

Seldia Suggested amendments – Omnibus

4 September 2018

Article 1**Amendments to Directive 2005/29/EC**

Text proposed by the Commission	Amendment
<p>(1) Article 3 is amended as follows:</p> <p>(a) Paragraph 5 is replaced by the following:</p> <p>This Directive does not prevent Member States from adopting provisions to protect the legitimate interests of consumers with regard to aggressive or misleading marketing or selling practices in the context of unsolicited visits by a trader to a consumer's home, or with regard to commercial excursions organised by a trader with the aim or effect of promoting or selling products to consumers, provided that such provisions are justified on grounds of public policy or the protection of the respect for private life.</p>	<p>OPTION 1 Delete</p>
<p>Justification: The Commission has not presented any data that supports the inclusion of this provision in the proposal. None of the Reports of May 2017 (results of Consumer REFIT) have indicated that there is a need for legislative intervention and no impact assessment was carried out on such an overly restrictive provision. The Unfair Commercial Practices Directive already explicitly bans aggressive doorstep selling in Annex I point 25 (Blacklist of commercial practices) and does not allow for any misleading practice to take place. In addition, the Consumer Rights Directive provides a number of safeguards for consumers concluding off-premises contracts, including their right to withdraw from the contract within 14 days. Adding yet another set of rules would not provide any real added value for consumers but would instead lead to the stigmatization of a legitimate sales channel, with serious repercussions for companies and all those people who are either employed or actively involved in it. Moreover, the provision would take away from the Unfair Commercial Practices Directive one of its most important elements, the full harmonization principle. The added value brought to consumer protection by this Directive, including its full harmonization principle, has been recognized by stakeholders and the proposed provision will be a "step backwards", compromising the Directive's achievements in eliminating obstacles to cross-border trader and boosting the single market. Rogue traders do not respect EU laws and will not be dissuaded by another set of rules. On the contrary, better enforcement of the current rules will be a more efficient solution. It is essential that all Member States have in place mechanisms to stop these traders from engaging in unfair commercial practices (appropriate sanctions, consumer education, information campaigns etc.).</p>	

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<p>Justification: We are aware that consumers encounter problems in the context of commercial excursions in certain Member States. We do think, however, that any potential restrictions at national level, should they be authorised, must not target this legitimate sales channel as a whole, since this would not be in line with the principle of proportionality; they should instead focus on specific misleading or aggressive commercial practices. In line with the Rapporteur's suggestion in his draft Report, the legal basis is changed from "public policy and respect of private life" to "overriding reasons in the public interest" to narrow down the broad scope of the originally proposed legal basis.</p>	

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<p>Justification: It should be made clear that any potential national restrictions should not target the sales channels as a whole, since this would be highly disproportionate and would stigmatise legitimate sales channels; they should rather apply to specific commercial practices, after they have been identified as aggressive or misleading. In line with the Rapporteur's suggestion in his draft Report, the legal basis is changed from "public policy and respect of private life" to "overriding reasons in the public interest" to narrow down the broad scope of the originally proposed legal basis. Regarding visits to consumers' houses, the word "unsolicited" is replaced by "persistent and unwanted" to ensure any potential national provisions are proportionate and can better ensure a balance of traders' and consumers' rights.</p>	

Recital 44

Text proposed by the Commission	Amendment
<p>While off-premises sales constitute a legitimate and well-established sales channel, like sales at a trader's business premises and distance-selling, some particularly aggressive or misleading marketing practices in the context of visits to the consumer's home without the consumer's prior agreement or during commercial excursions can put consumers under pressure to make purchases of goods they would not otherwise buy and/or purchases at excessive prices, often involving immediate payment. Such practices often target elderly or other vulnerable consumers. Some Member States consider those practices undesirable and deem it necessary to restrict certain forms and aspects of off-premises sales within the meaning of Directive 2011/83/EU, such as aggressive and misleading marketing or selling of a product in the context of unsolicited visits to a consumer's home or commercial excursions, on grounds of public policy or the respect for consumers' private life protected by Article 7 of the Charter of Fundamental Rights of the EU. In accordance with the principle of subsidiarity and in order to facilitate enforcement, it should therefore be clarified that Directive 2005/29/EC is without prejudice to Member States' freedom to make arrangements without the need for a case-by-case assessment of the specific practice, to protect the legitimate interests of consumers with regard to unsolicited visits at their private home by a trader in order to offer or sell products or in relation to commercial excursions organised by a trader with the aim or effect of promoting or selling products to consumers where such</p>	<p>OPTION 1 Delete</p>

arrangements are justified on grounds of public policy or the protection of private life. Any such provisions should be proportionate and not discriminatory. Member States should be required to notify any national provisions adopted in this regard to the Commission so that the Commission can make this information available to all interested parties and monitor the proportionate nature and legality of those measures.

Justification: See justification for Option 1 above suggested for Article 1 par.1

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in order to facilitate enforcement, it should therefore be clarified that Directive 2005/29/EC is without prejudice to Member States' freedom to make arrangements without the need for a case-by-case assessment of the specific practice, to protect the legitimate interests of consumers with regard to unsolicited visits at their private home by a trader in order to offer or sell products or in relation to commercial excursions organised by a trader with the aim or effect of promoting or selling products to consumers where such arrangements are justified on grounds of public policy or the protection of private life. Any such provisions should be proportionate and not discriminatory. Member States should be required to notify any national provisions adopted in this regard to the Commission so that the Commission can make this information available to all interested parties and monitor the proportionate nature and legality of those measures.

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Justification: We are aware that consumers encounter problems in the context of commercial excursions in certain Member States. We do think, however, that any potential restrictions at national level, should they be authorised, must not target the sales channel as a whole, since this would not be in line with the principle of proportionality; they should instead focus on specific misleading or aggressive commercial practices.

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immediate payment. Such practices often target elderly or other vulnerable consumers. Some Member States consider those practices undesirable and deem it necessary to restrict certain forms and aspects of off-premises sales within the meaning of Directive 2011/83/EU, such as aggressive and misleading marketing or selling of a product in the context of unsolicited visits to a consumer's home or commercial excursions, on grounds of public policy or the respect for consumers' private life protected by Article 7 of the Charter of Fundamental Rights of the EU. In accordance with the principle of subsidiarity and in order to facilitate enforcement, it should therefore be clarified that Directive 2005/29/EC is without prejudice to Member States' freedom to make arrangements without the need for a case-by-case assessment of the specific practice, to protect the legitimate interests of consumers with regard to unsolicited visits at their private home by a trader in order to offer or sell products or in relation to commercial excursions organised by a trader with the aim or effect of promoting or selling products to consumers where such arrangements are justified on grounds of public policy or the protection of private life. Any such provisions should be proportionate and not discriminatory. Member States should be required to notify any national provisions adopted in this regard to the Commission so that the Commission can make this information available to all interested parties and monitor the proportionate nature and legality of those measures.

Such practices often target elderly or other vulnerable consumers. ~~Some Member States consider those practices undesirable and deem it necessary to restrict certain forms and aspects of off-premises sales within the meaning of Directive 2011/83/EU, such as aggressive and misleading marketing or selling of a product in the context of unsolicited visits to a consumer's home or commercial excursions, on grounds of public policy or the respect for consumers' private life protected by Article 7 of the Charter of Fundamental Rights of the EU.~~ In accordance with the principle of subsidiarity and in order to facilitate enforcement, it should therefore be clarified that Directive 2005/29/EC is without prejudice to Member States' freedom to make arrangements ~~without the need for a case-by-case assessment of the specific practice~~, to protect the legitimate interests of consumers with regard to **persistent and unwanted unsolicited** visits at their private home by a trader in order to offer or sell products or in relation to commercial excursions organised by a trader with the aim or effect of promoting or selling products to consumers. ~~where such arrangements are justified on grounds of public policy or the protection of private life.~~ Any such provisions should be proportionate and not discriminatory. Member States should be required to notify any national provisions adopted in this regard to the Commission so that the Commission can make this information available to all interested parties and **examine monitor** the proportionate nature and legality of those measures.

Justification: It should be made clear that any potential national restrictions should not target the sales channels as a whole, since this would be highly disproportionate and would stigmatise legitimate sales channels; they should rather apply to specific commercial practices, after they have been identified as aggressive or misleading. Regarding visits to consumers' houses, the word "unsolicited" is replaced by "persistent and unwanted" to ensure any potential national provisions are proportionate and can better ensure a balance of traders' and consumers' interests.

Article 7
Amendments to Directive 2011/83/EU

Text proposed by the Commission	Amendment
<p>Art. 7.1. With respect to off-premises contracts, the trader shall give the information provided for in Article 6(1) to the consumer on paper or, if the consumer agrees, on another durable medium. That information shall be legible and in plain, intelligible language.</p> <p>Art. 7.2. The trader shall provide the consumer with a copy of the signed contract or the confirmation of the contract on paper or, if the consumer agrees, on another durable medium, including, where applicable, the confirmation of the consumer's prior express consent and acknowledgment in accordance with point (m) of Article 16.</p>	<p>Art. 7.1. With respect to off-premises contracts, the trader shall give the information provided for in Article 6(1) to the consumer on paper or, if the consumer agrees, on another a durable medium. That information shall be legible and in plain, intelligible language.</p> <p>Art. 7.2. The trader shall provide the consumer with a copy of the signed contract or the confirmation of the contract on paper or, if the consumer agrees, on another on a durable medium, including, where applicable, the confirmation of the consumer's prior express consent and acknowledgment in accordance with point (m) of Article 16.</p>
<p>Justification: These provisions, which apply only to off-premises contracts, do not reflect the needs of today's consumers who live in a digital world. Under the Directive, pre-contractual information and copies of the signed contract should be provided in paper and only if the consumer agrees, on another durable medium. The provisions are out of date and therefore need to be revised to ensure they better serve consumers' interests, by taking into account future technological developments.</p>	