buyer would not have bought it or would have tendered a smaller price, if he had been aware of them. If the defects of the thing sold were known to the seller, he is not only bound to repay the price received by him but he is also liable in damages towards the buyer. If the defective thing perishes in consequence of its defects, the loss is borne by the seller who still has to repay and indemnify the buyer.

Poland

The Act on Combating Unfair Competition of 16 April 1993 regulates ‘acts of unfair competition’, including misleading and aggressive conduct of ‘traders’. The aim of the Act is to prevent and fight unfair competition in the interest of the public, traders, customers, in particular the consumers (Article 1). Consumers cannot take a case to the court on the basis of the Act. However, it is possible for them to use other provisions of Polish law: for instance by virtue of Article 388 of the Civil Code of 1964 (referring to the law of contractual obligations and regulating undue influence or exploitation – if one party, by exploiting a difficult position, incapacity or lack of experience of the other party, accepts or demands a benefit disproportionately higher than the benefit that he is obliged to confer on the other party, the latter may demand a sum equal to the difference in the benefits or rescind the contract).

Other provisions which can be used at least indirectly are: Article 5 of the Civil Code (referring to the general ‘use of rights’ – such use cannot be contrary to the socio-economic aim of the right and the principles of social cooperation); and Article 387 of the Civil Code (referring to the case where a contract purports to confer on a party a benefit which is impossible; such a contract is invalid; a party who knew about the impossibility of the benefit and did not inform the other party of it, is liable for losses caused to the latter). Proceedings based on the Act on Combating Unfair Competition against unscrupulous traders can be commenced by certain bodies or organisations representing consumer interests. The Act refers to ‘acts of unfair competition’, which have been defined as acts contrary to legal provisions or the principle of good faith, threatening or infringing the interests of other traders or customers (Article 3.1). The Act regulates specific examples of such conduct – misleading indication of the supplier, misleading or untruthful indication of the geographic origin of the goods or services, misleading description of goods or services, inducement of breach of contract, counterfeiting products, disparagement or unfair praise, unfair or prohibited advertising, organising a snowball system of sale of goods (under certain conditions), lottery sales (under certain conditions), some free gifts, consortium-type organisations aimed at buying rights, movable or immovable goods or services.

Slovakia

Legal protection of economic competition and protection against unfair competition are strictly separated. The Commercial Code expressly delegates the protection of economic competition to a special Act, the Act on the Protection of Competition, which in its turn excludes protection against unfair competition entirely from its application. Pursuant to the Commercial Code, the Civil Code also protects against unfair competition. An equally important part of the law against unfair competition is provided by the Consumer Protection Act, the substantial contribution of which is a detailed regulation of some forms of unfair competition and the availability of administrative action against them. A specific form of protection from unfair competition is the regulation of advertising. Here it is necessary to mention the Act on the Regulation of Advertising and the Act on Radio and Television Broadcasting Operation.

§§ 41-43 Commercial Code contain general provisions, such as the definition of participants in economic competition (competitors), a ban on abuse of participation in competition (§ 41 Commercial Code states that ‘... competitors ... may not abuse their participation in ... economic competition.’) which it divides into unfair competition (§§ 44 to 52) and unlawful limitation of economic competition. The latter is governed by a special Act on the Protection of Economic Competition. The Commercial Code expressly leaves the protection of economic competition to a special Act (Act on Protection of Economic Competition). That Act in its turn expressly excludes unfair competition from its scope.

§§ 44-52 Commercial Code deal with unfair competition. The first provision contains the general clause, i.e. the general criteria of unfair competition and a listing of different categories of unfair competition. The following provisions of this part specify more precisely the possible manners of unfair competition. In this respect it is important to mention that the listing stipulated in the § 44 sub. 2 Commercial Code is not exhaustive so that other unforeseen conduct may be also considered unfair competition, if it fulfils the conditions set forth in the general clause.

§§ 53-55 stipulate the legal means of protection against unfair competition, particularly the active and passive eligibility, the scope of claims deriving from unfair competition and procedural specialities of such claims.

The specific categories of unfair conduct stated in §§ 45-52 Commercial Code can be classified into four categories with one exception. These categories are:

- Causing possible confusion about goods or services of another competitor (misleading advertising and causing possibility of confusion).
- Providing misleading information about the qualities of goods or services (misleading labelling of goods or services and sponging on the reputation).
- Providing incorrect information about business which could cause harm to it (discrediting and comparative advertising).
- Conduct close to criminal activities (bribery and breach of a business secret).

A fifth rule which does not fit into this categorisation because it is much broader is the prohibition of unfair competitive conduct causing health or environmental hazard. This is a rather new rule and it still needs to be developed by practice. Categories of unfair conduct not mentioned in the Act may be qualified as unfair on the basis of the general clause.

Another relevant legal instrument of protection against unfair commercial practices is the Civil Code. On one hand it is applied as a *lex generalis* as compared to the Commercial Code, on the other hand it contains provisions on consumers' contracts as well as general provisions on liability for damage.

A damages claim for unfair competition should be filed on the basis of the Commercial Code rather than on a Civil Code provision, because § 54 sub 2 Commercial Code reverses the burden of evidence on the defendant so that he has to prove that the conduct in question was not unfair (in case the claimant is a consumer and the conduct in question falls within §§ 44 to 47 and § 52 Commercial Code). The only provision of the Civil Code that could theoretically be applied to claim damages for unfair competition is the general obligation of prevention of damages provided for by § 415 CC (there is no similar provision in the Commercial Code) but it is much harder to prove the violation of this obligation.

The Act on Consumer Protection deals with some unfair competitive conducts in detail and allows their administrative sanctioning. However, it is primarily designed to protect consumers, while the above mentioned acts are mostly dedicated to protect the competitive environment and the competition as such, although under certain circumstances it protects customers as well. The Act on Consumer Protection is absolutely independent and it constitutes its own mechanism of sanctioning the conducts harming consumers. It also contains a stand-alone definition of consumer.

As was mentioned above, the Commercial Code prohibits unfair competitive conduct. Its foremost objective is to protect competition. All conducts described in §§ 44-52 Commercial Code are considered unfair competition only if they fulfil the conditions of general clause (i.e. it has to be a competitive conduct, contrary to *bonos mores* of competition and capable of harming other competitors or consumers). These provisions are not designed for protecting consumers and therefore it is hard for consumers to use them.

On the other hand, the Act on Consumer Protection contains clear obligations set to protect the consumer (for example, information that must be provided to consumer, any ban on misleading the consumer). It is not related to economic competition at all. Moreover, the protection under the Act on Consumer Protection is realized by a public authority (Slovak Business Inspection), which acts on its own initiative, while protection under the Commercial Code has to be realized by the harmed subject itself at the court.

This also reflects in prohibited kinds of commercial practices. While § 44 sub. 2 Commercial Code bans (a) misleading advertising; (b) misleading labelling of goods and services; (c) causing possibility of confusion; (d) sponging on reputation of another competitor's enterprise, products or services; (e) bribery; (f) discrediting; (g) breach of business secrets; (h) endangering the health of consumers and the environment, the Act on Consumer Protection bans (a) discriminating consumers; (b) misleading consumers; (c) producing, exporting, importing, selling, giving or offering of goods dangerous due to possibility of their confusion with food products; (d) exporting, offering or selling humanitarian material and sets numerous obligations regarding providing information about goods.

Slovenia

At present, there is no specific legislation in Slovenia governing fairness of commercial practices. Instead, the issue of unfair commercial practices is addressed in a piecemeal manner in a number of laws regulating various aspects of fairness in commercial transactions or sectors of the economy.

The Protection of Competition Law (Competition Act) (*Zakon o varstvu konkurence*) is the most general in its scope. However, it should be noted that the primary purpose of this Law is not the protection of consumers in business transactions, but is, rather, ensuring fairness amongst competitors by providing safeguards against distortions in the market caused by competitive advantages gained by undertakings using unfair commercial practices and, thus, only indirectly protecting economic interests of consumers from unfair B2C commercial practices. Pursuant to Article 2 (1) of the Competition Act the law is binding on legal and natural persons who undertake commercial activity regardless of their legal or organisational structure or ownership.

In addition, the Law on the Protection of Consumers (*Zakon o varstvu potrošnikov*) provides consumers with specific protection in respect of misleading and false advertising. Other relevant laws include the Act on Prevention of Restrictions on Competition (*Zakon o preprečevanju omejevanja konkurence*), the Law on Trade (*Zakon o trgovini*), the Slovenian Code of Obligations (in particular Art. 12), the Penal Code (in particular Art.237), and the Personal Data Protection Act (Articles 72 and 73). Article 12 of the Code on Commercial and Civil Obligations provides that, in determining whether the conduct of undertakings and the consequences of such conduct comply with [], the customs, norms and standard practice established between parties in commercial and civil relationships will be taken into account.

There is also a number of laws that contain provisions on unfair commercial practices (i) in certain sectors of the economy, such as the energy sector (see Energy Act (*Energetski zakon*)), (ii) in respect of certain types of communication, such as electronic communication (see the Law on Electronic Communication (*Zakon o elektronskih komunikacijah*)), (iii) in respect of the purchase of real property (see Law on Real Estate (*Zakon o nepremičninskem posredovanju*) and the Law on the Protection of Buyers of flats and houses (*Zakon o varstvu kupcev stanovanj in hiš*)).

Finally, a number of codes of conduct have been adopted by various business associations which set out rules concerning good business practices. These include: (i) the Statute of the Slovenian Chamber of Commerce, (ii) the Slovenian Advertising Code of the Slovene Advertising Chamber; (iii) the Banking Code of the Association of Banks; (iv) the Code of Legal Ethics of the Bar Association; and (v) the Doctors' Code adopted by the Medical Council of Slovenia.

However, such Codes, apart from those promulgated by the Chamber of Commerce, the Medical Council and Bar Association, are of limited effectiveness. Adherence is strictly voluntary, and there are few sanctions for their breach. That said, the rules set out in these codes provide evidence as to what amounts to good business practices in a specific sector. The courts may then use them as a basis for determining whether certain actions by a business amount to an unfair commercial practice once the Directive is transposed.

Article 26 of the Competition Protection Act provides that a participant (which includes a consumer) can commence legal proceedings to obtain, *inter alia*, damages or a declaration of cessation of unfair competition. Article 27 of the same law provides that a person (including a consumer) who has suffered damages can commence proceedings pursuant to tort or contract law. Article 28 of the same Act gives the Slovenian Market Inspectorate the power to ensure compliance with the terms of the Act and impose sanctions in case of a breach of its terms.

1.2 General clauses

1.2.1 Introduction

Article 5 of the Directive on Unfair Commercial Practices (Prohibition of Unfair Commercial Practices) states that:

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 reach the generality of consumers, but are likely to materially distort the economic behaviour only of a 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.

In the Annex twenty eight misleading and aggressive practices are listed which will be deemed to be unfair. The question is how this new general rule in the Directive relates to the current national laws in the new Member States.

1.2.2 Member States with one or two general clauses

The national reports show that the legislation in a vast majority of the Member States contains a general clause. These clauses, however, differ in scope. All of these clauses are, of course, supplemented and specified in a number of more specific rules which are for a great deal following the EC Directives on consumer protection and the internal market. In this respect it goes without saying that the general clause only applies if there is no special provision covering the particular case (*lex specialis derogat legi generali*).

Czech Republic, Estonia, Hungary, Latvia, Lithuania (in the course of this year), Poland, Slovakia and Slovenia provide for one or two general clauses on unfair commercial practices. Some of these general provisions both regard commercial practices between businesses as well as between businesses and consumers (Czech Republic, Hungary, Latvia, Poland and Slovakia). Other countries have two general clauses, one to protect consumers and one to protect other competitors or the market in general (Estonia and Slovenia). A peculiarity can be found in Poland where the general clause protects consumers but consumers are not able to bring a case to court on the basis of this provision.

1.2.3 Who is protected by these provisions?

Legislation on unfair commercial practices can be issued for various reasons. Generally, this legislation is aimed to protect market players such as consumers (or customers) and traders, as well as the proper functioning of the market. It is assumed that protection of the proper functioning of the market is, in the end, in the interest of both business and consumers.

The proper functioning of the market is particularly is particularly the goal of competition law provisions such as Articles 81 and 82 EC Treaty and their national equivalents. These provisions are outside the scope of this research.

In those countries with a general clause, most general clause(s) prohibiting unfair commercial practices aims to protect both consumers and business. This is the case in Czech Republic, Hungary, Poland and Slovakia. In this respect Poland plays a special role because individual consumers are not allowed to bring claims for breach of the general provision even though the Act on Combating Unfair Competition is aimed to protect consumers.

Estonia and Slovenia possess two general clauses. Estonia has one clause protecting consumers and one clause protecting the proper functioning of the market. Slovenia has two general clauses, one protecting all market participants and one protecting consumers.

1.2.4 *The content of the general clauses*

When defining unfair commercial practices most general clauses refer to good trading practices, more specifically to the *bonos mores* of the competition (Czech Republic, Slovakia), to good trade practice, honesty and good morals (Estonia), to business integrity (Hungary), to the principle of good faith (Poland) or to good business practices (Slovenia).

These references are akin to the references in the Directive to professional diligence and to practices that materially distort or are likely to materially distort the economic behaviour with regard to the product of the average consumer (Article 5)

1.2.5 *Country overview*

Czech Republic

§ 44 section 1 Commercial Code reads: ‘The unfair competition is a conduct in an economic competition, which is contrary to the *bonos mores* of the competition and is capable of harming other competitors or consumers. Unfair competition is prohibited.’ This provision implies three cumulative conditions: conduct in economic competition, violation of *bonos mores* of competition and capable of harming other competitors or consumers. The general clause has a subsidiary character: it can only be applied only if the conduct in question cannot be subsumed under any of the specific types of unfair competitive conduct in § 44 sub 2 and 44-52 Commercial Code.

For example, if an advertising text implies that a product was approved by a particular institution and in fact only one or some of the product’s components were so approved, this qualifies as unfair competition according to § 45 Commercial Code (Decision R3Cmo 53/97).

It is a violation of *bonos mores* in economic competition if a competitor, when starting his business activity and without a relationship of succession implies, indicates or pretends in any way a link of his business activity to any activity of another competitor, or alternatively even implies a continuity of services of another competitor’s activity to the present audience of another competitor’s announcement (Decision R3Cmo 30/98).

Finally, if all the producers labelled their products, produced from the same raw materials, as ‘vanillin sugar’, it is not important that the customers connected the mentioned product in their minds with a product labelled ‘vanilla sugar’. In the situation where all producers supply the market with a product labelled as ‘vanillin’ and customers ask for sugar labelled as ‘vanilla’, but are satisfied with ‘vanillin’ sugar, then there is equality of competitive conditions of all products being competitive to each other. However, if one of the producers starts to use for his products a label, which is subconsciously stated and used by the consumers, it is obvious that these equal conditions were breached. If the product of this producer (differently labelled as ‘vanilla sugar’) does not differ by its contents from the products of other producers using the title ‘vanillin’, the conditions of competition were breached in an unjustified manner and the action of such a producer is to be judged as an action of unfair competition (Decision R3Cmo66/96).

According to § 44 sub 2 unfair competition means in particular the following: misleading advertising, misleading labelling of goods and services, causing possibility of confusion, sponging on reputation of another competitor's enterprise, products or services, bribery, discrediting, comparative advertising, breach of business secrets and endangering the health of consumers and the environment. In this respect the structure of the rule is comparable to that of the Directive in that it has a general clause forbidding unfair commercial practices and subsequently enumerating a number of actions which are deemed to be unfair.

Both the Commercial Code and the Act on Consumer Protection protect competitors and consumers against unfair competition, whereas the Act on Protection of Economic Competition only aims to protect competition and the proper functioning of the market and not consumers.

Estonia

Article 12 Consumer Protection Act (*Tarbijakaitseadus*) provides that 'the offering and sale of goods and services to consumers shall follow good trade practice and be honest with regard to the consumers.' The purpose of the Consumer Protection Act is 'to safeguard consumer rights'.

§ 50(2) of the Competition Act states that 'unfair competition is prohibited.' Unfair competition is defined as 'dishonest trading practices and acts which are contrary to good morals and practices.' The scope of the law is thus to ensure the proper functioning of the market rather than the protection of consumers.

Hungary

Article 2 of the Competition Act (Chapter II of Act No LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices) prohibits conducting economic activities in an unfair manner, in particular in a manner violating or jeopardising the lawful interests of competitors and consumers, or in a way which is in conflict with the requirements of business integrity.

This general clause and other provisions in the Competition Act directly protect consumer economic interests from unfair business-to-consumer commercial practices on the market (B2C). It also indirectly protects legitimate businesses from their competitors who do not abide by the rules in the Competition Act and thus guarantees fair competition in fields coordinated by it (B2B).

Articles 3-7 of the Competition Act further prohibit specific unfair practices such as violating or jeopardising the good reputation or credit-worthiness of a competitor, gaining access to or using business secrets in an unfair manner, making unfair appeals with the intention to disrupt existing economic relationships, unauthorised using a name, mark or designation, by which a competitor or its goods are usually recognized or infringing the fairness of any bidding process.

Latvia

Article 18 of the Competition Act prohibits unfair competition: actions that violate regulatory enactments or the fair practices of commercial activities and which have created or could create a hindrance, restriction or distortion of competition, shall be deemed to be unfair competition. Unfair competition includes for example imitating names or trademarks, disseminating false, incomplete or distorted information regarding other market participants or their employees or goods, the acquisition, the use or distribution of other participants commercial secrets and

coercion of employees of another market participant with threats or bribery in order to create advantages for one's own economic activity.

According to Article 17 Consumer Right Protection Law the manufacturer, seller or service provider is obliged to provide the consumer with true and complete information regarding the quality, safety, price, guarantee and the possibilities for guarantee service, directions regarding use, the name (company name), given name, surname and address of the manufacturer, seller or service provider regarding the goods or services offered, indicating such information in the labelling, the attached instructions for use, the technical certificate or in other written information in respect of such goods or services.

The consumer can file a claim against an unfairly acting business mainly on the basis of Consumer Right Protection Law, but not general tort law.

Lithuania

Article 6 Draft Law amending the Law on consumer rights protection (which will be passed by the Parliament this year) set forth the principle of fair commercial practice. It provides that sellers and service providers must obey fair commercial practice while offering and providing goods and services to the consumers. These have to be offered in such a way that the commercial nature of the offer is clear to the consumer.

Until this draft law is adopted, a consumer is able to claim against an unfairly acting business on the basis of the general tort law provisions. Article 6.716 Civil Code provides that when a client of the service provider is a natural person-consumer-special legal provisions regulating the consumer contracts *mutatis mutandis* should be applied to the service provision contracts as well.

Poland

The Act on Combating Unfair Competition prohibits unfair competition, including misleading and aggressive conduct of traders. Acts of unfair competition are acts contrary to legal provisions or the principle of good faith, threatening or infringing the interests of other traders or the customers (Article 3.1).

Although this Act is said to protect the interests of consumers (Article 1), it gives a direct right of action only to traders, associations representing traders, and the Head of the Office for the Protection of Competition and Consumers (the latter only if the 'act of unfair competition' in question endangers or infringes consumers' interests).

Consumers are unable to take a case to court on the basis of the provisions of this Act. They can, however, rely on for example Article 388 Civil Code (undue influence or exploitation), Article 5 Civil Code (use of rights) and Article 387 Civil Code (impossibility of a contract).

Slovakia

§ 44 section 1 Commercial Code reads: 'The unfair competition is a conduct in an economic competition, which is contrary to the *bonos mores* of the competition and is capable of harming other competitors or consumers. Unfair competition is prohibited' This provision implies three cumulative conditions: conduct in economic competition, violation of *bonos mores* of competition and capable of harming other competitors or consumers. The general clause has a subsidiary character: it can only be applied only if the conduct in question cannot be subsumed

under any of the specific types of unfair competitive conduct in § 44 sub 2 Commercial Code (and §§ 45-52).

According to § 44 sub 2 unfair competition means in particular the following: misleading advertising, misleading labelling of goods and services, causing possibility of confusion, sponging on reputation of another competitor's enterprise, products or services, bribery, discrediting, comparative advertising, breach of business secrets and endangering the health of consumers and the environment. In this respect the structure of the rule is comparable to that of the Directive in that it has a general clause forbidding unfair commercial practices and subsequently enumerating a number of actions which are deemed to be unfair.

Both the Commercial Code and the Act on Consumer Protection protects competitors and consumers against unfair competition, whereas the Act on Protection of Economic Competition only aims to protect competition.

Slovenia

Slovenian law contains two general rules regulating commercial practices.

First, certain commercial practices are prohibited under Article 13 of the Competition Act as amounting to unfair competition. Article 13(2) defines unfair competition as an act contrary to good business practices which causes or is likely to cause damage to another market participant. Article 13(3) sets out a non-exhaustive list of commercial practices which are in all circumstances regarded as constituting unfair competition including misleading commercial practices such as misleading actions and aggressive commercial practices including harassment, coercion, and undue influence.

The term 'market participant' is not defined in the Act but most commentators are of the view that consumers fall within the ambit of this provision and are therefore afforded protection. Articles 26 and 27 provides market participants including consumers the right to commence legal proceedings to obtain, *inter alia*, damages or a declaration for the cessation of unfair competition.

Secondly, Article 25 Consumer Protection Act generally requires a business which sells goods or provides services to consumers to do so 'in a manner which is not contrary to good business practices'. However, the Act does not contain a definition of the term 'good business practices'.

1.2.6 Member States without a general provision on unfair commercial practices

A minority of the new Member States only have set out specific provisions, regulating specific forms of unfair commercial practices. This concerns Cyprus and Malta. In Cyprus this is due to the common law tradition which is usually not very fond of general statutory provisions. In Malta the absence of a general provision may be attributable to a common law influence in this mixed legal system (civil and common law) but this is not clear since much of Maltese private law traditionally followed the civil law tradition. In Malta the general civil liability rule (tort law) applies to unfair commercial practices.

1.2.7 Country overview

Cyprus

Cyprus does not have a comprehensive codification of market practices or a codification of private law containing a general provision on unfair commercial practices. However, various legislative provisions deal directly or indirectly with practices which might be considered as unfair. An unfair commercial practice may constitute a breach of contract in appropriate cases or duress or undue influence as well as other tortious claims, such as passing off or injurious falsehood depending on the nature of the case.

Malta

The legislation of Malta does not contain a general clause on unfair commercial practices. In principle, a consumer may file a claim for damages against a trader under the general tort law provisions of the Civil Code if he or she is able to prove that he or she suffered damages as a direct result of the practices of the trader and that the trader was at fault because he or she did not use the prudence, diligence and attention of a *bonus paterfamilias* or was guilty of culpable negligence.

Article 43 Consumer Affairs Act holds a set of basic consumer rights (General Principles). These are not directly enforceable but any court or tribunal must adhere to in the interpretation of this Act and any regulations under it. Amongst the consumer rights it sets out is the right of protection against unlawful or unfair trading practices.

The only general clause refers to the unfairness of terms in consumer contracts in the Consumer Affairs Act. Although these provisions generally follow the provisions of the Unfair Contract Terms Directive, they go beyond the directive by laying down four alternative criteria. Unfairness results when the term (a) creates a significant imbalance between the rights and obligations of the contracting parties to the detriment of the consumer; or (b) causes the performance of the contract to be unduly detrimental to the consumer; or (c) causes the performance of the contract to be significantly different from that which the consumer could reasonably expect; or (d) is incompatible with the requirements of good faith. The provisions give no definition or guidance on the good faith requirement.

Articles 32-37 Commercial Code, Chapter 13 of the Laws of Malta, prohibit various forms of unfair competition between traders such as the use of names, marks or distinctive devices that might create confusion with the names, marks and devices used by others in the market; or the use of company names or fictitious names to mislead others as to the real importance of the firm; or the use of false indications of origin of goods; or the spreading of news that is prejudicial to other traders; or the subornation of other traders' employees.

1.3 Definitions of consumers, traders and the like

1.3.1 Introduction

Article 2 Directive on Unfair Commercial Practices (Definitions):

- (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.

1.3.2 Legislative definitions of ‘consumer’, ‘trader’ and/or ‘business’

In most Member States the legislation contains various definitions of *consumer*, *business* and *trader*. The various legislations are rather similar and, of course, often akin to the definitions of consumer and trader provided in the various EC Directives.

There are various provisions regulating commercial practices directed at groups of vulnerable consumers. This concerns particularly children and consumer parties to energy contracts as regards their termination. See under C.

1.3.3 Country overview

Cyprus

The concept of *consumer* is defined as: ‘a natural person engaged in a non-commercial, non-business, non-professional activity’. This definition is found in different laws such as: s.2 Distance Marketing of Consumer Financial Services Act, 2004, implementing Directive 2002/65/EEC; s.2 Act for the Conclusion of Consumer, Distance Contracts, 2000, implementing Directive 97/7/EC; s.2 Unfair Contract Terms Act, 2002, implementing Directive 93/13/EEC and s.2 Act for the Consumer Contracts Concluded away from Business Premises, 2000, implementing Directive 85/577/EEC.

Business is generally defined as a trade or profession and the activities of any government department or local or public authority and it is described in the Unfair Contract Terms Act 2002. An example of *trader* is found in the Act for the Consumer Contracts Concluded away from Business Premises, 2000 and in the Inscription of the Sale Price and the Unitary Price of Products Act, 2000.

A *trader* is defined as any natural or legal person, who acts in the course of a trade, business or profession either on his own behalf or through another person.

Czech Republic

The notion of *consumer* is described in two different sources: the Civil Code and the Act on Consumer Protection. According to the provisions established in these laws, consumers may be both individuals and corporations who buy goods or exploit services (Act on Consumer Protection) or who conclude or fulfil a contract (Civil Code), and do not perform these activities within or towards business.

The Commercial Code which regulates unfair competition provides a definition of *competitor* the essential feature of which is the participation in economic competition. It is irrelevant whether the competitor is an individual, a corporation, or an entrepreneur.

Estonia

§ 34 Law of Obligations Act defines *consumer* as a natural person who performs a transaction not related to an independent economic or professional activity.

§ 2(1) Consumer Protection Act defines *consumer* as a natural person to whom goods or services are offered or who acquires or uses goods or services for purposes not related to his or her business or professional activities.

According to § 2(2) Consumer Protection Act a *trader* is defined as a person who offers and sells, or markets in any other manner, goods or provides services to consumers within the scope of the person's business or professional activities.

Hungary

Article 2(e) Act on Consumer Protection defines *consumer* as a person who buys, orders, receives or uses goods – for purposes other than the business or professional activity he engages in – or to whose benefit a service is provided, furthermore, who is the target person of any information or offer on goods or services.

Article 8(1) of the Competition Act defines *consumer* as customer, purchaser or user.

Article 2(f) Commercial Advertising Act describes *consumers* as all private individuals, legal entities and economic associations without legal entity towards whom or which advertising is directed.

Trader in the Competition Act is defined by the term of a company, which means natural and legal entities, including Hungarian branch offices of foreign-registered companies, as well as of unincorporated business associations.

The Advertising Act refers to the *trader* as enterprises and this includes private individuals, legal entities or economic associations without legal entity.

Article 2(j) Consumer Protection Act defines *distributor* as an economic organisation marketing goods and/or services to consumers.

Latvia

Article 1 Consumer Rights Protection Law defines a *consumer* as a natural or legal person who expresses a wish to purchase, purchases or might purchase goods or utilises a service for a purpose which is not directly related to his or her entrepreneurial activity. The same law also defines terms such as *service provider*, *seller* and *service*.

The Commercial Law defines a *commercial activity* as an open economic activity, which is performed by merchants in their name for the purpose of gaining a profit; it is one of the types of entrepreneurial activity. Economic activities are any systematic, independent activities for remuneration.

Lithuania

The Civil Code and Article 2.1 of the Law on Consumer Protection provide a definition of the *consumer*. It is a natural person, who expresses the intention to buy, buys and uses goods or services to meet his own personal or household needs.

Article 2.27 of the Law on Payments provides that *user or consumer* means a natural person who concludes a contract with a credit institution on the provision of services for satisfying personal, family or household needs unconnected to his or her profession or business.

Article 2.32 of the Law on Heat Economy provides that *heat consumer* is a legal or natural person who is connected to heat network.

Article 2(15) of the Law on Advertising provides that *consumer of advertising* means a person for whom the advertisement is intended or whom it can reach.

Article 2 of the Law on Consumer Protection defines *trader* as another party to a contract who sales purchases or services. There is no definition concerning the term *business*.

Malta

Article 2 Consumer Affairs Act defines *consumer* as any individual who in transactions and other matters covered by this Act or any regulations made hereunder, is acting for purposes which are not related to his trade, business, craft or profession. This is, however, extended to any other individual not being the immediate purchaser or beneficiary, and whether or not a member of the consumer's household, who has been expressly or tacitly authorized or permitted by the consumer.

The Doorstep Contracts Act gives a narrow definition of *consumer*, namely a person who...acts otherwise than in a commercial or professional capacity. On the other hand, the Package Travel, Package Holidays and Package Tours Regulations 2000 provides a very wide definition of *consumer* as a person who takes or agrees to take the package (the principal contractor), or any person on whose behalf the principal contractor agrees to purchase the package (the other beneficiaries), or any person to whom the principal contractor or any of the other beneficiaries transfers the package (the transferee).

Article 4 Commercial Code defines *trader* as any person who, by profession, exercises acts of trade in his own name, and includes any commercial partnership. In addition, the Consumer Affairs Act refers to this definition in the Commercial Code but adds that a *trader* means any person, including any body corporate or incorporate, who in relation to any transactions or other matters covered by this Act or regulations made hereunder is acting for purposes relating to his trade, business, craft or profession.

The Trademarks Act, although not defining *business*, states that this includes a trade or profession.

Poland

Article 22.1 Civil Code defines *consumers* as those who conclude a 'legal act' which is not directly related to his economic or professional activity.

Article 4.1 Act on the Freedom of Economic Activity defines a *trader* as any physical or legal person, or a unit the legal personality of which has been confirmed by a separate legislative act, which in its own name carries out an economic activity. Article 2 of this Act defines *economic activity* as a professional activity of an organized and permanent nature, or carrying out production, building, trade, or services for profit (agricultural activities are excluded from the scope of application of the Act, see Article 3).

Slovakia

A definition of the consumer is envisaged in three different sources: the Act on Consumer Protection, the Law on Consumer Protection at Distance Marketing and Door-to-door Selling

and a chapter in the Civil Code which deals with consumer contracts. These definitions are slightly different but their substantive part is identical. According to the Act on Consumer Protection and the Law on Consumer Protection at Distance Marketing and Door-to-door Selling consumers are defined as both ‘individuals and corporations, who buy goods or exploit services’ or as stated in the Civil Code ‘concludes or fulfils a contract and do not perform these activities within or towards business’.

Slovenia

Article 1(2) of the Law on Consumer Protection defines a *consumer* as a natural person who is purchasing or using goods or services for purposes which are outside his professional or business activity.

Article 1(3) of the Law on Consumer Protection defines a *business* as any legal or natural person who performs commercial activities, regardless of such person's legal or organisational form or ownership structure. This Law also defines the terms *producer*, *exporter* and *services of an information company*.

Article 2(1) of the Competition Act defines *business* as any legal and natural persons who undertake commercial activities regardless of their legal ownership or organisational structure. Article 2(2) of the same Act defines a *business activity* as any activity that is performed in the market including the buying or selling of goods or transport, tourist, building or any other services, and banking, financial, insurance and similar services.

1.3.4 Definitions of young and other vulnerable consumers

Particularly in the area of the law on advertising children are considered to need special protection. In a number of countries specific age limits apply in this respect. This is the case in the Czech Republic (until the age of 15), Hungary (two categories: 0-14 and 15-18), and Slovakia (until the age of 15).

Other countries do not provide specific age limits. These countries consider all minors to be children for this purpose. This goes for Cyprus, Malta, Poland and Slovenia (NB: in Malta the age of majority is 16), Estonia.

Examples of rules that can be considered as providing a definition of a vulnerable adult consumer can be found in utilities law. For instance in Slovenia, Article 76 Energy Law provides that energy suppliers cannot disconnect consumers whose lives or health would be threatened by such a disconnection. This effectively acknowledges the existence of a category of consumers to whom special protection needs to be accorded.

1.3.5 Country overview

Cyprus

There are no definitions of specific groups of customers, such as *vulnerable consumers* or *children*. However, the Radio and Television Stations Act of 1998 and the Code of Advertising grant special protection to children. Under s. 33(6)(a) Code of Advertising the advertisement of alcohol containing drinks shall not be addressed in particular to minors nor to present minors consuming alcohol containing drinks.

Czech Republic

There are no legal definitions concerning specific groups of consumers such as children, young people or seniors but the courts distinguish these groups especially when it measures the *bonos mores* of competition. The specific area is the regulation of advertising because advertising is always targeted at a specific group of consumers.

For example, § 2(3) Act on Regulation of Advertising (RA) prohibits advertising to children under the age of fifteen which could promote behaviour endangering their health or their psychic or moral development. § 2c RA provides that advertising must not be aggressive, immoral and must not advise children to persuade parents to buy goods. § 3 and § 4 RA which regulate advertising of tobacco products and alcohol, prohibit such advertising focused on persons under the age of fifteen or performed by them.

Estonia

Advertising directed at children is regulated by § 9 of the Advertising Act. There is a general prohibition not to 'exploit the natural credulity or lack of experience of children'. Furthermore, advertising directed principally at children shall not suggest that the possession of a product or service will give the child an advantage over other children of the same age or that the lack thereof would have the opposite effect; it shall not incite children to behave in an unsafe way and it shall not include an appeal to children to demand the product from other persons such as their parents. These rules are very general and have not been specified by case law.

There is no definition of whom is to be considered a child for the purposes of the Act. Section 12 Advertising Act prohibits advertising of alcoholic beverages directed primarily at persons under the age of 21.

Hungary

Article 2(h) Advertising Act defines *children* as persons younger than 14 years of age and Article 2(e) defines *juveniles* as persons older than 14 but younger than 18 years of age.

Latvia

Article 3 Protection of the Rights of the Child Law defines a *child* as a person who has not reached the age of 18, except such persons for whom according to law, majority takes effect earlier, that is, persons who have been declared to be of the age of majority or have entered into marriage before attaining 18 years of age.

The only specific provision concerning specific groups of consumers related to advertising for children and minors is envisaged in the Advertising Law and in the Radio and Television Law. Article 5 of the Advertising Law states that advertising directed to children or advertising which has been created with the participation of children shall not threaten the rights or interests of children and in its creation, regard shall be to the perception and psyche of children. Exploiting the natural credulity or lack of experience of children in advertising is prohibited. It is also prohibited to exploit children in alcoholic beverage and tobacco product advertising and to direct this advertising directly at children.

Articles 20 and 24 Radio and Television Law provide that commercials may not cause moral or physical harm to minors. Commercials addressed to or using children may not harm the interests of children, and their production shall have regard to the special susceptibilities and psyche of

children. Commercials advertising teleshopping for alcohol may not be aimed at minors, and minors shall not participate in them.

Lithuania

Article 7 of the Law on Advertising defines a *child* as a consumer (the law does not explicit the precise age of the child, but from the general context of legal enactment it can be understood that the term child is applied to persons under 18) and provides that it shall be prohibited to cause moral and physical detrimental influence to children by advertising by (1) exploiting children's trust in parents, guardians (providers), teachers or other adults; (2) Directly exhorting children to persuade their parents or other persons, to purchase the advertised goods or services, taking advantage of their inexperience and credulity; (3) Forming children's opinion linking consumption of certain goods or services with the enhancement of their physical, psychological or social advantages before the members of their peer group; (4) Unreasonably showing children in situations which pose danger to their health and life.

The Law on Tobacco Control indicates strict requirements regarding the prohibition of promotional practices of tobacco products in relation to vulnerable consumer groups. The law prohibits to promote events intended for persons under 18 and also to invite persons under 18 to engage in activity promoting tobacco products. Article 18 of the Law on Tobacco Control recognizes person under 18 as belonging to vulnerable consumer group.

Article 2(32) of the Law on Heat Economy specifically defines *heat consumer* as a legal or natural person who is connected to a heat network.

Case example:

The High Court in *Specialios paskirties AB "Vilniaus šilumos tinklai" v. B.Giedraitienė* (case No. 3K-3-1137/2002) ruled that a heat consumer or subscriber is not the apartment building but the final consumer. This decision was based on the joined Cases C-541/99 and C-542/99 *Cape Snc (C-541/99) v. Idealservice Srl and Idealservice MN RE Sas v. OMAI Srl (C-542/99)* [ECR [2001] I-09049] of the European Court of Justice where the Court emphasized that consumer may only be a natural person.

Malta

The Maltese Broadcasting Act defines a *minor* as someone who is under sixteen years of age. There are no provisions concerning vulnerable consumers.

Poland

Article 16.1.3 Act on Combating Unfair Competition classifies as an 'act of unfair competition' an advertisement which exploits the naivety of children. However, in the area of consumer protection, such as advertising, there is no specific definition of children.

Slovakia

The only regulation concerning a specific group of consumers is the regulation of advertising designed for children. This regulation grants special protection to vulnerable groups of consumers, especially children (that is, people under fifteen years).

Section 3 sub 4(n) of the Law on Advertising bans advertising designed for persons under 15 years of age or advertisements performed by them, which could promote behaviour endangering their health or their psychical or moral development.

Sections 5 and 6 of the Law on Advertising, regulating the advertising of tobacco products and alcohol, ban such advertising focused on persons younger than fifteen years or performed by them.

Slovenia

There is no general definition of *young consumers* or *vulnerable consumers*.

Children are granted special protection under Slovenian law. In particular, Article 15 Law on Consumer Protection provides protection of children against advertising which causes or is likely to cause them physical, mental or other harm or exploits or is likely to exploit their trust or lack of experience. However, this Law does not contain a definition of children.

Article 49 of the Law on Media prohibits advertising to children or in which children are depicted that morally or psychologically affects children, without defining the concept of children.

Although not referring directly to vulnerable consumers, Article 76 Energy Act provides that energy suppliers cannot cease to provide energy below a quantity which in view of the circumstances (time of year, place of residence and financial situation) is necessary to ensure the life and health of consumers.

1.4 Case law, decisions and codes of conduct

1.4.1 Introduction

Interpretation of the rules on unfair commercial practices takes place at three stages: by the consumer authority or a comparable public body, by the courts and by self regulatory bodies.

First, the interpretation of rules takes place by a consumer authority or a public body with a comparable task: Cyprus (Competition and Consumer Protection Service), Czech Republic (Office for the protection of competition), Estonia (Consumer Protection Board), Hungary (General Inspectorate of Consumer Protection) and Latvia (Consumer Rights Protection Centre).

Secondly, in most Member States the legislative provisions dealing directly or indirectly with practices that might be considered unfair are interpreted by courts. In these countries the Supreme Court plays the role of leading authority but in practice the number of cases decided by courts of second instance or the Supreme Court is extremely low. Even the number of first instance cases is very modest and do not give much guidance on the interpretation of the legislation on unfair commercial practices.

Finally, self regulation plays a role in the area of advertising, particularly in Cyprus, Czech Republic (Advertising Standards Council), Latvia (Latvian Advertising Association), Lithuania (several sector-specific codes for marketing) and Slovakia (Advertising Standards Council).

1.4.2 Country overview

Cyprus

Provisions dealing with unfair commercial practices are generally interpreted by the courts as well as by the Attorney-General on a report by the Director of the Competition and Consumer Protection Service. In this respect the Competition and Consumer Protection Service under the auspices of the Ministry of Commerce, Industry and Tourism plays a major role in interpreting legislative provisions dealing directly or indirectly with unfair commercial practices.

Self-regulation and Codes of Conduct are of importance in relation to advertising. The Code of Journalistic Ethics controlling inaccurate, misleading, imaginary and distorting information or comments as well as the Code of Advertising, controlling misleading and false advertisements are interpreted by the Cyprus Radio Television Authority. An appeal may be filed at the Supreme Court against decisions of the Cyprus Radio Television Authority.

Czech Republic

The protection of economic competition is performed by the Office for the Protection of Competition. Its decisions develop and concretize the general legal framework.

In the area of advertising also self-regulation and codes of conduct are of importance. The Advertising Standards Council monitors the quality of advertisements based on the Codes of advertising practice.

The Supreme Court is the leading authority when interpreting the laws protecting against unfair competition.

Estonia

Rules are at first stage interpreted by the Consumer Protection Board, which is the national authority responsible for protecting consumer rights. The authority has been constantly improving its practices, but there have been many problems with its interpretation and role. Decisions of the Consumer Protection Board serve as guidelines for trade enterprises. The Board's decisions constitute a form of extrajudicial proceedings, but it is always possible to appeal from its decision to the courts according to the general Code of Misdemeanour procedure. Depending on the nature of the rules, the extrajudicial proceedings may also be conducted by local governments, police prefectures and the like.

There have been a number of cases, two of which relate to the use of celebrities in television advertisements for vodka, where the actions of the authority were regarded as unjust.

There is no self-regulatory body for advertising agencies or other specific areas.

Hungary

The General Inspectorate of Consumer Protection is the main consumer protection enforcement authority.

The aim of the Arbitration Board (Articles 18-37 Consumer Protection Act) is to try to settle cases between business and consumer(s) or to decide on the matter.

Latvia

The Consumer Rights Protection Centre is responsible for supervision of consumer rights protection. It can examine complaints and supervise compliance with consumer rights (Articles 24-25 Consumer Rights Protection Law) and decide that a manufacturer, seller or service provider has to cease an unfair commercial practice or to rectify its impact thereof.

Advertising is supervised by the Consumer Rights Protection Centre, the Competition Council, the State Pharmaceutical Inspectorate and the Radio and Television Council according to their respective competences (Article 13 of the Advertising Law).

Decisions of the Consumer Rights Protection Centre can be challenged before the court (Article 76 of the Administrative Procedure Law; Article 17 of the Advertising Law). Such an appeal does not suspend the execution of the decision, however.

The only code of conduct is the Code of Ethics adopted by the Latvian Advertising Association. This code is interpreted by Latvian Advertising Association. The code provides liability for comparative advertising, hidden advertising and incomplete information.

Lithuania

Consumer rights are protected by, *inter alia*, the State Food and Veterinary Service, the National Control Commission for Prices and Energy, the Competition Council and the National Consumer Rights Protection Board. These institutions can be seen as inspections which do not have the right to interpret rules. However, there is draft legislation pending to change this situation.

Codes of conduct are of growing importance. In September 2004 the members of the associations uniting Lithuanian pharmaceutical companies adopted Code of marketing of pharmaceuticals in order to ensure equal and ethical pharmaceuticals' marketing practices. In December 2004 Lithuanian brewers' association passed Lithuanian brewers' Code which regulates brewers' and traders' advertising, sponsorship and fair competition practices. The Chairman of the National consumer rights protection board has been elected as the member of the arbitral institution that solves disputes according to the mentioned code.

Malta

Generally, provisions on unfair commercial practices are interpreted by the courts. The provisions envisaged in the Consumer Affairs Act are interpreted by the Director of Consumer Affairs, the Consumer Affairs Tribunal and the courts. The provisions of the Broadcasting Act and the Codes issued under it are applied by the Broadcasting Authority. Decisions of the Consumer Affairs Tribunal and the Broadcasting Authority are reviewable by a court only on grounds of infringement of the rules of natural justice but from the decision of the Director of Consumer Affairs imposing a compliance order there is a right to appeal on any material point of law.

Poland

The number of cases decided by courts of second instance or the Supreme Court is extremely low.

The Court for the Protection of Competition and Consumers in Warsaw makes decisions regarding unfair contractual clauses which are subsequently inserted into the Unfair Clauses

Register. The Register contains over 200 clauses – this number demonstrates quite a dynamic approach of the Court to the issues of unfair clauses.

Slovakia

The law protecting against unfair competition is interpreted by courts, with the leading authority being the Supreme Court. It mainly unifies the practice of the courts to form a consistent interpretation of controversial or unclear issues, particularly in defining unfair competitive conducts regulated by the general clause, including the concept of *bonos mores*.

In the area of advertising also self-regulation and codes of conduct are of importance. The Advertising Standards Council monitors the quality of advertisements based on the Codes of advertising practice. However, its decisions are not binding and its decisions cannot be enforced.

The Slovak Commercial Inspectorate(Consumer Protection Department) is a public authority under the Ministry of Economy and its activity is governed by the law on state control of internal market regarding consumer protection.

The Commercial Inspectorate is an administrative body and therefore its competence is only to apply the law and not to interpret it. An appeal before a court of against the decision of an administrative body is possible. These actions are dealt with by general courts, since there are no specialized administrative courts (§ 244 ff. Civil Procedure Code, law nr. 99/1963 Coll.).

Slovenia

There is just one reported case of the Administrative Court which concerned the meaning of good business practices. In a case concerning a breach of Article 13 Of the Competition Act the Court held that a business breached good commercial practices for failing to print, in the same-sized print, that participation in its prize competition did not require the purchase of its products and in doing so, misled consumers (decision U 1622/2000).

Under Article 73 Consumer Protection Act the Market Inspectorate is given extensive powers to enforce the rights accorded to consumers under this Act.

2. PROVISIONS ON SPECIFIC ISSUES

2.1 Misleading advertising

2.1.1 *Comparative overview*

Articles 6 and 7 of the Unfair Commercial Practices Directive prohibit misleading commercial conduct.

Article 6(1) states that 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 (...), and in either case causes or is likely to cause him to take a transactional decision that he would not have taken otherwise’. A number of factual circumstances have to be taken into account such as the existence or nature of the product, the main characteristics of the product, the extent of the trader's commitments, the price, the need for a service, part, replacement or repair, the nature, attributes and rights of the trader or his agent and the consumer's rights or the risks he may face.

According to Article 6(2) a ‘... commercial practice shall also be regarded as misleading where, in its factual context, taking account of all its features and circumstances, it thereby causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise’. This involves the marketing of a product and the non-compliance by the trader with commitments contained in codes of conduct.

Article 7(1) a misleading states that a ‘... commercial practice shall be regarded as misleading which, in its factual context, taking account of all its features and circumstances and the limitations of the communication medium, 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.

The same goes when ‘... a trader hides or provides in an unclear, unintelligible, ambiguous or untimely manner such material information as referred to in paragraph 1 or fails to identify the commercial intent of the commercial practice if not already apparent from the context.’ (Article 7(2))

In the case of an invitation to purchase, the following information shall be regarded as material, unless apparent from the context: the main characteristics of the product, the geographical address and the identity of the trader, the price inclusive of taxes, the arrangements for payment, delivery, performance and the complaint handling policy and the existence of a right of withdrawal or cancellation (Article 7(4)). Additionally, information requirements which are non-exhaustively listed in Annex II shall be regarded as material.

An important body of communitarian rules in this respect is Directive 84/450/EEC on misleading advertising, as amended by Directive 97/55/EC on comparative advertising.

Article 2(2) Directive 84/450 EEC defines misleading advertising as ‘... any advertising which in any way, including its presentation, deceives or is likely to deceive the persons to whom it is addressed or whom it reaches and which, by reason of its deceptive nature, is likely to affect their economic behaviour or which, for those reasons, injures or is likely to injure a competitor’.

These provisions following from European legislation play a prominent role within the legal frameworks on unfair commercial practices. These specific rules sit well together with general rules on unfair commercial practices, such as in Czech Republic, Estonia, Hungary, Poland, Slovakia and Slovenia.

The provisions on misleading advertising differ considerably between the Member States. The most important harmonizing effect of Directive 84/450/EEC as amended by Directive 97/55/EC is that most Member States copied the definitions of Article 2 and 3a of this Directive. There are, however, some specific remarks to be made.

All national reports show that the answer to the question whether an advertisement is misleading very much depends on the circumstances of the case. A majority of the Member States have issued legislation enumerating those circumstances which can be taken into account when establishing the misleading character of an advertisement.

One of the essentials for fair advertising is that the information provided about the product should be factually correct, although it is allowed to exaggerate in accordance with the use in commercial practices.

Sometimes it is explicitly set out that marketing measures have to be recognisable as such and that it should not be concealed, for example in Lithuania. Czech Republic, Poland and Slovakia consider misleading advertising explicitly as an unfair commercial practice.

Finally, in this respect also Directive 98/6/EC on the Indication of Prices of Products is relevant. This Directive provides that the selling price and the price per unit of a product shall be mentioned in the advertisements of such products.

2.1.2 Country overview

Cyprus

The Code of Advertising prohibits ‘any advertisement, which is misleading or false’. Advertisements under this code have to be in conformity with the Trade Description Act. Advertisements must not contain descriptions which directly or by conclusion misleads for the product or for the service advertised as well as for the fitness for the purpose advertised or for the price of the product. In particular, an advertisement leading a person to believe that the advertised product or an ingredient of the advertised product is of special quality or had a special capacity, which is unknown or can not be identified, is prohibited. Also advertisements of toys or other products concerning children must not mislead a child, taken into consideration the immature judgment of the child.

S. 2 Control of Misleading and Comparative Advertising Act contains the definition of misleading advertising of the Directive.

Czech Republic

§ 45 Commercial Code defines misleading advertising as ‘disseminating information about one’s own or other’s enterprises, products or services, which is capable of invoking a misleading image and thus giving advantage to one enterprise at the expense of other competitors or consumers’. § 2.1(c) Act on Regulation of Advertising also prohibits misleading advertising using the same definition.

The conduct needs to fulfil as well the conditions of the general clause (§ 44(1) Commercial Code: the conduct must be committed in economic competition (which implies that the provision cannot be applied in, for example, an electoral campaign), the conduct has to be a violation of *bonos mores* of competition (for example, by unfair persuasion techniques, commercial techniques based on compassion or immoral techniques) and the conduct must be capable of causing harm to other competitors or consumers.

Estonia

Misleading advertising is defined in § 4 Advertising Act as ‘advertising which in any way, including its presentation, deceives or is likely to deceive the public, or which, for those reasons, injures or may injure a competitor’. This is similar to the provision in Directive 84/450. The Advertising Act requires that in determining whether the advertising is misleading, account shall be taken of all its features, in particular of any information it contains.

This is followed by a list of relevant issues to be taken into account: the composition, environmental safety and risk of damage to health, the method and date of manufacture, the fitness for purpose, manner of use, the value and actual price of the product or service, the terms of payment for products or services, delivery, exchange, return, repair and maintenance of the product, the terms of guarantee, the manufacturer of the product or the service provider, their qualifications, and the intellectual property rights related to the product or service, the official recognition or approval of the product or service, awards, distinctions or diplomas and the extent of endorsement for public or charitable causes using the name of the product or service

It is also prohibited to use the results of scientific or other research, quotations from scientific or technical publications and statistical or scientific data in advertising in a manner that misleads the public concerning the subject of the advertising.

Hungary

Article 2(n) Advertising Act defines misleading advertising as ‘any advertising which in any way, including its presentation, deceives or is likely to deceive the persons to whom it is addressed or whom it reaches and which, for reason of its deceptive nature, is likely to affect their economic behaviour or which, for those reasons, injures or is likely to injure a competitor who is engaged in the same or similar activities’. This is similar to the provision in Directive 84/450.

For the purpose of establishing a misleading advertisement, the following information in the advertisement shall be taken into consideration. This concerns the *general characteristics* of the merchandise (article 7-indent (2) point (a)) which include facts such as the place of origin of the merchandise, its ingredients, safety factors, its impact on health, technical features, its environmental features and energy consumption (Article 7-indent (3)), its availability, the date of manufacture, the quantity, its suitability for a given function, the expected results from its use, the way it is controlled or tested, and any other fact regarding the application, shipping, use and maintenance of the merchandise (Article 7-indent (3)). It is obliged to provide information

on the *price* or the pricing method and other *contractual conditions* of the purchase as well as on the *disposition of the advertiser*, such as its characteristics, the rights, wealth and/or endowments of or the awards received by the advertiser (Article 7-indent (2) point (b)-(c)).

Latvia

Article 8(2) of the Advertising Law prohibits misleading advertising which is defined as ‘advertising which in any manner, including its manner of presentation, is directly or indirectly misleading or may be misleading and due to its misleading character, may affect the economic behaviour of a person, or is harmful or may be harmful to a competitor’. This provision corresponds with the definition in Directive 84/450/EEC.

In determining whether advertising is misleading, all its aspects shall be considered: the individual components and overall content and design and, particularly, any information in the advertising such as accessibility, properties, manufacturing or distribution method and date, the effect on the environment or human health of goods or services, the results which are expected from the use of goods, or the results of tests or inspections, the price or method for calculating price and the identity and qualifications of the advertiser.

Lithuania

Article 5 of the Law on Advertising defines misleading advertising as ‘advertising which in any way, including its presentation, deceives or is likely to deceive the persons to whom it is addressed or whom it reaches and which, by reason of its deceptive nature, is likely to affect their economic behaviour or which, for those reasons, injures or is likely to harm another person’s capabilities in competition’. The same article bans misleading advertising.

In judging whether advertising is misleading, account shall be given to the accuracy, comprehensiveness and the presentation of the good or service. Claims presented in an advertisement are false if the accuracy of the assertion during the time of use cannot be substantiated. Particular attention should be paid to the information regarding the supplier of the advertising, his activity, the firm’s name, the mark of the good or service, the authors’ rights, patents and licenses, the location, time and origin of manufacture, the purpose, quantity, content, energy value, consumption (use) suitability, testing time, location, type and assessments of the good or service, the way of consumption (use), whether it meets the established standard, certification, official recognition and prizes at fairs and exhibits; the price or the manner of calculation thereof, the terms of payment, guarantees, the terms of delivery, exchange, repair, service and refund.

Article 3 of the Law on Advertising states that advertising must be 1) proper and accurate; and 2) clearly recognisable as an advertisement.

Malta

Article 48 Consumer Affairs Act prohibits all forms of misleading advertising and it faithfully implements the Misleading Advertising Directive and the Comparative Advertising Directive. The Act does not go beyond the Misleading Advertising Directive in terms of protection.

Poland

The Act on Combating Unfair Competition considers misleading advertising to be an act of unfair competition. Advertising is considered unfair if it is contrary to the provisions of law, good manners, or if it violates human dignity. Among the types of unfairness specified by the Act, Article 16.1 mentions advertising which misleads the customer and is thus capable of

influencing his decision on whether to acquire a particular product or service, exploiting the feelings of the customers by causing fear, exploiting superstitions or naivety of children, or making an impression of neutral information while in fact encouraging acquiring goods or services (Article 16.1.1 – 4).

Other types are a misleading indication of the name of the company (Article 5), a misleading indication as to the geographic origin of the goods and services on any documents or in advertising (Article 8); misleading information or lack of information concerning the origin, quantity, quality, contents, means of preparation, use, purpose, repair, conservation, other crucial features of the goods or services, and lack of information concerning risk related to their use (Article 10.1); as well as untruthful or misleading information regarding the trader or another trader, aimed at gaining benefits or causing losses (Article 14.1).

Slovakia

§ 45 Commercial Code defines misleading advertising as ‘disseminating information about one’s own or other’s enterprises, products or services, which is capable of invoking a misleading image and thus giving advantage to one enterprise at the expense of other competitors or consumers’. § 2.1(c) Act on Regulation of Advertising also prohibits misleading advertising using the same definition.

The conduct needs to fulfil as well the conditions of the general clause (§ 44(1) Commercial Code: the conduct must be committed in economic competition (which implies that the provision cannot be applied in, for example, an electoral campaign), the conduct has to be a violation of *bonos mores* of competition (for example, by unfair persuasion techniques, commercial techniques based on compassion or immoral techniques) and the conduct must be capable of causing harm to other competitors or consumers.

Slovenia

Article 12 (b) of the Law on Consumer Protection defines misleading advertising as ‘advertising, which misleads or is likely to mislead a consumer targeted or exposed by such advertising and which in view of its misleading nature is likely to influence the commercial decision of such consumer or cause or is likely to cause harm to a competitor.’ This article also provides that advertising of goods and services must not be contrary to law and must not be indecent or misleading.

In addition, misleading advertising also falls within the category misleading actions listed in Art. 13(3) of the Law on the Protection of Competition which is regarded as amounting to ‘unfair competition’.

An omission by a business to provide material information is not *per se* misleading under Slovenian law. However, under Article 13(3) of the Competition Act ‘hiding faults of the goods and services’ is deemed to be an act of unfair competition and is therefore prohibited. In addition, to the extent that a business omits material information when advertising a service or product such misleading omission would fall within the ambit of ‘misleading advertising’ under Article 12(b) Consumer Protection Act.

Finally, Article 47 Public Media Act (*zakon o medijih*) prohibits subliminal advertising and provides that advertising must not affect human dignity; incite racial, sex or ethnic discrimination or religious or political intolerance; or encourage actions which cause damage to

health and safety, to cultural heritage or to the interests of consumers. There are specific rules governing advertising to children.

2.2 Comparative Advertising

2.2.1 Comparative overview

A common model concerning comparative advertising is foreseen through the implementation of Directive 97/55/EC (amending Directive 84/450/EEC) with respect to the Member States' laws in this field. Comparative advertising is allowed in the Member States if certain conditions and requirements envisaged in the laws are met.

According to Article 2(2a) comparative advertising means '... any advertising which explicitly or by implication identifies a competitor or goods or services offered by a competitor.'

Article 3a provides:

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

- (a) it is not misleading according to Articles 2 (2), 3 and 7 (1);
- (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 create confusion in the market place 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;
- (e) it does not discredit or denigrate the trade marks, trade names, other distinguishing marks, goods, services, activities, or circumstances of a competitor;
- (f) for products with designation of origin, it relates in each case to products with the same designation;
- (g) 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;
- (h) it does not present goods or services as imitations or replicas of goods or services bearing a protected trade mark or trade name.

2. Any comparison referring to a special offer shall indicate in a clear and unequivocal way the date on which the offer ends or, where appropriate, that the special offer is subject to the availability of the goods and services, and, where the special offer has not yet begun, the date of the start of the period during which the special price or other specific conditions shall apply.'

The new Member States have implemented this Directive in general and in specific legislation, mainly according to their traditions at this point. Implementation of this Directive has taken place in Cyprus, Estonia, Hungary, Latvia, Lithuania, The Directive has been transposed in more general legislation in Czech Republic (Commercial Code), Malta (Consumer Affairs Act), Poland (Act on Combating Unfair Competition), Slovakia (Commercial Code), Slovenia (Law on the Protection of Consumers).

2.2.2 Country overview

Cyprus

Directive 97/55/EC on comparative advertising is implemented in section 4 Control of Misleading and Comparative Advertisements Act (2000). It reiterates the conditions for allowing comparative advertising listed in Article 3a.

Czech Republic

In accordance with Directive 97/55/EC comparative advertising is regulated by § 50 a (2) Commercial Code. Comparative advertising must not be misleading, discrediting or intended to allow sponging on reputation. Only similar and comparable goods or services may be compared and only their representative and relevant features.

Estonia

Comparative advertising is regulated by § 4 ff Advertising Act. It defines comparative advertising as ‘advertising which directly or indirectly identifies a competitor operating in the same market or goods or services offered by a competitor meeting the same needs or intended for the same purpose as the advertised goods or services.’ The limitations to comparative advertising are those listed in Article 3a of the Directive.

Hungary

Comparative advertising is allowed if it fulfils the conditions set out in Article 7/A (2)-(3) Advertising Act, implementing the circumstances mentioned in Article 3a Directive. Furthermore, comparative advertising shall not violate the provision of Article 6 of the Competition Act on the prohibition of imitating the merchandise of another company or the characteristics of such merchandise. The Competition Act requires some positive conditions as well. Comparative advertising shall be allowed to compare only goods, which are similar in terms of purpose and function. The advertisement shall objectively compare one or more features of the goods in question which are definitive and typical, and which can be confirmed. It shall objectively exhibit the prices, when applicable, and pertain to goods of the same origin, when applicable.

Latvia

Article 9 of the Advertising Law states that ‘comparative advertising is any advertising in which comparison is used which directly or indirectly indicates a competitor or goods or services offered by a competitor’. A comparison shall not be misleading. The comparison shall be developed in accordance with principles of fair competition, utilising facts that may be proved. Comparative advertising is permitted if all of the conditions listed according to Article 3 Directive are complied with.

Lithuania

The provisions on allowing comparative advertising of Directive 97/55/EC are implemented in the Law on Advertising, particularly Article 6.

Malta

Provisions of the Consumer Affairs Act allow comparative advertising, provided the conditions reproduced from the Directive are satisfied.

Poland

Art. 16 Act on Combating Unfair Competition of 1993 as amended in order to reflect the Directive 97/55/EC in principle allows comparative advertisement. In addition, the list of requirements for comparative advertising is envisaged in this Act.

Slovakia

In accordance with Directive 97/55/EC comparative advertising is regulated by the Law on Advertising.

Slovenia

Comparative advertising is defined in Article 12(c) of the Law on the Protection of Consumers as advertising which directly or indirectly identifies a competitor or the goods and services offered by such a competitor. Comparative advertising is permitted under this Article provided the conditions following from the Directive are met.

2.3 Aggressive practices*2.3.1 Comparative overview*

Article 8 of the Directive on Unfair Commercial Practices (Section 2: Aggressive Commercial Practices) stipulates that:

...a commercial practice shall be regarded as aggressive if, in its factual context, taking account of all its features and circumstances, by harassment, coercion 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 provides information which has to be taken into account when determining whether a commercial practice uses harassment, coercion and undue influence:

- (a) its timing, nature or persistence;
- (b) the use of threatening or abusive language or behaviour;
- (c) the use 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 established 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.

In the Directive on Unfair Commercial Practices community law for the first time will provide a general regulation of aggressive practices. Apart from misleading and comparative advertising, no communitarian provisions have been issued. This means that the laws of the Member States do not contain implemented provisions on aggressive practices. Here, the Directive on Unfair Commercial Practices will provide a level playing field for traders and an equal protection for consumers.

Aggressive practices are related with other areas of unfair commercial practices. One may think of advertising law, as well as of more specific marketing techniques that can be aggressive but not necessarily are aggressive, such as distance marketing, face-to-face marketing and price reduction techniques. Provisions regarding this technique will be dealt with in the following chapter. The laws of the new Member States combat aggressive practices as described in the Articles 8 and 9 of the Directive on Unfair Commercial Practices in various ways.

First, some Member States have adopted provisions of a similar character as the ones in the forthcoming Directive (Hungary and Poland). See under B.

Secondly, most Member States provide an opportunity to tackle aggressive practices with the help of general contract law or tort law provisions, partly in the Commercial Code, partly in the Civil Code (Cyprus, Czech Republic, Estonia, Latvia, Lithuania, Malta, Poland and Slovakia). See under C.

Finally, Member States also deal in more specific ways with aggressive practices. This will be illustrated with Cyprus, providing specific rules in the area of advertising and Malta, providing criminal sanctions against certain aggressive practices. See under D.

2.3.2 *Provisions similar to those in the Directive*

Hungary

Article 10 of the Competition Act prohibits applying business methods which restrict, without justification, the freedom of choice of consumers. For example, clearance sales can be regarded as aggressive practices which distract consumers' attention from the substantial features – low quality – of the product and prevent consumers from making an informed decision.

Poland

According to Article 16.1.5 Act on Combating Unfair Competition advertising which constitutes a substantial invasion into privacy, in particular by hassling in public places disturbing clients, sending unsolicited goods with the costs to be borne by the customer, or abusing technological means of transferring information is prohibited.

Article 16.1.3 Act on Combating Unfair Competition prohibits advertising which exploits the customers' feelings by causing fear, or exploits superstitions or the naivety of children.

2.3.3 *General tort law and contract law provisions*

Cyprus

If an agreement is concluded without the free consent, such as by coercion, fraud or misrepresentation (s. 19(1) Contract Law) or if consent to an agreement is given under undue influence (s. 20(1) Contract Law), the contract is void on the claim of the party who has given its influenced consent.

Czech Republic

Protection against aggressive practices is possible by applying the general clause of § 44 sub 1 Commercial Code or the general provisions of the Civil Code (§ 37 sub 1 CC) setting the essential requirements for contracts, or conduct which conflicts with *bonos mores* (§ 39 CC).

Estonia

In order to tackle aggressive practices the consumer can rely on provisions in the Civil Code. § 86 declares void all transactions which are contrary to good morals or public order. According to § 90 ‘a transaction entered into under the influence of a relevant mistake, fraud, threat, violence or gross disparity may be cancelled pursuant to the procedure provided by law.’ § 96 deals with transactions entered into under the influence of an unlawful threat or violence. It allows for cancellation of such transactions only if the threat or violence ‘was under the circumstances so imminent and serious as to leave the person who entered into the transaction no reasonable alternative.’ § 97 deals with transactions entered into under extremely unfavourable conditions. These can be cancelled if the other party took advantage of ‘the urgent needs, dependence or inexperience of the person, or other similar circumstances.’ It must be pointed out that these provisions have been rarely tested in courts and their application to the field of unfair commercial practices is still *terra incognita*.

Latvia

There are no specific regulations on aggressive practices. However, Article 1440 of the Civil Law specifies that in order to consider legal transaction as valid it is not enough if parties express their will, but it is necessary that this will is not influenced by misrepresentation, falsehood or duress.

Lithuania

There are no provisions regulating aggressive practices. Under the general contract law and tort law the consumer has special rights and is able to defend them against aggressive commercial practices of purchaser or service provider. Provisions of the Civil Code apply in case of contractual liability (Art. 6.256-6.262) and tortious liability (Art. 6.263-6.291).

Malta

Art. 974 Civil Code makes any contract where the consent of one of the parties has been extorted by coercion, violence or fraud null and void.

Poland

The Civil Code refers to the law of contractual obligations and regulates undue influence and exploitation. If aggressive practices cause loss or damage, the general tort law provision in the Civil Code could be used. For example, Article 415 provides that “whoever by his fault caused damage to another, is obliged to repair it”.

Slovakia

Protection against aggressive practices is possible by applying the general clause of § 44 sub 1 Commercial Code or the general provisions of the Civil Code (§ 37 sub 1 CC) setting the essential requirements for contracts, or conflict which conflicts with *bonos mores* (§ 39 CC).

2.3.4 *Specific provisions*

Cyprus

The Code of Advertising stipulates that commercial advertisements, which exploit superstition or a sense of fear, are prohibited. According to this Code, advertisements addressed to children implying that in the event where they did not purchase a product they will omit to carry out their law-abiding duty towards a particular person, are prohibited. Also advertisements, which lead

children to believe that they will be in a sense inferior to other children or will be subject to contempt or sarcasm for not acquiring and advertised product, are prohibited.

The Radio and Television Stations Act of 1998 prohibits the advertisement of toy products. S. 34(4) stipulates that advertisements of toy products shall only be transmitted during the permitted hours. This can be illustrated by *Cyprus Radio Station Authority v Logos Station (case No.5/2003(2), 10 September 2003)* in which the Cyprus Radio Station Authority examined the transmission of advertisements of toy products by the television station 'Logos' during prohibited time hours between 1/12/2002 and 15/12/2002. The Authority judged that there had been 74 infringements of the Radio and Television Stations Act for which an administrative fine of CYP 12.000 was imposed. This prohibition may constitute a barrier to the Internal Market (see Chapter 3).

Malta

According to Article 5A Doorstep Contracts Act it is a criminal offence for a door-to-door salesman to refuse to leave the home or place of work of the consumer when requested to do so.

Art. 251 Criminal Code provides that any person who uses violence to compel another person to do, suffer or omit anything would be guilty of a criminal offence liable to custodial sentence.

2.4 Distance marketing and distance selling

2.4.1 Comparative overview

Article 10 of Directive 97/7/EC on the protection of consumers in respect of distance contracts puts restrictions on the use of certain means of distance communication. According to paragraph 1 the use by a supplier of an automated calling system without human intervention (automatic calling machine) and a facsimile machine (fax) require the prior consent of the consumer.

Paragraph 2 provides that Member States shall ensure that means of distance communication, other than those referred to in paragraph 1, which allow individual communications, may be used only where there is no clear objection from the consumer.

This Directive has been implemented in all Member States. On the one hand it provides that contracts can be concluded without the physical presence of the contracting parties, on the other it imposes duties on the seller to inform the consumer properly and provides the consumer rights, such as to withdraw from the contract within a certain period of time.

Directive 2002/58/EC on privacy and electronic communications extends controls on unsolicited direct marketing to all forms of electronic communications. Art. 13 of this directive requires the subscriber's prior consent with regard to the direct marketing.

The Member States have implemented this Directive into various Acts protecting consumer rights. Most Member States have done so in special Acts: Cyprus, Hungary, Poland and Slovakia.

Other Member States have implemented the rules in the more general legislation such as the Civil Code (Czech Republic), the Consumer Protection Act (Estonia, Slovenia), the Consumer

Rights Protection Law (Latvia), the Law on Consumer Protection (Lithuania) and the Consumer Affairs Act (Malta).

2.4.2 *Specific Acts*

Cyprus

Section 14(2) Act for the Conclusion of Consumer Distance Contracts (2000) and section 18(2) Distance Marketing of Consumer Financial Services Act (2004) may be construed as inferring that cold calling and e-mail spamming shall only be allowed to be used by the supplier if the consumer does not object to the use of such means. The same Act stipulate that the use of automated calling devices, fax and telephone in cases of distance marketing requires the prior consent of the consumer.

The Information Society Services Act of 2004, implementing Directive 2000/31/EC on electronic commerce, establishes the general framework for the development and promotion of e-commerce identifying the duty and obligations of the providers of services aiming to secure the interest of consumers in the field of information. S. 12(1) of this Act allows e-commerce agreements to be used unless exempted under s. 1(2).

Hungary

Article 1 Government Decree No.17/1999 (II.5) on Distant Contracting, implementing Directive 97/7/EC, applies to consumer contracts concerning the provision of services or sales of goods using exclusively one or more means of telecommunication (distant contracting). *Means of telecommunication* refers to devices such as pre-printed forms not including the address or the addressee, standard letters, press advertisements with order forms, catalogues, telephones, automatic calling devices, radios, video-phones, videotexts (microcomputers with screen) with keyboard or touch-screen, electronic mail (e-mail), facsimile and television.

Article 9(1) Decree requires the consumer's explicit consent for concluding a contract via fax or an automatic calling device. Article 9(2) adds that unless special legislation provides otherwise, the business may, in the absence of the consumer's explicit objection, use direct contact telecommunication devices except for those falling within the scope of Article 9(1). Because there are no specific provisions with regards to cold-calling, the general rules of this Decree are applicable.

Act 108 of 2001 contains provisions regarding information and technical provisions related to contracts concluded electronically and regarding the service providers' responsibility including that of the intermediary (E-Commerce Directive).

Poland

The Distance Selling Directive 97/7 was transposed into the Act on the protection of certain consumer rights and liability for damage caused by an unsafe product. This Act protects the interests of consumers in cases where contracts were concluded between a consumer and a trader using the means of communication such as printed or electronic forms, an advertisement with a form already included, electronic advertisement, a catalogue, telephone, fax machine, radio, television, automatic calling machine, videophone, electronic mail and any other means of electronic communication as specified by the Act on electronically provided services.

Article 9 of the Act on the protection of certain consumer rights and liability for damage caused by an unsafe product imposes an obligation upon the trader to provide the consumer with all essential information before the contract is concluded and for this information to be clear and easy to understand. Article 10 of the same Act gives the consumer the right to withdraw from the contract within 10 days from the day of obtaining the goods, or, in case of a contract for services, from the day of its conclusion.

Slovakia

The Law on Consumer Protection at Distance Marketing and Door-to Door Selling (CPDM) governs distant contracts between a seller and a consumer providing services at a distance, exclusively using communication devices such as supply catalogue, telephone, fax, radio, television or e-mail. A seller can only use communication devices enabling individual negotiation if the consumer did not preclude it. Automatic calling devices (without human operator) and faxes can be used only after previous approval by the consumer.

The CPDM imposes on the seller special obligations to provide information, for example, the obligation to deliver a written version of the information at the latest with the supply of goods or services (§ 10(3) CPDM), or the obligation to inform the consumer about liability or the consumer's right to withdraw from the contract (§ 10(4) CPDM). If the seller provides the required information, the consumer may withdraw from the contract only within 7 days after the supply of goods or services. However, if the seller does not comply with that obligation, then consumer may withdraw within three months after the supply; this will render the contract invalid from the beginning.

2.4.3 General Acts

Czech Republic

§ 53 Civil Code provides that consumer contracts can be concluded without the physical presence of contracting parties. The means of communication at a distance can be used only if the consumer did not preclude it. Automatic calling devices (without a human operator) can be used only after previous approval of the consumer. § 53(a) Civil Code provides other rules for distance marketing, such as the information that has to be provided.

E-commerce is regulated by law Nr. 480/2004 Coll., which regulates *inter alia* sending e-mail containing commercial messages (i.e. information dedicated to direct or indirect support of products or services or image of an enterprise, including advertising). This Law prohibits sending unmasked e-mails (spamming), unless the addressee has explicitly agreed with it. It also prohibits sending e-mails with a commercial content unless their commercial nature is intelligibly and clearly indicated. It also prohibits the sending of emails which hide or conceal the sender's identity or do not contain a valid address to which the recipient can directly and effectively communicate that he does not wish to receive commercial e-mail from the sender.

Estonia

The Consumer Protection Act includes provisions regarding distance contracts. They are general in nature and refer back to the provisions relating to regulation of such transactions and contracts in the Law of Obligations Act.

Latvia

Article 10 of the Consumer Rights Protection Law provides that a distance contract is an agreement between a consumer and a seller or service provider on the basis of an offer by the seller or service provider through directed or non-directed printed matter, model letter, catalogue, advertisement published in periodicals to which an order form is attached, telephone, facsimile, internet, electronic mail, television, radio and other means of communication or transmission of information. The Law also sets requirements for the seller's duty to inform the consumer.

If the seller has complied with his duty to inform the consumer has the right to withdraw from the contract within a time period of 14 calendar days, unless the parties have agreed on a longer time period. If the required information is not complete, the consumer has the right to withdraw from the contract within 90 calendar days.

According to the Law on Information Society Services sending of commercial communication by e-mail to person who did not given prior approval to it, as well as sending of other troublesome communications is prohibited.

Lithuania

Issues of distance marketing and distance marketing are dealt with in the Civil Code as well as the Law on Consumer protection.

Art.17 (1) of the Law on Consumer Protection provides that a purchase or a service provision contract is concluded by using distance communication means shall be treated as a distance contract between the seller or service provider and the consumer on the selling (delivery) of goods or the provision of services, that are concluded (including the signing thereof) by using exclusively (one or more) distance communication means (Article 1 of the Law on Consumer Protection introduces the notion of the *means of communication*, stating that these are the means which can be employed without the physical attendance of the seller, service provider or consumer to draw up a contract).

Article 6.366 Civil Code deals with Sale of Goods under Distance Contracts and states that a distance contract of purchase and sale of things concluded by means of communication is a contract for the sale of things concluded between the seller and the buyer (consumer) exclusively by means of communication (one or several).

On the basis of Article 6.367 Civil Code the buyer has the right to repudiate the distance contract of purchase-sale concluded by means of communication by notifying the seller thereof in writing within seven working days from the date of delivery of the good or the date of conclusion of the contract for the supply of services.

Malta

The Distance Selling Regulations, LN 186 of 2001, adopted under the Consumer Affairs Act implement the Distance Selling Directive (Dir. 97/7/EC) by imposing information and transparency requirements and providing for a fifteen day cooling off period. They also lay down obligations concerning delivery and performance of distance contracts and protect consumers against fraudulent use of credit cards through provisions that follow very closely the provisions of the Directive. Failure to comply with these requirements and obligations constitutes a criminal offence.

Slovenia

Article 45 (a) Consumer Protection Act provides that a company may use automatic calling devices, faxes and email only if it obtains the prior consent of the consumer to whom such information is directed. The provision also requires the person making a telephone call to 'reveal at the beginning of each call the name and seat of the company on whose behalf it is calling and clearly state that the call is a business related call'. Finally, this Article enables the consumer to advise a company if he no longer wishes to receive information from such company and requires the company to desist from sending him any information which relates to the purchase of any product or provision of any service. If a business is found by the Market Inspectorate to be in breach of the above mentioned provisions of Article 45 it is liable to pay a fine varying between SIT 1-10 million.

Article 109 Electronic Communications Act, implementing Directive 2000/31/EC on E-Commerce, prohibits automatic calling systems, fax machines and emails for the purposes of direct marketing, except where prior consent has been given by the consumer to whom such information is directed.

2.5 Unsolicited Goods

2.5.1 Comparative overview

Sending unsolicited goods to the consumer (inertia selling) is governed by the EC Directive on distance selling (97/7/EC). Article 9 Directive provides that Member States shall take the measures necessary to:

- prohibit the supply of goods or services to a consumer without their being ordered by the consumer beforehand, where such supply involves a demand for payment,
- exempt the consumer from the provision of any consideration in cases of unsolicited supply, the absence of a response not constituting consent.

The Member States have implemented this Directive into various Acts concerning the protection of consumer rights. Most Member States have done so in special Acts (Cyprus, Hungary, Poland and Slovakia). Other Member States have implemented the rules in the more general Consumer Protection Act (Slovenia), the Consumer Affairs Act (Malta) or have added the rules to a general Code, for example the Commercial Code (Czech Republic) and the Civil Code as well as the Law on Consumer Protection (Lithuania).

2.5.2 Country overview

Cyprus

Under s. 13(1) Act for the Conclusion of Consumer Distance Contracts of 2000 inertia selling in relation to distance contract is prohibited.

If a consumer receives goods which he or she did not order before and during a period of 30 days, starting from the date of receipt and neither the supplier nor any other authorized person acting on his behalf required the return of these goods, the consumer may use, deal with or dispose these goods in such a manner as if they were made to him as an unconditional gift; the rights of the supplier or other person acting on his behalf during the dispatch of the goods shall be forfeited (s. 13(2) Act for the Conclusion of Consumer, Distance Contracts of 2000).

Czech Republic

§ 53 sub 8 Civil Code provides that if goods were supplied to the consumer without his previous order, he is not obliged to give such goods back or inform the supplier about the supply.

Hungary

Article 8 Government Decree No. 17/1999 (II.5) on Distant Contracting, implementing Directive 97/7/EC, provides that the business organisation may not demand any consideration from the consumer in case it sells a product or provides a service that the consumer has not ordered at an earlier date. The absence of an explicit statement by the consumer shall not justify the assumption that the consumer has - automatically - accepted the offer of the business organisation.

Lithuania

Article 6:368 prohibits the supply of unsolicited things if payment is demanded therefore. In the event of delivery of goods without consent of the consumer, the latter may dispose of them at his own discretion free of charge. This provision is repeated in Article 19 of the Law on Consumer Protection.

Malta

Inertia selling and unsolicited communications are regulated by the Distance Selling Regulations, LN 186 of 2001, adopted under the Consumer Affairs Act implementing the Distance Selling Directive (Dir. 97/7/EC). Failure to comply with these requirements and obligations constitutes a criminal offence.

Poland

The Act on the protection of certain consumer rights and liability for damage caused by an unsafe product, implementing the Distance Selling Directive 97/7, regulates the consequences of sending of unsolicited goods. Article 15 provides that if a trader performs an unsolicited obligation he does this at his own risk and no obligations for the consumer arise.

Slovakia

§ 11 of the Law on Consumer Protection at Distance Marketing and Door-to-Door Selling stipulates that when supplying the ordered goods or services the seller must not supply goods or services which were not ordered.

Slovenia

Article 45 Consumer Protection Act provides that unsolicited goods sent by a company to a consumer with the purpose of concluding a contract of sale are deemed to 'promotional gifts'.

2.6 Face-to-face marketing*2.6.1 Introduction*

The draft national reports show that special marketing techniques such as multi-level marketing, touting for consumers, and snowball systems are not specifically regulated in the Member States. Exceptions are Poland where snowball systems are prohibited by the Act on Combating Unfair Competition and Hungary where pyramid selling is regarded as unlawful. In absence of specific regulations these techniques could fall within the ambit of a general rule regulating

unfair commercial practices if a Member State provide for such a rule (see under General rules). However, none of these countries have reported cases in this area. See under B. and C.

Concerning door to door selling provisions all Member States have, of course, implemented Directive 85/577/EEC on door-to-door selling. See under D.

2.6.2 Multi-level marketing and snowball systems

Czech Republic

Snowball systems or multi-level marketing techniques are not expressly regulated. Its unfair character has to be concluded from the general clause.

Hungary

Multi-level marketing is legal as long as it can not be regarded as pyramid-selling.

Poland

Snowball systems of sale are prohibited by the Act on Combating Unfair Competition.

Art. 17c(1) describes such systems as arrangements whereby buyers of goods or services are promised material rewards for enticing others to conclude similar transactions.

Art. 17c(2) provides that such systems are not unfair if the material rewards derive from resources gained from sale of the goods or services at a price not drastically exceeding their market price, and if anyone wishing to withdraw from the arrangement is able to return the goods, material, samples or advertising materials obtained during the 6 months preceding the withdrawal to the organizer of the system in return for at least 90% of the price paid.

Slovakia

Snowball systems or multi-level marketing techniques are not expressly regulated. Its unfair character has to be based on the general clause.

2.6.3 Touting for consumers in public places

None of the new Member States have reported specific regulations which deal with touting for consumers in public places. In Member States holding a general clause it is conceivable that such practices will be deemed unfair. However, at present there is no case law available to confirm this.

2.6.4 Door to door selling

Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises applies to contracts under which a trader supplies goods or services to a consumer and which are concluded during an excursion organised by the trader away from his business premises, during a visit by a trader (i) to the consumer's home or to that of another consumer and (ii) to the consumer's place of work, unless the visit takes place at the express request of the consumer (Article 1).

The Directive does not apply to contracts for the construction, sale and rental of immovable property or contracts concerning other rights relating to immovable property as well as contracts for the supply of foodstuffs or beverages or other goods intended for current consumption in the household and supplied by regular tradesmen and purchases from a catalogue which is read outside the presence of the seller (Article 3).

Traders have to give consumers written notice of their right of cancellation, together with the name and address of a person against whom that right may be exercised (Article 4).

The consumer has the right to renounce the effects of his undertaking by sending notice within a period of not less than seven days from the receipt of the notice referred to in Article 4. Giving such notice releases the consumer from any obligations under the cancelled contract (Article 5).

The Member States have implemented this Directive into various Acts concerning the protection of consumer rights. Most Member States have done so in special Acts (Cyprus, Hungary, Latvia, Malta and Slovakia). Other Member States have implemented the rules in the more general Consumer Protection Act (Estonia, Lithuania, Slovenia), in the Act on the protection of certain consumer rights and liability for damage caused by an unsafe product (Poland) or in the Civil Code (Czech Republic, Lithuania).

2.6.5 Country overview

Cyprus

Door-to Door Selling is regulated by the Act for the Consumer Contracts Concluded away from Business Premises of 2000. S. 5 provides that no contract concluded away from business premises shall be enforced against the consumer unless it is in writing and states the date of contract, name, telephone number and address of trader in a clear and legible form, describes in detail the supplied goods and/or services, includes in a clear and legible form the fundamental term of the contract that the consumer may renounce, is accompanied by a renunciation form, states the name and address of the person to whom the renunciation notice may be sent and is signed by trader and consumer.

Czech Republic

§ 57 Civil Code deals with consumers' contracts concluded away from business premises. The provision concentrates on the possibility of withdrawal of the contract and determines that the supplier is obliged to inform the consumer no later than at the moment of concluding the contract about his right to withdraw from the contract including specifications of the person or company to whom he can exercise this right. This regulation however does not apply to contracts on building, selling or renting real property, supplying food products, products ordered on the basis of catalogue or insurance contracts.

Estonia

A contract negotiated away from business premises is defined by § 46 of the Law of Obligations Act. It is a contract for the delivery of movables or the provision of services where a supplier makes an offer to a consumer or makes a proposal to negotiate entry into a contract in or near the home or the place of work of the consumer, in public transport or street, at a recreational event. There is a *de minimis* rule which limits the application of this article only to transactions which are worth more than € 15. The supplier is obliged to inform the consumer about his right of withdrawal from the contract within 14 days (§ 48-49 of the Law of Obligations Act).

Hungary

Article 1 (1) Government Decree No 370/2004 (XII. 26) applies to contracts concluded away from his business premises. The trader has to meet information duties towards consumers, it is prohibited to visit the consumer from 7pm to 9am and the consumer can terminate a contract within 8 working days.

Latvia

Door-to-door selling in Latvia is regulated by the Cabinet of Ministers Regulations regarding contracts entered into outside the permanent sales or provision of services premises of an undertaking. According to these regulations, the contract shall include information about name of the seller or service provider, characteristics (also price) of the goods or services and a description of the right of withdrawal. (Point 2 Regulations). A consumer is entitled to utilize the right of withdrawal from a contract within 14 calendar days of entering into such contract. Unless otherwise agreed by the parties, a consumer is not entitled to exercise the right of withdrawal in regard to the supply of foodstuffs which are intended for immediate household use and are regularly supplied by a commercial agent (Points 3 and 4 Regulations). Upon entering into a contract, the seller or service provider shall issue to the consumer a written form of withdrawal according to which the specific contract may be identified. The consumer, in order to confirm the receipt of the withdrawal form, shall make a note on the copy of the withdrawal form (Point 5 Regulations).

Lithuania

Relevant rules can be found in the Law on Consumer Protection and the Civil Code. However, the most detailed provisions are set in the Order of the minister of Economy Nr. 226, 2001. It obliges the seller or service provider who works away from his business premises, to provide the buyer with a document stating the date of the document, a description of the good or service, the name of seller, the person to whom the buyer can transfer the good in order to give it back or exchange if the good or service is damaged. The buyer can withdraw from the contract within 14 days of its conclusion.

Malta

The Doorstep Contracts Act, Chapter 317 of the Laws of Malta, implements the Doorstep Selling Directive by providing for a fifteen day cooling off period and the related right of cancellation. Article 5A thereof even makes it a criminal offence for a door-to-door salesman to refuse to leave the home or place of work of the consumer when requested to do so. The Act gives greater consumer protection than the directive since it provides that a consumer may not be required to pay for the goods prior to their delivery except for a 10% deposit payable only after the expiry of the cooling off period (Article 9). Moreover, it also regulates the content of the doorstep contract (Articles 6, 7 and 11). The sanction for a breach of the provisions of this Act (or indeed of any of the provisions of the Consumer Affairs Act or any regulations made under it) is that in respect of the person infringing the provisions the Director of Consumer Affairs may withdraw or suspend or refuse to renew the licence to act as a door-to-door seller.

Poland

Art. 3.1 Act on the protection of certain consumer rights and liability for damage caused by an unsafe product (2000) contains obligations for the trader to provide the consumer with the information as to his right to withdraw from the contract. Art. 2.1 contains the right for the consumer to withdraw within 10 days from the day when the contract was concluded.

Slovakia

§ 5 of the Law on Consumer Protection at Distance Marketing and Door-to-Door Selling regulates contracts negotiated away from business premises or during visit of consumer (unless consumer asked for that visit). If the consumer asked for visit of the seller the provision still applies if the seller offers to a consumer a product or service, which the consumer did not mention at the time of asking for a visit. The provision also applies if the consumer proposes the seller to conclude a contract and the seller agrees within 30 days.

Provisions of the Law on Consumer Protection at Distance Marketing and Door-to-Door Selling are not applied to contracts on construction of buildings, insurance contracts, stocks contracts, selling food and drinks, and to contracts concluded on a basis of a catalogue. If a consumer buys something from a catalogue without presence of a seller the consumer can withdraw from the contract within seven days after concluding it.

Slovenia

Rules on door-to-door selling are set out in Articles 46, 46(a), 46 (b) and 46(c) Consumer Protection Act. Article 51 of the Regulation on minimal technical and other requirements concerning premises for sale of goods and the sale of goods outside shops, which was adopted under the Trade Act, prescribes the types of goods which can be sold door-to-door. The following goods can *inter alia* be sold door-to-door: books, periodicals, art reproductions, small household appliances and goods, ceramic and porcelain household goods and cosmetics. A business found to be in breach of this Article is liable to pay a fine of at least SIT 1 million.

2.7 Price reduction techniques

2.7.1 Comparative overview

Half of the Member States have reported special rules regarding price reduction techniques: these are Cyprus, Hungary, Latvia, Poland and Slovenia.

The Polish Act on Combating Unfair Competition regulates price reduction techniques which provides that sale at a loss is treated as an 'act of unfair competition' (Art.15.1.1). In Latvia the Consumer Rights Protection Law regulates price reduction techniques. Legislation in Cyprus permits liquidation sales under s. 4 Conditions for Advertising or Announcement of Sale of Products on Sale Prices Law (1990).

2.7.2 Country overview

Cyprus

Section 4 Conditions for Advertising or Announcement of Sale of Products on Sale Prices Act of 1990 permits liquidation sales or sales during the period of demolition or movement of the business construction. In general, sales take place within restricted and indicated time period during February and August each year under section 3 (1) of the abovementioned law. Section 3 (2) of this Act requires a business offering goods on sale to insert a label on the goods offered on sale of the pre-sale and sale price. However, the aforesaid Act has been proposed to be amended on the basis of being an unconstitutional piece of legislation.

Hungary

Sales below cost are prohibited in relation to foodstuffs. In case of other goods only general competition rules apply.

Latvia

Article 21(1) Consumer Rights Protection Law provides that the word *sale* or words of a similar meaning are permitted to be used only if certain conditions are met. In particular, if it relates to a sale of all goods or a sale of an indicated part thereof; the sale takes place in a restricted and indicated time period; and the prices are lower than the normal prices of the relevant goods or services.

The words discount, reduced prices or words of a similar meaning are only permitted if certain conditions are met. In particular, if it relates to the selling of such goods or the providing of such services with which the seller or service provider is permanently engaged; such trade takes place within a restricted time period; and the prices are lower than the normal prices of the relevant goods or services (Article 21(1) Consumer Rights Protection Law). After a public announcement of reduced prices, discounts or a sale, the initial price and the price after reduction of the goods and services shall be clearly indicated. A sale shall be publicly announced at least five days before its commencement by placing notices in the place of trade. The price of the relevant goods or services regarding which discounts are specified may not change at least one month before the public announcement of the reduction in price, discount or sale.

Article 6 Advertising Law provides that advertising in which a special offer is made or a sale is announced shall include the subject and the conditions of the special offer and the date when the special offer or the sale starts and ends.

Poland

Art. 15.1.1 Act on Combating Unfair Competition stipulates that sale at a loss is treated as an 'act of unfair competition'. Exceptions are end of season sales (twice a year no longer than one month), end of 'use-by period' sales, and liquidation sales (no longer than 3 months, or no longer than 1 year if the trader is liquidating his entire trading activity).

Slovenia

Article 15(a)(2) Consumer Protection Act requires that communications regarding special offers (sales, premiums and gifts or similar) must be "clearly identifiable, the conditions concerning such offers easily available and clearly and unambiguously listed".

Article 28(1) Consumer Protection Act provides that "a business must announce a sale in the manner which is typically for the region in which it operates". Art. 28(2) requires 'a business offering goods on sale to clearly specify the percentage of discount offered on sale goods, as well as the duration of the sale'. The same article provides 'goods that are offered on sale must be labelled with the pre-sale and sale price'. Art. 28(3) stipulates that 'if a price reduction is advertised as a percentage discount from the original price, then at least a quarter of all goods being offered on sale must be offered at the maximum rate of the advertised discount'. Article 29 provides that 'if a product is being offered for sale because of its impending expiry date, the expiry date must be clearly visible on the product'. Article 30 states that faulty goods must be (i) clearly labelled as such, (ii) displayed separately from the other goods on sale, and (iii) individually labelled.

Seasonal sales are subject to self-regulation. The Rules Concerning Seasonal Sales of Textile Goods and Shoes are issued by the Slovene Chamber of Commerce. Article 6 provides that summer and winter sales cannot commence before 15 July and 6 January respectively. Article 5 provides that seasonal sales cannot last longer than 3 weeks. Since membership of the Slovenian Chamber of Commerce is compulsory by law for all Slovenian companies, the above-mentioned rules are binding on them. Article 7 provides that the court of the Slovenian Chamber of Commerce has the power to fine a company in breach of these Rules and to issue a warning.

2.7.3 *Rebates and free gifts*

A number of Member States have legislation which determines whether free gifts are allowed or amount to unfair commercial practice (Cyprus, Malta, Lithuania, Poland and Slovenia).

Cyprus and Malta have specific legislation concerning free gifts for minors. The Code of Advertising in Cyprus prohibits advertising of a product addressed to children in conjunction with a free gift if the advertisement places disproportional emphasis on the free gift. The Broadcasting Code for the Protection of Minors in Malta requires that all references to the free gifts for minors in advertisements should include all necessary information such as any time limit and how many products must be purchased.

Polish and Slovenian legislation provide for a more general regulation of free gifts.

2.7.4 *Country overview*

Cyprus

Under the Code of Advertising, it is prohibited to advertise a product addressed to children in conjunction with a free gift when the advertisement places disproportional emphasis on the free gift (*Cyprus Radio Station Authority v Capital TV, case No.45/2003(57), 12 November 2003*).

Lithuania

The Civil Code as well as the Criminal and Administrative Codes contain provisions on free gifts. However, it must be noted that according to the provisions of the latter codes, 'free gifts' are considered to be an offence.

Malta

The Broadcasting Code for the Protection of Minors requires that all references to 'free gifts' for minors in advertisements should include all qualifying conditions, such as any time limit and how many products must be purchased, and any other relevant information.

Poland

The marketing techniques related to free gifts or sales linked to some sort of lotteries are regulated by the Civil Code provisions on mistake (Article 84 of the Code), the Act on Combating Unfair Competition and the Civil Code on unfair clauses in consumer contracts (Articles 384, 385).

Art.17(a) Act on Combating Unfair Competition provides that "any sale of goods or services together with free gifts is unfair, unless the gifts are of small value or samples, or if the gifts have been won in a lottery (organized in compliance with the Act on games and betting) or in a

competition”. Art. 17(b) specifies that “making an impression of a certain win in such lotteries as long as the consumer orders certain goods or services or pays a certain sum of money is unfair”.

Slovenia

Article 13 of the Competition Act provides that an offer or promise of a prize or any other benefits or advantages whose value significantly exceeds the value of goods and services being offered will be deemed unfair competition and consequently prohibited. The Supreme Court held in decision U1388/94 that an offer of a gift or prize which exceeded by 30 fold the value of the good or service being sold is amounts to unfair competition in accordance with Article 13 of the Competition Act. Pursuant to Article 28 Consumer Protection Act, the Market Inspectorate is empowered to prohibit such actions by businesses if it determines a breach of Article 13.

2.8 Information requirements

2.8.1 Introduction

Article 7 of the Directive on Unfair Commercial Practices (Misleading omissions) states that:

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.
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.

2.8.2 *Comparative overview*

In many countries, contract law directly or indirectly imposes a duty to the seller to disclose material information to the other party or parties to the contract (such as actions for misrepresentation). This does not only go for general contract law but also for special contract law, particularly the sale of goods. Since the Directive on Unfair Commercial Practices does not affect contract law, these contractual provisions will be left out in this research report.

Many Directives contain duties to disclose (correct) information. For example:

- Art. 3(1) (1) of Directive 90/314/EEC (Package Travel and Holiday Tours): the organizer shall not supply to a consumer any descriptive matter concerning a package, the price of a package or any other conditions applying to the contract, which contains any inaccurate to an essential degree information or misleading information or any information that might lead to deception.
- Art. 3(2) Directive 90/314/EEC (Package Travel and Holiday Tours): the organizer is not allowed to distribute a brochure to a possible consumer for his account, unless it specifies in a comprehensible and accurate manner the total price including any additional charges and adequate information.
- Art. 4 Directive 97/7/EC (Distance Contracts): the consumer must be provided with the necessary information prior to the conclusion of a distance contract. This information includes the identity of the supplier, the main characteristics of the good or service, the price including all taxes, the delivery costs where appropriate, the method payment, delivery or execution of the contracts, the existence of the right for cancellation, the duration of validity of the offer or the price and so forth.
- Art. 3 Directive 2002/65/EC (Distance Marketing of Consumer Financial Services): the supplier is required to supply to the consumer in good time before the consumer is bound by a distance contract a whole host of information on the supplier, the financial services, the distance contract and redress. This is in order to guarantee essential information prior to the conclusion of the contract.
- Directive 98/6/EC on Indication of Prices of Products.

Next to these duties to inform following from Directives and from general and special contract law, many Member States have set out articles which require the provision of material information in business-to-consumer relations. This is particularly the case in the various Consumer Protection Acts (Czech Republic, Estonia, Lithuania, Slovakia and Slovenia) as well as in other general Acts such as the Hungarian Competition Act, the Latvian Consumer Rights

Protection Law and the Polish Act on the Protection of Competition and Consumers. In Czech Republic and Slovakia general information duties can also be found in the Commercial Code. In Malta Articles 10-12 Trade Descriptions Act provide a basis for imposing information duties on sellers. Cyprus does not hold other provisions than those following from the implemented Directives and general and specific contract law.

These Acts impose rather general obligations for a seller to provide the consumer with information. The scope of these provisions differs but the main common features are that the information about the offered goods and services needs to be correct and complete in its features, the price, the amount, the maintaining of goods and the risks they might cause.

2.8.3 Country overview

Czech Republic

The Act on Consumer Protection imposes on the seller a general obligation to inform the consumer about features of the sold goods, the means of their utilization and maintaining, about dangers that can result from the improper use or maintaining, about the character of provided services as well as possible risks connected with them. S. 9 of this Act holds the seller responsible for not providing this information even though the producer or importer did not provide it either. Sections 10-12 provide further detailed information duties, for example about the composition of the product and price labelling.

§ 46 Commercial Code prohibits misleading information about goods or services. This provision can be also applied in the case of breach of obligation to provide information, provided that this omission leads to the misleading assumption that a good or service possesses certain qualities which it does not.

Estonia

Section 4(1) Consumer Protection Act provides consumers the right “to obtain information on the safety of goods and services offered as well as on aspects concerning protection of health, property and economic interests”. The traders are required to provide the following information: the characteristics and conditions of use of the goods or service, whether a warranty applies and if so its conditions, the price, conditions of payment, performance of the contract, and the rights, obligations and liability arising from the contract, including the possibilities for submitting complaints regarding the goods or services.

Hungary

Article 9 of the Competition Act states that in establishing whether the information provided is capable of misleading the consumers, the *general meaning of the terms* as used in everyday life and/or in trade shall apply.

Latvia

Articles 17-19 of the Consumer Rights Protection Law establish that a manufacturer, seller or service provider has to provide the consumer with true and complete information regarding the quality, safety, price, guarantee and the possibilities for guarantee service, directions regarding use, the name (company name), given name, surname and address of the manufacturer, seller or service provider regarding the goods or services offered, indicating such information in the labelling, the attached instructions for use, the technical certificate or in other written information in respect of such goods or services.

The Consumer Rights Protection Law also provides that in order to identify the manufacturer, the name of the location of the manufacturer and the name (company name) of the manufacturer shall be indicated on the labelling of the goods, on the packaging or on the attached label. The seller is prohibited to offer or sell counterfeit goods or goods, the manufacturer of which cannot be identified. The same law stipulates that information provided on the labelling shall be clearly visible and comprehensible, and it shall objectively reflect the safety or harmlessness and the quality of the goods.

Lithuania

Article 5 of the Law on Consumer Protection lists the consumer's rights to be informed about the nature of the product in the state language and in written form.

Malta

Articles 10-12 Trade Descriptions Act empowers the Minister responsible for Consumer Affairs to impose requirements relating to the information that should appear on or accompanying goods and in advertisements and to the markings that should feature on goods being offered for sale for the better information for consumers.

Poland

The Act on the Protection of Competition and Consumers stipulates that failing to impair fair, truthful and full information onto consumers has been classified as a practice infringing the collective interests of consumers.

The Act on Combating Unfair Competition also contains obligations to provide full and truthful information.

Art. 13 of the Act on Research and Certification introduces an obligation to certify products and services which may be dangerous when in use.

Slovakia

The Act on Consumer Protection imposes on the seller a general obligation to inform the consumer about features of the sold goods, about the means of their utilization and maintaining, about the dangers that can result from improper use or maintaining and about the character of provided services as well as possible risks connected with them. S. 9 of this Act holds the seller responsible for not providing this information even where it has not been provided by the producer or importer. Sections 10-12 provide further detailed information duties, for example about the composition of the product and price labelling.

§ 46 Commercial Code prohibits misleading information about goods or services. This provision can be also applied in the case of breach of obligation to provide information, provided that this omission leads to the misleading assumption that a good or service possesses certain qualities which it does not.

Slovenia

Article 32 Consumer Protection Act provides that a business must familiarise consumers with the characteristics of the product being offered for sale. Article 32(2) provides that a business must show the function of the selected product establishing that it is free of fault. If this is not possible, then detailed instructions and information must be given to the consumer concerning the product being sold. Article 33 states that easily understandable and clear instructions concerning the use of a product must be provided with it. Article 34 stipulates that a company

must provide certificates, warranties, instructions for assembly and use, lists of authorised service providers and other accompanying documents as prescribed by law, together with goods being sold.

2.9 Post-contractual and after-sale commercial practices

2.9.1 Comparative overview

Though it was initially aimed to regulate after sales services at Community level (see the Green Paper on consumer guarantees and after-sales services: COM(93) 509 final), Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees did not regulate this issue and left it to the national laws of the Member States.

There is, however, some Community legislation on after-sales services. For example, Article 5 (1) Directive 97/7/EC (Distance Contracts) states that in case of a distance contract the trader has to provide information on the after-sales services and guarantees. This information requirement does not, however, impose any obligation as to the content of the after-sales services but it can be assumed that the trader needs to comply to the after-sales services mentioned to the consumer.

Though Article 5(1) Directive 1999/44/EC does not regulate after-sales services it does regulate guarantees in consumer contracts. Article 5(1) provides that the seller shall be held liable if the lack of conformity of the delivered goods becomes apparent within two years as from delivery of the goods. This implies that the conformity of delivered goods has to be guaranteed for at least two years.

These regulations have, of course, been implemented in the legislation of the Member States. This has happened in various ways: in general legislation such as the Civil Code (Czech Republic, Hungary, Lithuania, Malta and Slovakia) and the Law on Obligations Act (Estonia), the Consumer Protection Act (Latvia and Slovenia) as well as in specific legislation (Cyprus, Lithuania and Poland).

Specific regulation of after-sales services, apart from warranties, is rare.

- Section 232 of the Law of Obligations Act (Estonia) is one of the few specific provisions in this respect, requiring that after-sales services related to the usage and repair will be provided together with the item bought.
- Article 93 Consumer Affairs Act (Malta) provides that a trader is obliged to make available replacement parts and appropriate repair service for a reasonable time from the date of the delivery of the goods, unless the consumer is specifically and expressly warned that such replacement parts or repair service is not available.

In those Member States with a general provision on unfair commercial practices after-sales services (the lack of service as well as the quality of it) may be judged under this general provision. The latter goes for instance for Czech Republic and Slovakia.

Finally, reference can be made to the Product Liability Directive, which provides a right to compensation for damage caused by a defective product. This is not about after-sales services

but about the consequences of delivered goods. The Directive does, however, not apply to damage caused to the good itself.

2.9.2 Country overview

Cyprus

After-sale commercial practices can be found in general provisions promising after-sale assistance, which is dealt by contract law.

Directive 1999/44/EC has been implemented in the Act Regulating Consumer Protection in relation to Certain Aspects of the Sale of Consumer Products and Relevant Guarantees Act (2000). It provides that the consumer is entitled to a free of charge repair or a replacement of the product, or to an appropriate reduction in the product's price or to a repudiation of the contract if the goods supplied to the consumer are not in accordance with the description applied by the seller.

Czech Republic

Directive 1999/44/EC is implemented in § 619-627 Civil Code. Concerning consumer goods, a 24-month guarantee period applies. For processed food goods the guarantee period is 8 days, for feedstock 3 weeks and for the sale of live animals 6 weeks. The seller is obliged to provide a written warranty card when the buyer asks for it.

Commercial practices performed after conclusion of the contract are generally not regulated. If such a practice would be qualified as unfair competitive conduct, it could be sanctioned applying the general clause of unfair competition (see Chapter X).

Estonia

Regulation of post-contractual practices can be found in the Law on Obligations Act. Sections 230 and 231 cover post-contractual practices such as warranties. Section 231 establishes that the consumer has the right 'to demand the repair of the thing or delivery of a substitute thing without charge during the warranty period.'

Section 232 regards after-sale services and provides that consumers are entitled to expect that services related to the usage and repair will be provided together with the item bought. The purchaser has the right to request these services also after delivery if these services are not provided.

Hungary

These issues are regulated by the Civil Code, which contains the basic provisions of guarantee and warranty caused by wrong compliance. These provisions can be found in Article 305 ff. Civil Code.

Latvia

Directive 1999/44/EC has been implemented in the Consumer Rights Protection Law. Article 27 provides that a consumer is entitled to submit a claim to the manufacturer, seller or service provider in respect of the non-conformity of goods or services with the provisions of a contract within a period of two years of the day of purchase of the goods or receipt of the services. If a manufacturer or seller of goods or the service provider has issued a guarantee for the goods or the services, the consumer is entitled, after the end of the given time period, to submit a claim

with respect to the all of the remaining period of the guarantee in accordance with the conditions indicated in the guarantee document.

Lithuania

Despite the fact that some general provisions on post-contractual and after-sales practices are to be found in the basic Lithuanian legal acts, the most detailed listing of obligations are set in the secondary legislation, such as Orders of the Minister of Economy.

Rules on return and exchange of products, on approval of rules on marketing of products away from business premises, on approval of Rules on marketing of products and delivery of services when contracts are concluded by means of distance communication implies certain requirements with regards to buyer continues with the setting of the special provisions related to post-contractual and after-sale commercial practices are all implemented by Orders of the Minister of Economy.

Malta

Articles 72-92 of the Consumer Affairs Act require traders to deliver to consumers goods that are in conformity with the descriptions and specifications in the contract of sale, and grant various remedies to consumers if a trader defaults.

Articles 1424-1432 of the Civil Code provide that the seller is bound to warrant the thing sold against any latent defects which render it unfit for the use for which it is intended or which diminish its value to such an extent that the buyer would not have bought it or would have tendered a smaller price, if he had been aware of them. If such a latent defect becomes real, the buyer can return the thing and receive a refund of the price or retain the thing and receive a partial refund. These provisions are applicable to any purchaser, irrespective of whether he is a 'consumer' or not; the Civil Code does not distinguish between private purchasers and non-private purchasers.

Article 93 of the Consumer Affairs Act provides that if the goods are of a nature that may require maintenance, or possible replacement of parts, the trader is obliged to make available the replacement parts and appropriate repair service for a reasonable time from the date of the delivery of the goods to the consumer, unless the consumer is specifically and expressly warned before the contract is concluded that such replacement parts or repair service is not available.

Poland

The provisions of the Civil Code on legal and commercial guarantees and the Act on the Particular Conditions of Consumer Sales and on the Amendment of the Civil Code (2002) deal with post-contractual and after-sales conduct.

Articles 556-576 of the Civil Code refer to the 'legal guarantee' rights of the buyer. Articles 577-581 concern commercial guarantees specifying buyers' rights in case the guarantee itself does not clearly indicate something.

The Act on the particular conditions of consumer sales establishes the obligation for goods to comply with the contract and provides relevant remedies to consumers.

Slovakia

Directive 1999/44/EC is implemented in § 619-627 of the Civil Code. Concerning consumer goods, a 24-month guarantee period applies. For processed foodstuffs the guarantee period is 8

days, for feedstock 3 weeks and for the sale of live animals 6 weeks. The seller is obliged to provide a written warranty card when the buyer asks for it.

Commercial practices performed after conclusion of the contract are generally not subject to regulation. If such a practice would be qualified as unfair competitive conduct, it could be sanctioned applying the general clause of unfair competition (see Chapter X).

Slovenia

After-sale practices are commonly set out in contracts for the supply of goods and services and the consumer is able to invoke contract law remedies in case of a breach of the terms of such contracts.

Directive 1999/44EC has been implemented in the Consumer Protection Act. Article 16(2) provides that the producer or the trader which does not itself offer repair services in respect of a good for which a warranty is prescribed by law must ensure that an authorised service for the repair of such good is available to the consumer. Article 37 of the same Act sets out the rights of consumers in respect of a 'fault', which provides that there is a 'fault' if (i) the product 'does not have the characteristics necessary for its ordinary use', (ii) the product 'does not have the characteristics necessary for the particular use for which the consumer has purchased it and which was known or ought to have been known to the retailer at the time of sale', (iii) the 'product does not have the characteristics which were expressly or implicitly agreed or are prescribed', and (iv) 'if the trader delivers a good which is not the same as the sample or model previously offered, except where the sample or model was exhibited only for information purposes'. The same article further provides that the obligation of a trader concerning 'faults' under this Act cannot be limited or excluded pursuant to a contract.

3. POSSIBLE OBSTACLES FOR IMPLEMENTATION OF THE DIRECTIVE

3.1 Main obstacles for implementation of the Directive

3.1.1 Comparative overview

Before becoming Members of the European Union, the new Member States were obliged to comply with the *acquis communautaire* in the area of consumer protection. The transposition and implementation of the Directive on Unfair Commercial Practices would further harmonize consumer protection rules and would provide an enhanced legal certainty across the Member States. The general view in the new Member States of the Directive is that no major obstacles are foreseen that might complicate the process of transposition of this Directive into national law.

A more general concern in the process of transposition is to reconcile the existing detailed legislation in relation to business-to-consumer practices with the Directive. Particularly due to the Directive's maximum harmonisation character such legislation has to be amended or revoked, for example Poland applies a broader concept of 'consumer' than the Directive does. However, this is a problem all Member States (including the 'old' ones) will have to cope with.

After the implementation stage problems could arise in application of the Directive. Some of the Member States, for instance Cyprus, have less experience with applying a general rule and this might affect the application of the new legislation. Even though the Cyprus reporter does not see this as a matter of principle, this problem is not unique for Cyprus. Also other Member States will have to make themselves familiar with general rules and their application.

After implementation, the courts and the enforcement agencies will have to interpret new terminology covering such terms as average consumer, professional diligence, and material distortion of the economic behaviour of consumers.

3.1.2 Country overview

Cyprus

The absence of a general rule on unfair commercial practices may be considered as an obstacle resulting to a complicate transposition and implementation of the Directive. However, the approach taken under Cyprus law is not far away from the notion of a general rule against unfair commercial practices since the system may be described as containing general provisions on unfair commercial practices for certain kinds of unfair conduct.

Also the issue of maximum harmonization may lead to substantive problems at a transposition level but it is anticipated that this is a problem that can be overcome.

Czech Republic

The main problem in implementation of the Directive may be the numerousness of norms in the conception of legal regulation for unfair competition or the possible absence of certain institutions or standards to regulate them. There is a high number of statutes which in some way deal with this problem. The problem will be to harmonize it all with the new directive.

Implementation of the new Directive will require the consideration of the relationships between the standards of the Directive and in national law as well as the scope of the matters they regulate. It will also be desirable to legislatively fill the gaps presented by the absence of certain institutions such as aggressive business practices, to consider their place in the systems of the regulations. Whilst implementation will not be an easy task for the legislator there does not seem to raise substantial implementation problems.

Estonia

In order to transpose and implement the Directive a cohesive system of laws covering unfair trade practices needs to be created. There are a number of areas which are not yet covered by law and which will need to be added. Other areas need to be changed, such as regulation of aggressive practices, special marketing techniques and so forth.

Hungary

Implementation problems could rise through the term average consumer. According to the Hungarian Office of Economic Competition it means a consumer acting *circumspect* and *reasonable* in a *generally expected manner*. A *circumspectly* acting consumer takes his decision regarded as optimal in the current situation by a subjective guess of presumption. The consumer acts in an *expected manner* if he informs until the expected advantages of asking information exceeds the expected costs. On these grounds the transposition of the Directive would have been complicated if the average consumer would have been defined in the text.

Latvia

The main problem with regard to the implementation and further enforcement of the Directive would be the application of such terms as average consumer, professional diligence and material distortion of the economic behaviour of consumers and so forth. could cause difficulties for enforcement agencies and the courts. Decision making would not be easy, because the practice of giving reasons for such decisions is not extensive in Latvia.

Lithuania

There should not be any specific problems with regard to the transposition of the Directive into the Lithuanian Law. The Lithuanian system envisages regulation of consumer protection law envisaged in the Civil Code and separate legislation such as the Law on Consumer Protection. These are the two most likely parts of legislation to implement the EC Directive.

Malta

The Maltese reporters do not anticipate any problems of transposition of the Directive into national law.

Poland

Article 22.1 Civil Code provides an important definition of “consumer” to which many consumer protection Acts refer (for example, the Act on the Protection of Competition and Consumers). This definition is broader than the one established in the Directive. For that reason, as the Directive aims for maximum harmonization this issue may constitute a problem. How much of a problem it will actually be depends upon the method which the Polish authorities decide to use in implementing the Directive: adopting a separate act or amending the existing legislation, but even more upon how comprehensive the legislative effort related to the implementation will be.

Another obstacle could be foreseen in relation to the very nature of the Polish legal culture which creates difficult situations for the consumers. The problem with the Polish justice system is that it does not seem to be well suited to deal with cases swiftly and especially with cases related to consumers.

Slovakia

The main problem in implementation of the Directive may be the numerousness of norms in the conception of legal regulation for unfair competition or the possible absence of certain institutions or standards to regulate them. There is a high number of statutes which in some way deal with this problem. The problem will be to harmonize it all with the new directive.

Implementation of the new Directive will require the consideration of the relationships between the standards of the Directive and in national law as well as the scope of the matters they regulate. It will also be desirable to legislate for the gaps presented by the absence of certain institutions such as aggressive business practices, to consider their place in the systems of the regulations. Whilst implementation will not be an easy task for the legislator there does not seem to raise substantial implementation problems.

Slovenia

The main obstacle in the process of transposition will be the complexity of the process of harmonising the terms of the numerous laws, regulations and decrees which address business-to-consumer practices with the terms of the Directive. Such laws, regulations and decrees will have to be amended or revoked. Consequently, the transposition of the Directive will not be an easy or straight forward task. Nevertheless, it represents an opportunity to develop a more coherent body of law in the field of unfair commercial practices in Slovenia.

Another difficulty in the process of transposing the Directive into Slovenian law will be to ensure that a coherent system of sanctions in case of an infringement is established. If the government decides to transpose the Directive in a piecemeal way rather than by adopting a single new law, this will further complicate the adoption of a coherent sanctions system. The slowness of the court system will be the key obstacle in the implementation of the Directive.

A final implementation problem could be that the Directive provides that only the information required in Community law is considered as material and that laws of Member States must be harmonised so as to ensure that failure to provide extra information does not constitute a misleading omission. Given that Slovenian law prescribes more stringent information requirements in respect of certain goods (for example, electrical goods) or sectors of the economy, it would seem that these laws would also have to be amended even though they were introduced specifically to protect the health and safety of consumers.

3.2 Incompatibilities in implementation of the Directive

3.2.1 Comparative overview

Generally speaking, there are no major incompatibilities foreseen in the new Member States in the transposition of the Directive. In all Member States the question is rather to fit the new provisions into the existing legal systems (see Chapter X).

Since contract law is not affected by the Directive, the fact that a consumer has the right to commence proceedings under contract law in respect of unfair commercial practices does not render a national law incompatible with the terms of the Directive. Contract law sanctions would apply in addition to those prescribed by the law transposing the Directive and would in no way affect the primary purpose of the Directive of setting EU-wide rules regarding circumstances under which business practices are considered unfair.

However, two issues are worth mentioning concerning the Directive and its transposition into national law.

In the Lithuanian legal system the problem of the recognition of legal personality is considered a matter of concern since it only recognizes the enterprise as an object of law (property).

In Cyprus the ban on advertising toys on television and radio may constitute a problem. This kind of advertising is prohibited until the hours of 10.00pm on weekdays and 11.00pm on weekends and holidays.

3.2.2 Country overview

Cyprus

The ban on advertising toys on television and radio may constitute a barrier to the Internal Market. The advertisement of toy products on television and radio is banned from morning till 10.00pm and until 11.00pm during school holidays and weekends (s. 34(4)(a) and 34(4)(b) Radio and Television Stations Act 1998. The aforesaid ban affects only the advertisement of toy products by stations which are subject to the jurisdiction of the Republic of Cyprus.

Hungary

There will be no real obstacles to implement the Directive into Hungarian law. However, the enforcement would have been difficult if the term of average consumer had remained in the directive.

Lithuania

A problem could be the 'personification' of enterprises (recognition of legal personality). The Lithuanian legal order recognizes the enterprise as the object of law (property). It is not the subject of law according to the Civil Code. The enterprise is the opposite in the relation to the consumer. The subject doctrine could be changed under influences of the tendency to have consumer and enterprise as the subjects of Consumer Law.

3.3 How could the Directive be implemented into national law?

3.3.1 Comparative overview

According to Article 249 European Community Treaty (ECT) directives are binding as to the result to be achieved, upon each Member State to which they are addressed, but leave to the national authorities the choice of form and methods. This article obliges Member States to enforce the legal requirements of the directive. The main purpose of the directives is to harmonize the divergent national laws in order to make them adequate so that they could be combined or fitted within a legal framework.

According to the national reports the Directive on Unfair Commercial Practices could be transposed into existing national legislation in a variety of ways. In the end it is, of course, for the legislative authorities to decide in which form the Directive will be implemented.

Some Member States provide that the transposition of the Directive into the national legal order could be foreseen through its implementation into a general code, such as the Civil Code, the Commercial Code or an Act on Consumer Protection (Czech Republic, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia).

Other countries such as Cyprus, Estonia, Poland and Slovenia also envisage the possibility to enact a specific Law transposing and implementing the Directive. This possibility is preferable because the integration of the Directive into existing law would cause many problems of coordination, interpretation and lack of overview.

Estonia, Poland and Slovenia also consider the Directive an important opportunity to improve the way consumer law is regulated in these countries. The various ways in which communitarian rules are implemented in various acts could be consolidated in one Act.

3.3.2 *Country overview*

Cyprus

It could be transposed either by adopting a new act, implementing the Directive or by various amended acts, amending each act containing provisions dealing directly or indirectly with those practices which might be considered as unfair. The passing of a new act seems to be the most preferable choice.

Czech Republic

In compliance with the current legislative practice, the Directive would be transposed into the various existing Act, such as the Commercial Code, the Consumer Protection Act, the Act on Protection of Economic Competition and others. It is likely that implementation will not take place through one new act, for such an act would find itself beyond the existing system of norms that pursue unfair competition practices and this would result in further shattering of the system.

Estonia

Since a general unfair commercial practices law does not exist, it might be most suitable to create a specific act replacing and modifying some of the already existing laws. Consumer law in general is a rather new field of law and the implementation of the Directive could provide and impetus for the review of the whole system of regulation of commercial practices to bring it into a more cohesive form.

Hungary

The Unfair Commercial Practices Directive could be transposed into the Competition Act as well as in the Commercial Advertising Act. Annexes could be implemented into the new Trade Act.

Latvia

There are mainly two possible ways to implementing the Directive into national law: it can be implemented into the Consumer Rights Protection Law or it can be implemented by a special

law on unfair commercial practices. This is, of course, subject to discussion by all the ministries involved.

Lithuania

The Directive will deeply influence the national legal system and cannot be implemented without systematic structural changes in the Lithuanian Civil Law. The Directive could be implemented into the Civil Code, the Law on Consumer Protection (a special legal act, supplementing the norms of the Civil Code on consumer rights protection) and the Law on Competition. However, in the latter case, the scope of the Law needs to be changed because it only concerns *business-to-business* relations. Business-to-consumer relations are regulated by the Law on Consumer Protection.

Malta

Implementation is conceivable through amendments to the various legislative provisions or through the issue of regulations under the Consumer Affairs Act which already empowers the Minister responsible for Consumer Affairs in Article 7 to prescribe regulations ‘in relation to any aspect concerning the provision of any service, or the sale or hire of any goods offered or supplied to consumers’, ‘regulating advertising and similar practices in order to ensure that advertising and similar practices are fair and that they do not take undue advantage of consumers’ and ‘regulating trading stamps schemes, gift schemes, special offers, sale promotional activities and other similar schemes, arrangements and activities’.

Poland

It would be advisable for the Polish authorities to consider the introduction of a comprehensive consumer protection act when transposing the Directive into the Polish legal system. However, it will be more likely that the Directive will be incorporated into the Civil Code or, more probable, into the Act on Combating Unfair Competition, the Act on the Protection of Competition and Consumers, or an entirely new act.

Slovakia

In compliance with the current legislative practice, the Directive would be transposed into the various existing acts, such as the Commercial Code, the Consumer Protection Act, the Act on Protection of Economic Competition and others. It is likely that implementation will not take place through one new act, for such an act would find itself beyond the existing system of norms that pursue unfair competition practices and this would adversely affect the current legal system.

Slovenia

There are two ways in which the Directive could be transposed into Slovene national law: (i) through adoption of a new law and (ii) the amendment of the Consumer Protection Act. The national rapporteurs believe that the best approach would be to amend the Consumer Protection Act to bring it in line with the terms of the Directive. This would avoid the situation in which two laws dealing with substantially would cover the same subject matter. It would also mean that key consumer rights would be set out in a single document which would make it easier for consumers to become aware of such rights.

3.4 Sanctions and enforcement mechanisms

3.4.1 Introduction

Article 11 of the Directive on Unfair Commercial Practices (Chapter 4: Final Provisions) envisages the enforcement mechanisms:

Art.11 (1) states that ‘...Member States shall ensure that adequate and effective means exist to combat unfair commercial practices and for the compliance with the provisions of this Directive in the interest of consumers.

Such means shall include legal provisions under which persons or organizations regarded under national law as having a legitimate interest in combating unfair practices may take legal action against such unfair commercial practices; and/or bring such unfair commercial practices before an administrative authority competent either to decide on complaints or to initiate appropriate legal proceedings. (...)’

Art.11 (2) states that ‘... 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: to order the cessation of, or to institute appropriate legal proceedings for an order for the cessation of, unfair commercial practices, or 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. (...)’

Art.11 (3) provides that the administrative authorities must be composed so as not to cast doubt on their impartiality; have adequate powers, where they decide on complaints, to monitor and enforce the observance of their decisions effectively; normally give reasons for their decisions. (...)

3.4.2 Comparative overview enforcement

Enforcement of provisions on unfair commercial practices and the imposition of sanctions are achieved in various ways. In a number of Member States enforcement is carried out by public authorities, in others the emphasis is on private enforcement, whereas other Member States also impose criminal sanctions on business conducting unfair commercial practices.

- Art 13 (1) Directive 2002/65/EC (Distance Marketing of Consumer Financial Services), amending Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC, states that Member States shall ensure that adequate and effective means exist to ensure compliance with this Directive in the interests of consumers.

Paragraph (2) provides that the means referred to in paragraph (1) shall include provisions whereby one or more of the following bodies, as determined by national law, may take action under national law before the courts or before the competent administrative bodies to ensure that the national provisions for the implementation of this Directive are applied: a) public bodies or their representatives; b) consumer

organizations having a legitimate interest in protecting consumers; c) professional organizations having a legitimate interest in acting (...)

a) Public enforcement authority and administrative law

Some of the Member States have a general public authority or specific public authorities to deal with complaints launched by affected individuals (consumers and businesses) or organizations. For example, in Cyprus the Competition and Consumer Protection Service under the auspices of the Ministry of Commerce, Industry and Commerce is responsible for dealing with complaints (launched by consumers). The same goes for the Consumers Association: this is one of the bodies responsible for dealing with complaints in conjunction with the relevant governmental departments. Complaints can also be dealt with at a self-regulatory level as well where a consumer can claim remedy through another independent body (for example, the Cyprus Radio Televisions Authority).

These authorities generally have the power to impose sanctions, such as fines, or order an injunction. Some countries may issue warnings regarding the trading practices (for example, Cyprus, Malta).

b) Private enforcement and civil law

Next to this administrative way of enforcement, private enforcement is foreseen in all Member States by launching a civil claim for infringing rules of fair commercial practices. Such claims can be filed by consumers, competitors, business, and consumer associations and the claim can involve damages or an injunction order. The latter is considered to be the most effective sanction against unfair practices. In Malta an affected trader may either resort to an action for damages or request the Civil Court to impose a penalty on the offending trader which would be paid to the injured trader in settlement of all his claims for damages (for example, Malta).

c) Criminal law

Some Member States provide for criminal sanctions. For example, in Cyprus a criminal sanction is anticipated to be imposed on a trader engaged in an unfair commercial practice. Similarly in Latvia, criminal law establishes criminal liability for failing to ensure quality of goods and services, defrauding purchasers and ordering parties and violation of trading provisions. In some Member States certain unfair commercial practices are punishable by a fine and/or imprisonment (for example, Latvia, Malta, Poland).

3.4.3 Country overview enforcement

Cyprus

The Competition and Consumer Protection Service of the Ministry of Commerce, Industry and Tourism and the Director of such Service as well as other authorized officers are the principal enforcers of all Laws, dealing directly or indirectly with practices which might be considered as unfair.

Under s. 17 of the Act for the Conclusion of Consumer, Distance Contracts of 2000, the Court on application of the Competition and Consumers Protection Service of the Ministry of Commerce, Industry and Tourism is empowered to issue a prohibition or mandatory order against any person who is liable for a violation of the provisions of certain applicable acts, including an interim order providing for *a)* the immediate cessation of such violation, or *b)* the taking of rectifying measures within a specified time-limit which will remove the unlawful

situation created by such violation being investigated or c) the publication of the relevant court's decision in order to remove any prejudicial consequences of the violation investigated or d) any other act or measure necessary or reasonable under the circumstances.

Under *s. 14 of the Consumer Contracts Concluded away from Business Premises of 2000*, prohibition or mandatory orders can be issued in respect of violations by the sellers harming consumers' interests being of the same nature as those issued under the Act for the Conclusion of Consumer, Distance Contracts of 2000 as mentioned above.

Lawfully established organizations or associations have the right under certain applicable acts to apply to the Court for an injunction against any person who is involved in the violation of the particular act having the effect of combating unfair commercial practices.

The most important provisions are to be found in the following Acts:

Under *s. 8 of the Control of Misleading and Comparative Advertisements Act of 2000*, legally established organizations having an adequate legitimate interest have the power to apply before the Court for the issuing of a prohibition or mandatory order, including an interim order against any person who may have been or is possibly involved in the issuing or publication of the advertisement.

Under *s. 18 of the Act for the Conclusion of Consumer, Distance Contracts of 2000*, any lawfully established organizations having an adequate legitimate interest in the protection of the consumer's collective interests.

Czech Republic

The protection of Competition in the Czech Republic is ensured institutionally by the Office for the protection of competition. Legal regulation for the Office is provided by the PEC (Act on the protection of economic competition), Chapter 5.

The Office has a number of powers and responsibilities. It has decision making powers and duties, grants and cancels individual exceptions from the prohibition of agreements infringing the competition, prolongs exceptions from the prohibition of agreements, determines if a certain agreement of competitors is subject to the prohibition, decides upon applications whether a certain conduct of a competitor is or is not a misuse of dominant position, imposes so-called 'deconcentration' measures, fines, orders to remedy. Competitors are obliged to comply with inspections of the Office and the Office is entitled with a number of authorizations. The Office is also empowered with information power and duty. It has the duty to announce in the Commercial Bulletin any opening of proceeding for permission for fusion of competitors, to publish its own valid decisions, to keep a public trust register on agreements, permitted exceptions, their extensions and so forth.

Estonia

The Consumer Protection Board (CPB) would most likely be an enforcer of the provisions of the general clauses envisaged in the Directive. It is possible for the CPB as the responsible authority to issue a mandatory precept upon ascertaining a violation of the Advertising Act in case of advertisements.

Art. 19 of the Consumer Protection Act (CPA) creates the possibility to submit a complaint to the trader where it results from a breach of contract.

Hungary

The enforcement of regulations in Hungarian legislation is ensured by sanctions. The Hungarian Office of Economic Competition is entitled to impose sanctions in case of misleading practices. If a responsible authority, such as the Hungarian Office of Economic Competition or General Inspectorate of Consumer Protection, establishes that the advertising violates the law, it may order such violation to be terminated or prohibit continuation of the violation (Art.18 (1) of the Act on Business Advertising Activity).

Latvia

Article 25 Consumer Rights Protection Law allows the Consumer Rights Protection Centre to submit a statement of claim to a court or to provide an opinion on the matter when defending consumer rights and lawful interests. The requirements and instructions given by the Consumer Rights Protection Centre authorities are binding on the manufacturer, seller and service provider depending on each particular case.

Articles 202, 203, 204 and 205 Criminal Law, in the field of consumer rights protection, establishes criminal liability for failing to ensure quality of goods and services, failing to observe requirements regarding safety of goods and services, defrauding purchasers and ordering parties and violation of trading provisions.

Lithuania

The authorities for imposing and enforcing of sanctions are the following: the State Food and Veterinary Service; the State Inspectorate of Non-Food Products; National Control Commission for Prices and Energy; Competition Council Republic of Lithuania; National Consumer Rights Protection Board; Courts. According to paragraph 6 part 1 of the Article 1.138 Civil Code only the Court may adjudge material as well as non-material damages in the republic of Lithuania. National Consumer rights protection board may confirm that particular consumer rights have been infringed. On that basis a consumer may apply to the court requesting to adjudge damages that occur as the consequence of the particular infringement. The same board is allowed to be a state institution providing it's conclusion in the court.

Malta

A combination of public and private enforcement is available in Malta. The Director of Consumer Affairs would be in charge to monitor these practices and investigated complaints and following attempts at voluntary compliance, issue compliance orders, briefly stating his reasons to stop such practices. These orders would be reviewable by a Court of Magistrates in civil jurisdiction on an appeal by the person to whom the order is addressed. Registered consumer associations would be able to request the Director to issue a compliance order without having to prove an interest in the matter or that it is affected by it and although it is at the Director's discretion whether to accede to the request or not they would be able to appeal against his negative decision.

The Director of Consumer Affairs investigates complaints from consumers and takes actions in order to settle the matter amicably. If the Director finds that an offence has been committed under the Consumer Affairs Act, he may commence proceedings before the Court of Magistrates. Moreover, the aggrieved consumer or competitor would also be able to seek compensation before a civil court or a Small Claims Tribunal (or in the case of consumer before the Consumer Claims Tribunal) for the damage incurred by the unfair commercial practices.

Poland

The Act on Combating Unfair Competition (1993) prescribes civil and criminal liability of those traders who breach its provisions. According to Article 19.1 civil cases involving misleading or aggressive advertising can be brought by another trader, an association of traders, or the Head of the Office for the Protection of Competition and Consumers. The Act on the Protection of Competition and Consumers introduces the procedure in cases involving conduct infringing collective interests of consumers. The Head of the Office for the Protection of Competition and Consumers has the power to enforce the provisions of the Act. Claims can be brought by the Ombudsman, the Insurance Ombudsman, the Representative of Consumers, or a consumer organization (national and foreign). National and foreign organizations are cited on the list published in the Official Journal of the European Communities and are entitled to bring claims if their statutory aims justify the claim concerning actions or omissions taking place in Poland but endangering collective interests of consumers in the Member State in which the foreign organization is based (Art.100 a).

The Settlement Consumer Courts activity is based upon the Act on Trade Inspection and the provisions of the Code of Civil Procedure (Art. 695-715). The procedure before such courts is shorter and cheaper than before ordinary courts, but its success depends upon whether the trader in question agrees to be a party in the proceedings. Cases may be brought by consumers (alone or represented by a lawyer), as well as (if consent of the consumer was obtained) the Trade Inspection, a consumer organization or local authorities. The decisions of the Settlement Courts are final (however there is a possibility to bring the case to an ordinary court). Furthermore, proceedings involving unfair commercial practices may be commenced in an ordinary court (using ordinary civil procedure based on the Code of Civil Procedure). According to the Code of Civil Procedure, consumers who are victims of unfair conduct, the Representative of consumers (Art. 63.3), social organizations the statutory aims of which include consumer protection (Art. 61, 63), the Head of the Office for the Protection of Competition and Consumers may bring claims.

Slovakia

The inspection of application of legislation dealing with consumer protection is executed by controlling and inspection organs established according to law on competences of organs of consumer protection, namely the Slovak Commercial Inspectorate, departments protecting consumer and environment of district and regional authorities and municipalities. Slovak Commercial Inspectorate is a public authority falling under the Slovak Ministry of Economy and its activity is governed by the law on state control of internal market regarding consumer protection. The Commercial Inspectorate also cooperates with customs authorities, which provide it with necessary information.

The following institutions are involved in consumer protecting activities: State veterinary and food authority, district and regional hygienic officer and medical institutions established by Ministry of health, price controlling organs and custom authorities within Ministry of Finance, labour inspection organs within Ministry of Labour, family and Social Matters.

When the provisions regulating economic competition have been infringed, the claimant may file an action against the given subject with a State court to request the given subject cease such a conduct and remove the faulty state. He may claim appropriate satisfaction which can be a financial one, compensation for damages or rendering the unjustified enrichment. An application to court to restrain from unfair conduct and remove defective state can be filed even by a legal person authorized to protect the interests of consumers, even though it is actually not

the person whose rights were prejudiced or infringed by that unfair competition. At court cannot be opened a proceeding by which the consumer or another person would claim refraining from unfair conduct if a proceeding in the case has already been opened. The court may adjudicate the claimant, whose action for consumer rights protection has been admitted, the right to make the judgment public at the cost of the unsuccessful party, the court shall define the volume, form and the way of announcing according to the circumstances of the case.

Slovenia

Pursuant to Article 73 Consumer Protection Act the trade inspectorate or any other authorized body which determines that (1) a business is advertising its goods and services in a manner contrary to this Act, indecently or misleadingly or if it does not advertise in the Slovenian language; (2) a business comparatively advertises goods and services in a manner contrary to the provisions of this law; or (iii) advertising contains elements which cause or are likely to cause physical, mental or other damage, can issue a decision (a) temporarily prohibiting such advertising of goods and services or (b) prohibiting the publication of such advertising if such advertising is pending publication; (3) advertises goods and services in a manner contrary to this Act, incidentally or misleading or if the goods and services are not advertised in the Slovene language; (4) comparative advertising of goods and services contrary to the provisions of this Act.

(a) The Market Inspectorate is given extensive powers under the Consumer Protection Act to enforce the rights accorded to consumers under this Act. Article 72 accords the Market Inspectorate the right to issue decisions to prevent the sale of goods or services in case of breaches of the Act concerning price reductions.

(b) Under Articles 26, 27 of the Competition Act consumers can initiate claim for damages in case of unfair commercial practice which falls within the scope of unfair competition (Art. 13 Competition Act). However, no such claims have been brought to date.

(c) A breach by an individual of the rules of a professional association such as that of lawyers, accountants and doctors can result in a debarment from practicing the profession.

(d) Consumers enforce their rights concerning unfair commercial practices under contract law by commencing proceedings for breach of contract or for injunctive relief. In certain instances, actions for breach of tort law can be commenced as well.

The most significant obstacle to effective enforcement of the Directive is the ineffectiveness and slowness of the Slovenian court system. Reducing delay and making the judicial system more effective and efficient, including training of judges in consumer protection law and the introduction of case management, will be crucial to the effective enforcement of rules concerning unfair commercial practices in Slovenia.

3.4.4 Comparative overview sanctions

Article 13 Unfair Commercial Practices Directive (amending Directive 2002/65/EC, Directive 90/619/EEC, Directive 97/7/EC and Directive 98/27/EC) provides for penalties:

Art.13 states that Member States shall lay down 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.

The Member States' laws show a wide range of instruments by which to sanction unfair commercial practices. These range from civil law remedies (damages and injunctions) to administrative orders and penalties to criminal sanctions (fines and imprisonment). These sanctions do not only differ per country but also within each country, since the character and seriousness of the conduct which is to be sanctioned can differ considerably. In the country overview the emphasis is on the administrative and criminal sanctions of which the latter are generally of less importance than the former.

3.4.5 Country overview sanctions

Cyprus

Consequences of breaches of the various legislative provisions mentioned above vary between criminal sanctions, civil law remedies, injunctions or similar orders depending on each applicable act. Possible sanctions are the restraining or prohibitive injunction (for example, on the basis of the Control of Misleading and Comparative Advertisements Act 2000).

Lawfully established organizations or associations which either by virtue of a law or by their articles of association establish satisfactorily a legitimate interest in the protection of the collective interests of consumers have the right under the applicable acts to apply to the Court for an injunction against any person who is involved in the violation of the particular act which may have the effect of combating unfair commercial practices.

The Competition and Consumer Protection Service decides on complaints and can apply to the Court for a restraining and or prohibitive injunction which may have the effect of an unfair commercial practice or a future one depending on the applicable act. However, it does need to refer the case to the Attorney-General (The Competition and Consumer Protection Service shall refer the case to the Attorney-General who shall resolve whether to apply for a restraining and or prohibitive injunction, as the case applies under each applicable act. The Competition and Consumer Protection Service should be legitimated (*or should be granted a power*) to decide on complaints and launch an action for a restraining and or prohibitive injunction in respect of an unfair commercial practice or a future one, without being restricted to refer the case to the Attorney-General for time consuming purposes aiming to an efficient and effective protection of consumers). An action for an injunction for an unfair commercial practice or a future one should also be launched by consumer organizations and competitors. It does not need to refer the case to the Attorney-General. An action for an injunction for an unfair commercial practice or a future one can also be launched by consumer organizations and competitors under an express provision of the act implementing the Directive. However, this is currently not possible. Apart from organizations having a legitimate interest in consumers' interest, competitors should be legitimated (*or should be granted the power*) to launch an action for a restraining or prohibitive injunction for an unfair commercial practice or a future one under an express provision of the act implementing the Directive. The Court should issue an order as the Court thinks fit taking into account the public interest.

Under the Control of Misleading and Comparative Advertising Act of 2000 there is no imposition of criminal sanctions on the person who advertised misleadingly neither on the person engaged in a impermissible comparative advertising. It is, however, anticipated that criminal sanctions would be imposed on traders engaged in an unfair commercial practice under the Act implementing the Directive (in order to overcome the fact that there is no provision of criminal sanctions under the Control of Misleading and Comparative Advertising Act of 2000).

Fines or imprisonment would be imposed on offenders as it is the case under the Trade Description Act of 1987 until 2000. The Competition and Consumer Protection Service would be empowered to order the person who violates any provisions of the Directive to terminate the violation or to impose administrative fine as it is the case under the Distance Marketing of Consumer Financial Services Act of 2004. In addition, administrative fines should be provided for to be imposed by the Competition and Consumers Protection Service of the Ministry of Commerce, Industry and Tourism under the Act implementing the Directive (in order to overcome the fact that there is no provision of administrative fines under the Control of Misleading and Comparative Advertising Act of 2000).

The Cyprus Radio Television Authority, which among its competences under s. 3 of the Radio and Television Stations Act of 1998, is to examine that the provisions of this Act, the Regulations issued under this Act and the Code of Journalistic Ethics are preserved, is empowered under s.3 of the Radio and Television Stations Act of 1998 to sue and be sued and review on its own motion or by complaint whether an advertisement is misleading imposing an administrative fine or give a warning as it thinks proper under the circumstances.

Czech Republic

If provisions regulating economic competition have been infringed, the claimant (this can be a consumer, a competitor and in some special cases listed by § 54 of the Commercial Code a consumer organization) may file an action against the given subject with a State court to request the given subject cease such a conduct and remove the faulty state. He can also claim compensation for damages or rendering the unjustified enrichment. An application to ask an injunction of the unfair conduct and to end the wrongful situation can be filed even by a legal person authorized to protect the interests of consumers, even though it is actually not the person whose rights were prejudiced or infringed by the unfair competition.

Filing an injunction is not possible if a proceeding in a case has already been opened. The court may adjudicate the claimant, whose action for consumer rights protection has been admitted, the right to make the judgment public at the cost of the unsuccessful party, the court shall define the volume, form and the way of announcing according to the circumstances of the case.

On the basis of the Act on Consumer Protection, the Trade Inspectorate at the Ministry of Business and Industry can impose an injunction for unfair commercial practices. This and other public authorities are authorized and obliged to perform inspections whether businesses meet the relevant legal regulations. Powers of enforcement and sanctions are entitled to them by the Act on Consumer Protection.

According to the Law of Trade Inspection Nr. 64/1986 the Trade Inspectorate can fine an unfair acting trader with a penalty up to 2.000.000 Czech crowns (approx. € 65.000). Criminal sanctions are available but in practice they are not used.

Estonia

The Advertising Act specifies liability for misleading advertising. It is stated in section 1 of § 23(2) that 'misleading, offensive, denigrating or surreptitious advertising, advertising which violates the inviolability of private life or ownership, and violation of the requirements for comparative advertising or advertising directed at children is punishable by a fine up to 300 fine units' (a fine unit is based on a base amount for monetary fines, currently it is set at 60 Estonian kroons, about € 4). Legal persons can be fined up to 50,000 kroons (€ 3,200).

Proceedings against an advertiser can be instituted by the Consumer Protection Board, a rural municipality, city council or the Agency of Medicines (with regard to advertising medical products). It is also possible to impose an injunction against a broadcaster. There have been no cases where consumer organization or competitors have filed a claim for damages before a civil court. There is nothing in the law which would disallow such claims so it would depend on the circumstances.

Hungary

The enforcement of regulations in Hungary is assured by sanctions. According to the provisions of the Competition Act (Act on the Prohibition of Unfair and Restrictive Market Practices) in case of misleading practices the Hungarian Office of Economic Competition is entitled to impose sanctions. It may state the fact of behaviour violating the law; it may order to stop the behaviour violating the law; it may prohibit to continue the behaviour violating the law; it may proceed and prohibit refusing to create or maintain business relations appropriate for the type of transaction, in case of breach of law (section 21 (c)); it may order to publish an amending statement concerning information suitable for deceit and it may evoke or amend its decision made previously (section 19, 32).

The authority responsible for the proceedings may impose a penalty on the party violating the law. In case of repeated violations cumulative penalties may be imposed. The amount of the penalty shall be established with respect to all circumstances of the case including the scope and severity of the offence against consumer interests, the duration of the violation of law and any repeated violating conduct. According to section 18 (2)-(3) of the Act on Business Advertising Activity, any penalties imposed on the basis of a final legal judgment and not paid shall be collected in the same way as taxes.

Article 47(1) Consumer Protection Act says that the acting authority (the General Inspectorate of Consumer Protection), upon establishing in proceedings a violation of consumer protection regulations prescribed in this Act and in other legal regulations, may, unless otherwise prescribed by legal regulations impose sanctions. According to Article 48 (1) Consumer Protection Act, the acting authority may impose a fine by resolution. In the event of multiple infringements fines may also be imposed cumulatively. The amount of the fines shall be established in consideration of all circumstances, with particular emphasis on the sphere and gravity of damages caused to consumers, the duration of the violation and repeated offence, and on the advantage gained by such violation. There is no upper limit of the amount of the fine prescribed by this Act.

According to Article 39 (1) Consumer Protection Act, non-governmental (civil) organizations providing representation of consumer interests may file charges against any party causing substantial harm to a wide range of consumers by illegal activities aimed at enforcing the interests of consumers even if the identity of the injured consumers cannot be established.

Latvia

Under the Administrative Offences Code the Consumer Rights Protection Centre shall apply the administrative penalty provided for the relevant violation according to the procedures specified by law. Possible punishments are fines of up to 300 LVL (€ 416) for a natural person and up to 10.000 LVL (€ 13.900) for legal persons.

Article 166.13 AOC on advertising provides fines of up to 150 LVL for natural persons and up to 500 LVL for legal persons for violations regarding specified rules in providing and disseminating of advertising. For providing and disseminating of the prohibited advertising (for example, misleading advertising) it provides fines of up to 150 LVL for natural persons and up to 10 000 LVL for legal persons. Concerning unfair commercial practices, the upper level of the fines would be the same as for prohibited advertising.

For unfair competition (according to Article 19 Competition law) the Competition Council may impose penalties up to 5 % from the net turnover in previous financial year, but not less than 250 LVL.

Lithuania

The system for defending the consumers' rights is based on civil, administrative and criminal law. The requirements of the Civil Code, the Code of Violation of Administrative law and the Criminal Code are applied to similar types of infringement that could rise from the Directive. The sanctions are applied by the court or by the national administrative authorities.

Under the civil law it is possible to file a claim for damages before a civil court. The Civil Code with the consumer protection legislation provides a legal basis for filing a claim for damages. The consumer rights are represented by the National Consumer Rights Protection board or by non-governmental consumer rights organisation. The National Consumer Rights Protection board may confirm that particular consumer rights have been infringed. On that basis a consumer may apply to the court requesting to award damages that occur as the consequence of the particular infringement. Article 1.138(6)(1) Civil Code provides that only the court may award material and non-material damages.

Administrative action under the Code of Violation of Administrative Law is an action under public law. This code indicates responsible institutions for the investigation and sanctioning of violations. Authorities which are entitled to impose and enforce sanctions for the violation of consumer rights are the State Food and Veterinary Service; the State Inspectorate of Non-Food Products; National Control Commission for Prices and Energy; Competition Council; National Consumer Rights Protection Board; the Courts. The Code of Violation of Administrative Law provides the following typical sanctions for punishment-warning, punishment fines: 100lt.-5000lt. (EURO 30-1500), confiscation of goods and withdrawal of licenses.

Malta

The Commercial Code (Chapter 13) prohibits various forms of unfair competition between traders. An injured trader may either resort to an action for damages and interest or request the Civil Court to impose a penalty on the offending trader that would be paid to the injured trader in settlement of all his claims for damages and interest. The injured trader may seek a court order to stop such practices and to order the destruction of the infringing material. A damages claim under the civil law is likely to lead to an effective compensation.

Art. 8 Consumer Affairs Act empowers the Director of Consumer Affairs to issue public statements identifying and giving warnings or information about trading practices detrimental to the interests of consumers and about the persons who engage in such practices.

The Consumer Affairs Act empowers the Director of Consumer Affairs, in order to eliminate or reduce the continuing effects of any non-observance of consumer protection legislation, to require the trader concerned to publish a copy of the compliance order issued against him and to

publish a corrective statement in relation to any contravention in the daily newspapers. Any person who fails to comply with a compliance order would be guilty of a criminal offence punishable by lump sum or a daily fine.

The Trademarks Act (Chapter 416) prohibits the registration or use of trademarks that being identical or similar to earlier trademarks would enable the holder to take unfair advantage of or to damage the distinctive character or the reputation of the earlier trademark (Art.6-10). According to Art. 72 of this Law, use of such trademarks in such circumstances would amount to a criminal offence punishable by a fine and/or imprisonment. The Consumer Affairs Act (Price Indication) ensures that consumers receive correct and adequate information on the price of goods. Non-compliance with the information requirements prescribed in the regulations constitutes a criminal offence.

Poland

Certain unfair commercial practices have been declared to be criminal offences, punishable by a fine. Art. 23-27 Act on Combating Unfair Competition introduces criminal liability for certain 'acts of unfair competition' such as, instance snowball sales, counterfeiting products, and misleading consumers as to the essential features of goods or services. Penalties include imprisonment or fines.

Civil law sanctions range from invalidity or lack of effect of a contract concluded with the use of unfair techniques or clauses, through requirements to stop any further practices and eliminate the results of those which already took place, to paying compensation to other traders, in other way compensating their loss, or paying a sum of money for a designated purpose (Art.102 Act on the Protection of Competition and Consumers, fine of € 500-10,000 for each day the decision of the Head of Office for Competition and Consumers is not followed).

Slovakia

The responsible public authority is the Slovak Commercial Inspectorate which falls under the Slovak Ministry of Economy. Its activity is governed by the law on state control of internal market regarding consumer protection. It can impose a fine according Law 128/2002 to up to 2.000.000 Slovak Crowns (which is approximately € 60 000)

According to Law on Advertising the public authority can impose a fine up to 2 million Slovak Crowns (approximately € 60,000) and in case of repeated breach even up to 5 million Slovak Crowns (€ 150,000). Similar ban is also contained in The Commercial Code, which prohibits misleading labelling of goods and services.

Slovenia

Civil law remedies are available to consumers in respect of unfair commercial practices. Certain unfair commercial practices are criminalized and a business found guilty of such a crime is liable to pay a fine.

According to the Consumer Protection Act, an individual is fined a minimum of SIT 1,000,000 (€ 4000) and a legal person a minimum of SIT 3,000,000 (€ 12,000) if it advertises goods and services in a manner contrary to this Act, incidentally or misleading or if the goods and services are not advertised in the Slovene language or if its comparative advertising of goods and services contrary to the provisions of this Act.

3.5 Delimitation to other areas of the law

3.5.1 *Delimitation to Contract and Tort law*

A breach of many commercial fairness rules may also constitute a breach of contract and/or tort law. The relevant provisions are to be found in the Civil Code of the Member States (for example the Czech Republic, Hungary, Latvia, Malta, Poland, Slovakia). In Estonia, for example, this is regulated by the Law of Obligations Act which replaced a number of instruments envisaged in the Civil Code. Under contract law, where a consumer enters into a contract with a trader influenced by an unfair commercial practice (for example, misleading advertising), the consumer will have the right to rescind a contract on the basis of fraudulent misrepresentation (for example, Cyprus). Contract law in Malta, has provisions that are enshrined in its Civil Code, provides that consent in relation to contracts that have been given by error or extorted by violence or procured by fraud shall not be valid. In addition, a person is liable for damages caused through his fault under tort law (for example, Malta). The Polish Civil Code provisions on unfair contractual terms refer to the principle of good faith. Consumer contracts must not include clauses which are in contradiction to the requirement of good faith, to the detriment of the consumer, a considerable imbalance between rights and duties of the parties (for example, the Czech Republic, Slovakia).

Cyprus

The Directive will be supplemented by contract or tort law in the event where an unfair commercial practice may be considered to fall under contract or tort law. It is evident that a breach of many commercial fairness rules can also constitute a breach of contract and or tort law. An unfair commercial practice may affect the validity of a contract or affect the obligations of the contracting parties giving rise to an action of duress or misrepresentation under contract law or constitute a tortious claim such as passing off or injurious falsehood. Also in the event where a consumer entered into a consumer contract with a trader influenced by an unfair commercial practice, such as misleading advertising, the consumer may have the right to rescind a contract on the basis of fraudulent misrepresentation under Contract Law.

Czech Republic

The legal regulation of consumer contracts is applied for contractual relationships, parties to which are always the consumer (§ 52(3)) and the supplier or seller (§ 52(2)). Consumer law in the Czech Civil Code reaches a better protection for the consumer mainly by:

- prohibiting unfair terms in consumer contracts
- enabling the consumer to withdraw from a concluded contract under a priori settled conditions, and sets forth other provision which the supplier shall obey.

§ 52 Civil Code defines the consumer contracts sales contracts, contracts for work done, or other sorts of contracts, defined in part eight of the Act, provided that the parties to the contract are:

- i) consumer (a person not conducting upon concluding and performing of the contract within the framework of its business or another entrepreneurial activity)
- ii) supplier (a person conducting upon concluding and performing of the contract within the framework of its business or another entrepreneurial activity).

Consumer contracts must not include clauses that in contradiction to the requirement of good faith mean, to the detriment of the consumer, a considerable unbalance between rights and duties of the parties. The act further sets for a demonstrative list of inadmissible contractual covenants (§ 56).

Estonia

The measures in the Directive are in line with the existing LOA. There should be no problem incorporating the provisions of the Directive to the LOA, especially regarding the mandatory provisions concerning contracts between consumers and undertakings. It might be necessary to make a few minor changes, but on the whole there are no discrepancies between the existing contract law and the measures in the Directive.

Hungary

Contract law is regulated by Civil Code provisions regarding consumer contracts including general contractual conditions as well. On these grounds consumer protection authorities are able to handle complaints and impose sanctions against traders in connection with consumer contracts. Furthermore consumer protection authorities have right to inspect certain “pre-contractual” activities, such as advertisements, misleading actions and omissions and, after implementing UCP, aggressive practices as well.

Latvia

The provisions on contract and tort law are included mainly in the Latvian Civil Law. According to the Law ‘On the announcement, publication, enactment and validity of the laws and other normative acts adopted by the Parliament, State Presidents and the Cabinet of Ministers’ in cases when there exist specific law, that specific law prevails the provisions of the Civil law, as it is the case when consumer protection is concerned.

Article 1440 Civil Law to consider legal transaction as valid it is not enough if parties express their will, but it is necessary that this will is not influenced by misrepresentation, falsehood or duress.

Malta

The provisions of contract and tort law which are to be found in the Civil Code would complement the provisions of the Directive that are likely to be implemented through amendments to the Consumer Affairs Act. Moreover, the Consumer Affairs Act expressly states that the part of the Act dealing with misleading and comparative advertising, unfair contract terms and forms of promotion and selling techniques such as gift schemes and pyramid selling schemes prevails over the provisions of the Civil Code in case of conflict.

Concerning contract law, Article 974 Civil Code provides that consent in relation to contracts that has been given by error or extorted by violence or procured by fraud shall not be valid.

Concerning tort law Articles 1031-1033 Civil Code provide that a person is liable for the damages caused through his fault. A person is deemed to be in fault if in his own acts he does not use the prudence, diligence or attention of a bonus paterfamilias. Moreover, any person who, with or without intent to injure, voluntarily or through negligence, imprudence or want of attention, is guilty of any act or omission constituting a breach of the duty imposed by law is liable for any resulting damage.

Poland

As afore-mentioned above the new Directive ought to fit well within the Polish legal system. The contemporary approach of the Polish legislators of attempting to incorporate consumer law into the area of civil law means that many of the provisions analysed above have already been existing in compliance with other areas of civil law – such as the law of contract and tort (and

using the legal provisions regulating these areas of law, including the laws on legal and commercial guarantees, or product liability law). Further, provisions protecting consumer interests have already coexisted with the provisions protecting traders, public interest and competition. There should be no problem in this regard. What's more, it was mentioned that the *Act on the Protection of Competition and Consumers* refers to the rules on protection of intellectual property. Criminal law also plays part in enforcing some consumer protection provisions already. The questions of decency are also not entirely foreign to consumer protection issues – for instance the provisions of the Civil Code on unfair contractual terms refer to the principle of good faith. Good faith is also mentioned by the *Act on Combating Unfair Competition*.

Slovakia

The legal regulation of consumer contracts is applied for contractual relationships, parties to which are always the consumer (§ 52(3)) and the supplier or seller (§ 52(2)). The consumer law within the Czech Civil Code reaches a better protection of the consumer mainly by:

- prohibiting unfair terms in consumer contracts
- enabling the consumer to withdraw from a concluded contract under a priori settled conditions, and sets forth other provision which the supplier shall obey.

§ 52 Civil Code defines the consumer contracts sales contracts, contracts for work done, or other sorts of contracts, defined in part eight of the Act, provided that the parties to the contract are:

- i) consumer (a person not conducting upon concluding and performing of the contract within the framework of its business or another entrepreneurial activity)
- ii) supplier (a person conducting upon concluding and performing of the contract within the framework of its business or another entrepreneurial activity).

Consumer contracts must not include clauses that in contradiction to the requirement of good faith mean, to the detriment of the consumer, a considerable unbalance between rights and duties of the parties. The act further sets for a demonstrative list of inadmissible contractual covenants § 56.

Slovenia

Articles 1 and 23 Consumer Protection Act provides that contract terms which contravene or exclude the application of the provisions of the Consumer Protection Act are void and unenforceable under Slovene law. Should the terms of the Directive be inserted into the Consumer Protection Act, the same would apply to contracts seeking to contravene its terms.

Unless otherwise expressly provided, the transposition of the Directive into Slovene law would not affect the rights granted to consumers in respect of unfair commercial practices under contract and tort law.

3.5.2 Delimitation to Competition law

EC Treaty provisions on competition law (Art.81- 82) are integrated into the national competition law of the Member States. For example, an unfair commercial practice may be prohibited under Competition law if it constitutes a restrictive enterprise agreement or abuse of dominant position (for example, Cyprus). In Estonia, the competition law is designed to ensure a competitive business environment which in itself is in the interests of the consumers. Latvian Competition Law regulates business to business relations and therefore it does not directly

protect natural persons (consumers). Article 18 of this Law prohibits unfair competition in Latvia. Lithuanian Law of Competition (Art. 9) stipulates that it shall be prohibited to abuse a dominant position within the relevant market by carrying out actions which restrict or may restrict competition, limit without cause the possibilities of other undertakings to act in the market, or violate the interests of consumers. Furthermore, the Maltese Competition Act (Chapter 379) condemns the imposition of unfair prices or other unfair trading conditions by dominant undertakings and prohibits tying practices that directly harm consumers while indirectly benefiting consumers by prohibiting anti-competitive practices that hinder or distort competition and thereby raise prices, reduce consumer choice or stifle innovation. By contrast, competitors and consumers in Czech Republic and Slovakia are protected from unfair competition by provisions of the Commercial Code (Chapter 5). Their interests are often controversial, however (for example, in the cases where a competitor grants the consumer bonuses or reductions in order to reach an advantage before other competitors) and therefore their protection is solved in different ways and the prepared Directive may affect both fields.

Cyprus

An unfair commercial practice may be prohibited under Competition law if it constitutes a restrictive enterprise agreement or abuse of dominant position. That is why an agreement, which fixes directly or indirectly the purchase or reselling prices, is prohibited under Competition law. Nevertheless, an unfair commercial practice, which may be prohibited under Competition law, may also lead to criminal sanctions. That is why a person applying an agreement, which fixes directly or indirectly the purchase or reselling prices, being prohibited under competition law, commits a criminal offence.

Czech Republic

Legal protection of consumers as an element of consumer-oriented policy of the state is in the Czech legislation primarily oriented to the establishment of effective legal guarantees for the actual protection of the consumer and in wider circumstances to ensuring the development of equal conditions in economic competition. Of most importance is the Act on the protection of consumers. The main groups of subjects protected among others from unfair competition by provisions of chapter 5 of the Commercial Code are competitors and consumers (§ 44). Their interests are often controversial (for example, if a competitor grants the consumer bonuses or reductions in order to reach an advantage before other competitors), therefore their protection is solved in different ways and the prepared directive may affect both the fields.

It is necessary to make distinction between the Act on Protection of Economic Competition which protects mainly the competition as such, and the Commercial Code protecting subjects from harm caused by unfair competition. Depreciation, sponging on other's reputation or comparative advertising are oriented to other competitors, whereas deceptive designation of goods and services or endangering health and environment mainly protect the consumers.

Estonia

The Estonian competition law is designed to ensure a competitive business environment which in itself is in the interests of the consumers. The Directive thus has little effect on the provisions of the Competition Law Act.

Hungary

Competition law is regulated in Hungary by the Competition Act, which contains explicit consumer protection provisions.

Latvia

The Competition Law regulates business to business relations and it does not protect consumers or natural persons directly. According to Article 11 agreements between market participants which have as their purpose or consequence the hindrance, restriction or distortion of competition, are prohibited and null and void from the moment of being entered into.

Under article 18 of Competition Law unfair competition is prohibited. Actions, as the result of which regulatory enactments or the fair practices of commercial activities are violated and which have created or could create a hindrance, restriction or distortion of competition, shall be deemed to be unfair competition. If the Competition Council determines that there is a violation of fair competition in the activities of market participants, it shall take a decision regarding the determination of a violation, legal obligations and imposition of a fine.

Lithuania

Consumer protection is not a part of competition law. Two separate Act deal with these matters (Law of Competition and Law on Consumer Protection). The integration of consumer protection law into competition would change scope of application of the law on competition.

Article 5 Legal Act of the Competition provides that all agreements which have as their object the restriction of competition or which may restrict competition shall be prohibited and shall be void from the moment of conclusion thereof.

According Article 9 on Law of Competition it shall be prohibited to abuse a dominant position within the relevant market by carrying out actions which restrict or may restrict competition, limit without cause the possibilities of other undertakings to act in the market, or violate the interests of consumers.

Malta

The Competition Act, Chapter 379 of the Laws of Malta, is modelled closely on Articles 81 and 82 of the EC Treaty. Therefore like the EC Treaty provisions, national law condemns the imposition of unfair prices or other unfair trading conditions by dominant undertakings and prohibits tying practices that directly harm consumers while indirectly benefiting consumers by prohibiting anti-competitive practices that hinder or distort competition and thereby raise prices, reduce consumer choice or stifle innovation.

Poland

The new Directive ought to fit well within the Polish legal system. Provisions protecting consumer interests have already coexisted with the provisions protecting traders, public interest and competition. There should be no problem in this regard.

Slovakia

Legal protection of consumers as an element of consumer-oriented policy of the state is in the Slovak legislation primarily oriented to the establishment of effective legal guarantees for the actual protection of the consumer and in wider circumstances to ensuring the development of equal conditions in economic competition. Of most importance is the Act on the protection of consumers. The main groups of subjects protected among others from unfair competition by provisions of chapter 5 of the Commercial Code are competitors and consumers (§ 44). Their interests are often controversial (for example, if a competitor grants the consumer bonuses or reductions in order to reach an advantage before other competitors), therefore their protection is solved in different ways and the prepared directive may affect both the fields.

It is necessary to make distinction between the Act on Protection of Economic Competition which protects mainly the competition as such, and the Commercial Code protecting subjects from harm caused by unfair competition. Depreciation, sponging on other's reputation or comparative advertising are oriented to other competitors, whereas deceptive designation of goods and services or endangering health and environment mainly protect the consumers.

Slovenia

The Slovenian Competition Act would need to be amended to remove the right of a consumer under Articles 26 and 27 to commence proceedings to obtain damages for breach of unfair commercial practices in order to ensure that there is no overlap or inconsistency. This right granted to a consumer to obtain damages should be inserted into the Consumer Protection Act instead. The right of a competitor to commence proceedings in respect of unfair commercial practices of a business which impacts unfairly on competition would be preserved in accordance with Article 11 of the Directive. This provides that national law must enable a competitor to take legal action in case of unfair commercial practices.

3.5.3 Delimitation to Intellectual Property (IP) Law

The comparative overview shows that Member States have specific provisions to safeguard any existing intellectual property rights. Different forms of redress and sanctions exist in Member States where it can be shown that intellectual property rights belonging to another have been infringed. For example, Estonian intellectual property rights do not regulate unfair commercial practices in themselves and therefore the Directive is considered to be in line with IP law. It is suggested that Member States do not see urgency to delimit the Directive in the field of intellectual property law as it appropriately fits within the national legal systems. In some countries, copyright and consumer law is classified as existing independently from each other (for example, the Czech Republic and Slovakia), possible defects from the viewpoint of consumer protection would belong to the sphere of defects on product liability for damage, or to the protection of competition. Finally, violation of trademark rules can lead to liability to the trademark holder as well as to the consumer. However, the bases for these liabilities are different and do not cause problems.

Cyprus

Violations of intellectual property rights may constitute an unfair commercial practice leading to different sanctions such as in the case of a impermissible comparative advertising imitating the goods and services of another person, which may constitute a legal action in passing off under the law of torts. In particular, the provisions of the Directive in relation to similar trademarks in the market that may deceive or confuse the consumer are consistent with the provisions of the Trademarks Act, Cap.268.

Czech Republic

The Czech intellectual property law will not in its substance be affected by the Directive since this law is only marginally connected with it. Consumer law and intellectual property law exist independently from each other. Possible defects from the viewpoint of consumer protection would thus belong to the sphere of liability for damage or to the protection of competition.

Estonia

Estonian copyright laws do not in themselves regulate unfair commercial practices (except for the liability for sale of pirated goods). Therefore the Directive is in harmony with the Estonian IP law.

Hungary

According to Article 86(1) Civil Code intellectual properties are under protection of the Competition Act. This Article refers to the specific provisions of the particular areas, ties down the protection of the know-how and the application of the general civil rules (sanctions) as well. Thus, intellectual property law can be handled separately from the provisions of unfair commercial practices.

Latvia

There should not be any incompatibilities with the law on intellectual property. Under Article 68 of the Copyright Law violations of copyright and related rights shall be deemed to be activities by which the personal or economic rights of the holders of copyright and neighbouring rights are infringed.

Lithuania

Acts contrary to honest business practices include the ‘unauthorized use of a mark identical or similar to the name, registered or unregistered well known trademark or other reference having a distinguishing feature of another undertaking, if this causes or may cause confusion with that undertaking or its activity or where it is sought to take undue advantage of the reputation of that undertaking (its mark or reference) or where this may cause injury to the reputation (its mark or reference) of that undertaking or reduction of the distinguishing feature of the mark or reference applied by that undertaking’.

Consumers are afforded protection under civil law and under special provisions of administrative and criminal law (depending on the situation an appropriate form of redress can be made). This can be the case when enterprises have used trademarks illegally.

Malta

The Trademarks Act is consistent with what is adopted in the Directive in relation to trademarks that may deceive or confuse the consumer due to their similarity with other trademarks on the market.

Slovakia

The Slovak intellectual property law will not in its substance be affected by the Directive since this law is only marginally connected with it. Consumer law and intellectual property law exist independently from each other. Possible defects from the viewpoint of consumer protection would thus belong to the sphere of liability for damage or to the protection of competition.

Slovenia

The activities permitted pursuant to intellectual property law would not be regarded as unfair commercial practices. At the same time unfair business-to-consumer commercial practices which breach intellectual the property rights of another business would be considered by a court as breaching good business practice requirements as set out in Article 25 of the Consumer Protection Act. Imitation which does not breach intellectual property rights would remain permitted under Slovenian law upon the transposition of the Directive, unless the similarity of

products would result in the consumer being confused as to the origin of the product and therefore being misled.

3.5.4 Protection of Enterprises (Particularly SMEs)

According to Recital 5 of the Unfair Commercial Practices Directive, this Directive 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, nor the provisions of Directive 84/450/EEC on advertising which misleads business but which is not misleading for consumers. This Directive addresses commercial practices directly related to influencing consumers' transactional decisions in relation to products.

The question to be answered in this chapter is whether there is legislation in the new Member States which provides special protection for Small and Medium-Sized Enterprises (hereafter referred to as SMEs) compared to businesses generally, which could be of relevance for the implementation of the Directive. However, the comparative overview shows that the legislation of the new Member States does not directly regulate the protection of SMEs.

To a certain extent the position of SMEs is protected by the general rules of competition law, particularly the rules prohibiting the abuse of a dominant position. Just one example will do here to illustrate this: the Czech Republic and Slovakia prohibit abuse of a dominant position to the detriment of other competitors or consumers. This is stated in the Act on the Protection of Economic Competition (PEC), (§ 11 (1) Czech PEC and § 8(6) Slovak PEC). This provision is considered a general clause for the reason that it prohibits any form of misuse of a dominant position to the detriment of any other competitors or consumers.

Cyprus

There is no specific legislation in Cyprus in the field of Protection of Enterprises so as to play a role in combating unfair practices. The issue of the Protection of Enterprises is dealt with in the rules prohibiting the abuse of a dominant position under the Protection of Competition Act of 1989 - 2001.

Czech Republic

The Czech Republic does not directly regulate the protection of SMEs. Rather it focuses on the issue of abuse of a dominant position, concretely in the PEC in both systems, where the general clause determines the abuse of a dominant position and thus also the position of SMEs. The general clause is defined in §11(1) PEC: 'A misuse of dominant position to the detriment of other competitors or consumers is prohibited'. This provision is considered a general clause for the reason that it prohibits any form of misuse of a dominant position to the detriment of any other competitors or consumers.

Estonia

There are no laws covering specifically for the protection of SMEs or other sorts of enterprises.

Hungary

Transposition of the Directive will not have an effect on the regulations concerning the protection of enterprises. From a competition law point of view, the size of an enterprise does not matter for defining whether it has violated the rules on misleading advertising or on other unfair practices.

Latvia

There are no special regulations on the protection of SMEs in Latvia.

Malta

Enterprises are protected against unfair commercial practices by the aforementioned provisions of the Commercial Code, the Competition Act, the Consumer Affairs Act (where the scope of the Act beyond consumers), the Trademarks Act and the Civil Code. There are no provisions that protect specifically small and medium sized enterprises.

Slovakia

Slovakia does not directly regulate the protection of SMEs. Rather it focuses on the issue of abuse of a dominant position, concretely in the Law on Protection of Economic Competition (PEC) in both systems, where the general clause determines the abuse of a dominant position and thus also the position of SMEs. The general clause is defined in § 8(6) PEC: 'A misuse of dominant position to the detriment of other competitors or consumers is prohibited'. This provision is considered a general clause for the reason that it prohibits any form of misuse of a dominant position to the detriment of any other competitors or consumers.

3.5.5 Delimitation to Product Safety and Product Liability

All Member States have provisions and regulations enshrined in their national laws that specifically deal with Product Safety and Product Liability. This follows from the first Product Safety Directive 92/59/EEC and the latest General Product Safety Directive 2001/95/EC which had to be implemented in January 2004.

According to Article 5(1) producers shall provide consumers with the relevant information to enable them to assess the risks inherent in a product throughout the normal or reasonably foreseeable period of its use, where such risks are not immediately obvious without adequate warnings, and to take precautions against those risks. This Directive primarily addresses the manufacturer and the distributor. This does not automatically cover the trader as well in the sense of the Directive on Unfair Commercial Practices.

A breach or violation of legislation dealing with product safety amounts to a civil action for damages, the onus is on the plaintiff to show that the product was unsafe and to show the causal link between the defect and the damage sustained. This action for damages exists next to the action for damage caused by a defective product on the basis of Directive 85/374/EEC concerning liability for defective products.

According to the comparative study, there is no need of delimitation of the Directive as most Member States do not foresee any problems with respect to Product Safety and Product Liability.

Cyprus

Legislation dealing with product safety and product liability can be found in the Safety of Consumer Products Act of 1994 -1998 and the Defective Products (Civil Liability) Act of 1995. The provisions of the Directive on Unfair Commercial Practices in respect of information requirements have already coexisted with the provisions in respect of information requirements under the Safety of Consumer Products Act of 1994-1998. No specific problems are expected in their respective delimitation.

Czech Republic

The Directive on liability for damage caused by defective products is implemented in Act 59/1998. The injured person has to prove that there was a defect on the product, as a result of the defect damage occurred and the causal link between the defect on the product and the damages. The Act on liability for damages caused by defective product also regulates the relation of this act to the Civil Code. If not stated otherwise by the act, provisions of the Civil Code shall be applied. There are no problems to be expected for a collision between this and the Directive on Unfair Commercial Practices.

Estonia

The product safety Directives have been implemented in the Product Safety Act. This Act regulates issues such as the recall of potentially dangerous products from consumers and it defines the roles of the supervising authorities. No problems are expected to arise between this Directive and the Directive on Unfair Commercial Practices.

Hungary

General product safety is regulated under consumer protection. The implementation of the Unfair Commercial Practices Directive will not have an effect on the provisions on product safety and vice versa. Act X of 1993 on product liability states that the manufacturer of the product is responsible for the damage caused by the defect of the product. These provisions do not have an effect either on unfair commercial practices rules.

Latvia

The Directives on product safety have been implemented in the Law on the Safety of Goods and Services. According to Article the purpose of this Law is to achieve the production and circulation of goods and the provision of services that is safe, non-harmful to human life, health and the property of a person, as well as non-harmful to the environment.

Lithuania

The Law on Product safety Act establishes the general requirements for product safety, the principles of state and public control of product safety, the procedure for providing and communicating information about dangerous products, the duties and liability of producers, sellers and suppliers of services for placing dangerous products on the market and damage caused by them to consumers. The purpose of the Law is to ensure that only safe products are placed on the market. The requirements for food are in the Law on Food. This Law lays down the requirements for food placed on the market and its handling, the competence of state institutions and public organizations for the protection of consumers' rights in ensuring food safety; it shall also regulate duties and liability of food producers, food service operators and food traders. No problems are foreseen in the implementation of the Directive on Unfair Commercial Practices and the laws mentioned above.

Malta

The provisions of the Product Safety Act impose information requirements on producers and distributors that are complementary to the provisions of the Directive.

Slovakia

The Directive on liability for damage caused by defective products is implemented in Act 294/1999. The injured person has to prove that there was a defect on the product, as a result of the defect damage occurred and the causal link between the defect on the product and the damages. The Act on liability for damages caused by defective product also regulates the relation

of this act to the Civil Code. If not stated otherwise by the act, provisions of the Civil Code shall be applied. There are no problems to be expected for a collision between this and the Directive on Unfair Commercial Practices.

Slovenia

There is no particular need to delimit the scope of the Directive on Unfair Commercial Practices in respect of product safety and product liability.

3.5.6 Delimitation to Criminal law

Criminal sanctions form part of the enforcement tools for public authorities in compliance to the rules in the Unfair Commercial Practices Directive. There is no explicit reference to criminal law in the Directive or in its recitals and it can be taken that criminal law, just like contract law, is not affected by the provisions in the Directive. However, it would be odd if the national criminal provisions would not be in line with the provisions in the UCP Directive, particularly if they would provide a higher level of protection for the consumer than the Directive intends to give. It is nevertheless very likely that this would be the case because criminal sanctions usually apply to more serious conduct only and will hardly or not apply to less serious conduct than is provided for in the Directive.

Commercial practices may constitute crimes in two ways. First, such a commercial practice could be a general crime (for example, fraud) or a general offence (for example, false description). All Member States have set out general provisions under which certain unfair commercial practices can be subsumed.

Secondly, most Member States have legislated provisions which specifically criminalize certain unfair commercial practices can for example be found in Hungary (pyramid selling is regulated by the Criminal Code), Czech Republic, Latvia, Malta, Slovakia and Slovenia (deceiving consumers about quality or quantity of products).

Cyprus

There are many cases under which an unfair commercial practice may constitute a crime, such as fraud, or a criminal offence, such as false description. For example, a person shall commit a criminal offence for the application of an agreement, which fixes directly or indirectly the purchase or reselling prices or other terms of transaction.

Czech Republic

In criminal law causing damage to the consumer is defined as a conduct that causes significant damage to another's property by cheating on quality, quantity or weight of the goods, or introduces on the market a large volume of products, labour or services and conceives their material defects. More severe sanctions for such a conduct can be imposed on members of organized groups, or in case through such conduct they gain a significant profit (§ 121 Criminal Code). From the viewpoint of criminal law there is no collision with the text or objective of the Directive.

Estonia

Provisions of Estonian criminal law complement certain measures in the Directive. These include § 210-213 Penal Code which cover fraud, including investment, insurance and computer-related fraud. Extortion is covered by § 214. Of specific interest are so-called

economic offences, especially those concerning competition law breaches (§ 399-402). Such offences can be punished with up to 3 years of imprisonment.

Hungary

Transposition of the Directive on Unfair Commercial Practices would not touch regulations laid down in the Act IV Criminal Code 1978. It is worth mentioning that pyramid selling, which has similarities to Multi-Level-Marketing, is regulated by the Criminal Code.

Latvia

The Articles 202-205 Criminal Law establish criminal liability for violations in the field of consumer rights protection: for failing to ensure quality of goods and services, failing to observe requirements regarding safety of goods and services, defrauding purchasers and ordering parties and violation of trading provisions. The applicable sentence is a maximum of six years of imprisonment, custodial arrest, or a fine not exceeding one hundred times the minimum monthly wage, with or without deprivation of the right to engage in specific forms of entrepreneurial activity for a term of not less than two years and not exceeding five years.

Malta

Various provisions of the Criminal Code complement the provisions of the Directive on Unfair Commercial Practices. Article 298 condemns commercial or industrial fraud and under this category of offences it includes the use of any mark, device, signboard or emblem bearing an indication calculated to deceive a purchaser as to the nature of the goods; the sale of goods with such mark, device etc; and the application of false trade descriptions to any goods. Another offence carrying a custodial sentence is the use of false weights and measures (Article 307). Article 251 condemns any person who uses violence to compel another person to do, suffer or omit anything.

Slovakia

In criminal law causing damage to the consumer is defined as a conduct that causes significant damage to another's property by cheating on quality, quantity or weight of the goods, or introduces on the market a large volume of products, labour or services and conceives their material defects. More severe sanctions for such a conduct can be imposed on members of organized groups, or in case through such conduct they gain a significant profit (§ 121 Criminal Code). From the viewpoint of criminal law there is no collision with the text or objective of the Directive.

Slovenia

The Slovenian Penal Code provides in Article 237 that deceiving consumers is a criminal act and provides that a person committing such an act is either liable to pay a fine or 2 year jail term. Since the Directive does not prescribe the sanctions for infringement of the provisions of the Directive the Penal Code would not need to be amended.

3.5.7 Delimitation to public policy and questions of decency

Recital 7 of the preamble to the Directive on Unfair Commercial Practices makes clear that the Directive does not seek to address the legal requirement relating to taste and decency or health and safety, preserving the right of a Member State to ban or regulate commercial practices in its territory in conformity with Community law on these grounds even where such practices do not limit the consumer's freedom of choice.

Issues concerning public policy cover a wide spectrum of the Member States' national laws. Public policy issues are taken into consideration in both civil and criminal causes of action. In particular public policy issues, namely questions of decency are significant in the field of advertising and the law of trademarks (a branch of intellectual property law). Anything deemed to be contrary to public policy is seen as a breach of the law and is therefore not allowed. Additionally, in the field of the regulation of advertising self-regulation and moral codes are of particular importance (for example, in the Czech Republic).

With respect to commercial fairness rules, issues on public policy are contemplated when evaluating whether a particular commercial practice is unfair. The comparative study shows, that the notion of what is deemed decent (and acceptable to public policy norms) differs between Member States due to diverse cultural and legal backgrounds.

Cyprus

An unfair commercial practice may be prohibited on the basis of public policy, for example the conclusion of an unfair distance contract may be prohibited or restricted. In addition, issues of public policy are taken into consideration when judging whether an order shall be issued by the court combating a practice, which may be considered unfair, such as misleading advertising or impermissible comparative advertising.

Czech Republic

Czech unfair competition law does not require unfair conduct to be controversial to *bonos mores* in general, but rather a controversy to *bonos mores* in economic competition.

Self-regulation and moral codes are of importance in the Czech Republic, mainly in the field of the regulation of advertising. The Council for Advertising is a self-governing organisation monitoring the quality of advertising, based on the Advertising Code.

Hungary

There are voluntary codes of conduct, for example in advertising, that contain specific provisions concerning questions of decency.

Latvia

There are no specific rules on questions of decency in Latvian legislation.

Malta

There are different examples of how the law takes into consideration public policy issues and this is prevalent in various statutory provisions. Under the Trademarks Act, a trademark may not be registered if it is contrary to public policy or to accepted principles of morality (Article 4). Article 985 of the Civil Code provides that things that are contrary to morality or to public policy may not be the subject matter of a contract. Likewise, any condition in an agreement that is contrary to morals or to public policy is void and annuls the agreement (Article 1054). The Broadcasting Act prohibits advertising and teleshopping that prejudice respect for human dignity.

Slovenia

At present the Consumer Protection Act, the Media Act and certain other laws set out legal requirements concerning taste and decency, particularly in the area of advertising. If the Directive is transposed into Slovene law by amending the Consumer Protection Act, then the

provisions concerning these public policy issues relating to commercial practices will need to be preserved or legislated for by passing another law.

3.6 Legislation and case law constituting a barrier to the Internal Market

Article 30 EC Treaty provides that Articles 28 and 29 (prohibition of quantitative restrictions on imports and exports) do not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. However, such prohibitions or restrictions shall not constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States. The above mentioned cases are all applications of this latter exception.

Legislation and case law concerning commercial practices are still being developed in most of the new Member States. None of the reporting Member States foresee obstacles which would constitute a barrier to the internal market. Neither do they foresee problems caused by the case law concerning the questions raised in the above mentioned EU case law.

It is conceivable that the Cypriot ban on advertising toys on television and radio may constitute a barrier to the Internal Market. Advertisement of toy products on television and radio is banned:

1. under s. 34(4)(a) of the Radio and Television Stations Act of 1998 from morning till 10.00pm everyday;
2. under s. 34(4)(b) of the Radio and Television Stations Act of 1998 from morning till 11.00pm:
 - a. during school holidays, as determined in the respective Regulations of the Operation of Public Schools;
 - b. during Saturday and Sunday;
 - c. days that come before the days stated in (i) and (ii).

This ban only affects only the advertisement of toy products by stations which are subject to the jurisdiction of the Republic of Cyprus.

Annex

Overview of new Member States' legislation implementing B2C Directives

Country	84/450 Misleading Advertising; 97/55 Comparative Advertising	85/577 on Contracts Negotiated away from Business Premises	90/314 on Package Travel and Holiday Tours	93/13 on Unfair Terms in Consumer Contracts	94/47 on Purchase of the Right to Use Immovable Properties on a Timeshare Basis
Cyprus	Control of Misleading and Comparative Advertising Act of 2000	Consumer Contracts Concluded away from Business Premises of 2000	Package Travel, Holidays and Tours Act of 1998	Trade Description Act of 1987-2000; Unfair Terms in Consumer Contracts Act of 1996-2002	Timesharing Act of 2001
Czech Republic	Commercial Code Act of Regulation on Advertising (RA)	Civil Code	Civil Code Law on Tourist Trade Nr. 159/1999 Coll.	Civil Code	Civil Code
Estonia	Advertising Act Consumer Protection Act	Law of Obligations Act Consumer Protection Act	Law of Obligations Act	Law of Obligations Act	Law of Obligations Act
Hungary	Act LVIII of 1997 on Business Advertising Activity	Civil Code Government Decree 370/2004 (XII. 26) on contracts negotiated away from business premises and certain conditions to carry on trade away from business premises	Government Decree No. 213/1996 (XII.23.) on travel organisation and agency activities Government Decree No. 214/1996. (XII. 23.) on travel contracts	Civil Code Government Decree No.18/1999. (II. 5.) on unfair terms concluded in consumer contracts	Government Decree No. 20/1999. (II. 5.) on time share contracts regarding immovable properties
Latvia	Advertising Law	Consumer Rights Protection Law Respective Regulations of the Cabinet of Ministers No 327	Tourism Law Regulations of the Cabinet of Ministers No 163	Consumer Rights Protection Law Civil Code	Consumer Rights protection Law and respective regulations of the Cabinet of Ministers No. 325

Country	84/450 Misleading Advertising; 97/55 Comparative Advertising	85/577 on Contracts Negotiated away from Business Premises	90/314 on Package Travel and Holiday Tours	93/13 on Unfair Terms in Consumer Contracts	94/47 on Purchase of the Right to Use Immovable Properties on a Timeshare Basis
Lithuania	Law on Advertising	Constitution Law on Consumer Protection Order of the Minister of Economy Nr. 226 (2001)	Law on Tourism	Law on Consumer Protection Civil Code	Law on Consumer Protection 2006
Malta	Consumer Affairs Act	Doorstep Contracts Act	Package Travel, Package Holidays and Package Tours Regulations 2000, LN 157 of 2000, as amended by LN 258 of 2001.	Consumer Affairs Act	Protection of Buyers in Contracts for Time Sharing of Immovable Property Regulations 2000, LN 269 of 2000, as amended by LN 151 of 2001 and LN 80 of 2002, adopted under the Malta Travel and Tourism Services Act, Chapter 409 of the Laws of Malta
Poland	Act on Combating Unfair Competition 1993	Act of 2 March 2000 on the protection of certain consumer rights and liability for damage caused by an unsafe product	Act on Tourist Services of 29 August 1997	Civil Code	Act of 13 July 2000 on the protection of purchasers in respect of the right to use buildings or dwellings during certain time each year
Slovakia	Law on Advertising	Law on Consumer Protection at Distance Marketing and door-to-door selling (CPDM)	Civil Code	Law Nr. 310/1999 amending the law Nr.634/1992 on consumer protection	Law 150/2004 Coll., amending Civil Code
Slovenia	Consumer Protection Act; Competition Act; Public Media Act; Bar Association Statute	Consumer Protection Act Regulation on requirements concerning premises for sale of goods and sale of goods outside shops, adopted under the Trade Act	Code of Obligations	Consumer Protection Act	Consumer Protection Act

Country	97/7 on Distance Contracts	98/6 on Indication of Prices of Products	99/44 Certain Aspects of the Sale of Consumer Goods and Associated Guarantees	98/27 on Injunctions for the Protection of Consumer's Interests	2002/65 on Distance Marketing of Consumer Financial Services	85/374 Liability for Defective Products
Cyprus	Conclusion of Consumer Distance Contracts of 2000	Sale of Goods Act of 1994-1999 Inscription of the Sale of price and the Unitary Price of Products Act of 2000 Protection of Competition Law of 1989-2001	Certain Aspects of the Sale of Consumer Goods and Associated Guarantees Act of 2000	Directive has not been implemented in a consolidated national law. The major provisions of the Directive have been adopted in the national laws implementing the directives listed in the Annex to the Directive 98/27/EC	Distance Marketing of Consumer Financial Services Act of 2004	Defective Products (Civil Liability) Act of 1995 (Act 105 (I) of 1995)
Czech Republic	Civil Code	Law on Prices	Civil Code	Consumer Protection Act	Civil Code Securities Act Nr. 591/1992 Coll.	Law Nr. 59/1998 Coll. about liability for damage caused by a defective product amended by Law 209/2000
Estonia	Law of Obligations Act	Consumer Protection Act	Law of Obligations Act Consumer Protection Act	Consumer Protection Act	Law of Obligations Act	Product Safety Act
Hungary	Government Decree No.17/1999 on Distant Contracting	Economic Ministry Decree No. 7/2001. (III. 29.) on the indication of prices	Act IV. of 1959 on The Civil Code	Minister of Justice Decree No. 13/2004. (IV. 16.) on injunctions for the protection of consumer's Interests	Act XXV. of 2005 on Distance Marketing of Consumer Financial Services	Act X of 1993 on product liability
Latvia	Consumer Rights Protection Law Regulations of the Cabinet of Ministers No 207	Consumer Rights Protection Law Regulations of the Cabinet of Ministers No 178	Consumer Rights Protection Law Regulation of the Cabinet of Ministers No 154	Consumer Rights Protection Law	Consumer Rights Protection Law Regulation of the Cabinet of Ministers No 1037	Law on Liability for Defective Goods and Deficient Services

Country	97/7 on Distance Contracts	98/6 on Indication of Prices of Products	99/44 Certain Aspects of the Sale of Consumer Goods and Associated Guarantees	98/27 on Injunctions for the Protection of Consumer's Interests	2002/65 on Distance Marketing of Consumer Financial Services	85/374 Liability for Defective Products
Lithuania	Law on Consumer Protection 2006	Law on Consumer Protection 2006	Law on Consumer Protection 2006	Law on Consumer Protection 2006	Law on Consumer Protection 2006	Civil Code
Malta	Distance Selling Regulations, LN 186 adopted under the Consumer Affairs Act (2001)	Consumer Affairs Act (Price Indication) Regulations, LN 283 adopted under the Consumer Affairs Act (2002)	Consumer Affairs Act	Consumer Affairs Act	Distance Selling (Retail Financial Services) Regulations 2005, LN 36 of 2005	Product Safety Act
Poland	Act on the protection of certain consumer rights and liability for damage caused by an unsafe product (2000)	Act on Prices	Act on the particular conditions of consumer sales and on the amendment of the Civil Code (2002)	Act on the protection of Competition and Consumers	Civil Code	Act on certain consumers' rights and the liability for damage caused by unsafe products of 2 March 2000
Slovakia	Law on consumer protection at distance marketing and door-to-door selling (CPDM)	Law on consumer protection Law on prices	Law on Consumer Protection Civil Code	Law on Consumer Protection	Law 266/2005 Coll., on Consumer Protection at providing financial services at a distance	Law on liability for defective products
Slovenia	Consumer Protection Act	Consumer Protection Act Rules concerning seasonal sales of textile goods and shoes, Slovene Chamber of Commerce	Consumer Protection Act	Consumer Protection Act	Consumer Protection Act	Consumer Protection Act