

**GENERAL PRINCIPLES AND SPECIFIC GUIDELINES FOR GENERIC CODES OF PRACTICE FOR
THE SALE OF GOODS AND SERVICES TO CUSTOMERS ON THE INTERNET**

UNICE COMMENTS

I) GENERAL REMARKS

On-line consumer confidence is an objective which UNICE and its Member Federations share with the Commission.

At National level, industry federations are participants in various trustmarks and codes initiatives like the Trust UK initiative, the Danish 'e-mark', the Dutch model code from Electronic Commerce Platform NL or the intersectoral ecode of conduct endorsed by the Federation of Belgian Companies.

At European level, many companies are signatories of the FEDMA code and the Eurocommerce code.

At International level, companies are actively involved in confidence-building initiatives in TABD, GBDe and ICC.

UNICE knows that, in the border-free Internet environment these actions are all important. It also recognises that consumers and industry need to work together. This is why UNICE has long supported Consumer/Industry dialogue. Overall, industry believes that a Commission initiative will add value if it serves to encourage a European approach that fosters good practice among many businesses for the benefit of many consumers.

Against this background, although welcoming the Commission's initiative in seeking to establish guiding principles for codes of practice, UNICE has some serious concerns about the content of the first draft. The concerns are set out in detail below, but can be summarised as follows:

Business is concerned that the existing mediation and conciliation schemes that underpin many codes may not be recognised. These offer fast, effective solutions for consumers and should not be undermined.

UNICE believes that approval and monitoring systems should be left to industry and consumers working together and should not be too prescriptive.

It is industry's view that a considerable number of the specific guidelines for interpretation of the general principles are neither workable nor affordable. They will not offer a basis that could be

used to build good on-line practice among start-ups. They are often too detailed and they go beyond the inherent nature of guidelines. UNICE would like this initiative to follow the scope and the level of detail agreed upon by OECD in the framework of the discussions on the e-commerce consumer protection guidelines. The Commission cooperated in the preparation of the guidelines and applauded their adoption.

UNICE very much hopes that the Commission will address its concerns. Industry would also be very interested in being more closely involved in any follow-up action.

II) **SPECIFIC COMMENTS**

A) **FAILURE TO RECOGNISE MEDIATION AND CONCILIATION SCHEMES RUN BY TRUSTMARKS**

Currently, most codes envisage complaints being handled as follows:

- ⌘⌘ Complaints handling of code subscriber (e.g. in-house complaints handling)
- ⌘⌘ Complaints handling of code owner (e.g. conciliation or mediation of code owner)
- ⌘⌘ Complaints handling of approval or monitoring body (e.g. conciliation or mediation systems of trustmark owners)

This structure never excludes the possibility to obtain redress in the courts or to go to one of the ADR mechanisms recognised in the context of the Commission Recommendation of 30 March 1998 on the principles applicable to the bodies for out-of-court settlement of consumer disputes.

UNICE is extremely concerned that the Commission's text would undermine this structure. It does not recognise complaints handling, conciliation or mediation systems of code owners or trustmark owners. These are not ADRs according to the existing recommendation. But they are good means of encouraging confidence and offer cheap, fast and effective solutions for consumers. UNICE does not want them to be sidelined.

If a new recommendation could be agreed that recognised these mechanisms, industry would obviously consider it. However, until then, the current draft is unacceptable.

B) **ISSUES RELATING TO THE GENERAL PRINCIPLES AND SPECIFIC GUIDELINES**

The Commission's paper sets out both general principles and specific guidelines. UNICE accepts many of the general principles, but is extremely concerned about the specific guidelines. As currently drafted, the specific guidelines go beyond many existing codes and trustmarks. If all trustmarks had to meet these criteria, participation in them would no longer be viable.

UNICE believes that the specific guidelines need to be substantially reduced if they are to pave the way for approval and monitoring mechanisms that code owners can and will sign up to.

Going through, section by section, it would like to highlight the following issues:

a) On the General Principles

Overall UNICE supports many of the principles. However, a simpler text would be preferable in which each of the principles is clearly capable of being translated into practice. This is not currently the case. Particular concern attaches to the following points:

Social Responsibility: In a global medium, it is not possible to ensure that no "potential consumer" is ever offended. For example, niche markets could be subjectively judged as being contrary to any "potential consumer" who is not of the group the niche addresses.

In addition, if code subscribers are not to encourage 'behaviour prejudicial to health or safety', companies selling chemical products, high-risk/extreme sports equipment, etc, will have very

little chance to obtain a trustmark. This section should be streamlined and include less prescriptive indications.

Complaint Handling and Dispute Resolution: For the reasons mentioned earlier in this paper, industry strongly opposes the second paragraph which proposes the link between codes and out-of-court settlement bodies which meet the requirements of the relevant Commission Recommendation. It would ignore the mediation and conciliation systems of code owners which offer rapid solutions for consumers. Therefore, UNICE would like the second paragraph to be deleted.

Security: UNICE supports this general principle but is very concerned about the practicability and cost implications for small business. The requirement “not to contract out of responsibility” is not workable in the networked environment, in which many players may be involved in a single transaction.

b) On the Specific Guidelines for the interpretation of general principles:

-Commercial Communications

General: Most of these points are already recognised in the Misleading and Comparative Advertising, Distance Selling and E-commerce Directives. It is not clear what value is added by the mere duplication of existing EU legislation.

Use of Technology: Much of this section is already covered as “deceit” under the Misleading Advertising Directive.

Children: Industry is particularly concerned about the fourth and fifth indents for the following reasons:

- ❌ In the internet it is not possible to guarantee that minors do not enter inappropriate websites or communicate with inappropriate persons. For example, where search engines are used, an inappropriate site may result simply because the descriptor is false.
- ❌ This requirement will be very hard to police because the concept of encouragement is very subjective. It is also not clear what the distinction is between a minor and a child and what the basis of age limits would be. In some European member states a person of 18 may be considered a child. It is questionable whether they should be required to gain parental consent in order to buy a book on-line.

-Actions to be taken before the conclusion of the contract

Information on the goods and services on offer, including price: It is not always possible for marketers to control and anticipate the additional charges levied by national governments and customs authorities (or postal operators). This requirement is not operational. It is not practicable to show all label information on the offer page and this requirement would therefore be deleted.

Information on the contract and contractual obligations, terms and conditions: The guidelines are very prescriptive. The second and third paragraphs are of particular concern. This is because the implications of extra charges/discounts for types of payment are often beyond the control of the marketer and because information about the due date for shipment and the likely arrival date is not generally provided when the consumer places the order (as this would require).

Consent of children to contracts: As has been stated above, the explicit and verifiable consent of parents is extremely difficult to police. This section should be deleted.

-Contractual Performance

General: It is not always possible to foresee a wave of popularity and excessive demand. It is not easy to see what “reasonable steps” could be taken to avoid this.

Business acknowledgement: UNICE is extremely concerned about the duplicate receipt called for in the final paragraph. It is not clear why a second and third notification should be dispatched. No single party can deliver this in a complex supply chain. It will therefore be very hard to enforce. Industry is also concerned about the 24-hour time limit and would prefer to see a “reasonable time” requirement. This would be more in keeping with a Commission-level initiative.

Payment: UNICE opposes the statement saying that money should not be debited until the goods or services have been dispatched. This is unfair to small businesses which, for example, make personalised products for the buyer which require prior investment. Furthermore, such a requirement does not exist in the distance selling directive or in the off-line world.

-Data Protection:

Industry strongly opposes the obligation to meet the requirements in the recommendation 1/99 of the Article 29 Data Protection working party. This document has already been considered by the Commission in developing its draft proposal on data processing in the electronic communications sector. Therefore, this reference should be deleted. Also, while business supports the use of privacy policies, it would not like to see their format prescribed.

-Complaint Handling and Dispute Settlement

Complaint Handling: UNICE thinks that an obligation for the code subscriber to provide information on the out-of-court settlement body it adheres to is a disproportional requirement. Industry would like to see this encouraged but not required.

-Compliance

Monitoring: The different monitoring tasks indicated would put an excessive administrative burden on both code owners and subscribers.

C) ON THE GUIDING PRINCIPLES FOR APPROVAL AND MONITORING BODIES

UNICE supports the guiding principles for approval and monitoring bodies. However, we think that the composition of stakeholders’ approval and monitoring committees should be decided by the approval and monitoring body themselves and should not be prescribed in advance.

D) ON THE OPTIONS FOR APPROVAL AND MONITORING

So far, the Community has little experience of approval and monitoring. There are schemes developing in some member states. Although still at an early stage, it is clear that these involve differing partners and operate in different ways. Action at European level, should supplement this, helping to prevent market fragmentation while allowing sufficient flexibility.

In industry's view, national approval schemes should not be required where no need has been shown since this could lead to fragmentation of the single market. This would not fit with the needs of the medium.

At European level awareness-raising and oversight of trustmarks should be fostered via the use of web-based initiatives. UNICE would like to see the European Commission's e-confidence website used to achieve this end.

Overall, among the options for approval and monitoring, industry would support a combination of Option A and Option B#2, that is co-operation and mutual recognition between existing national approval and monitoring bodies. However UNICE does not consider that national approval systems should be required where no need has been shown. In industry's view, trustmarks (whether run by approval and monitoring systems or code owners) should be promoted at European level. Industry therefore welcomes the idea of a central website containing a wide range of consumer information. In particular, this could include a global map that will show consumers the trustmarks that meet the guidelines and specific requirements. All national and EU trustmarks on the map should be required to publish an annual report of their compliance with the principles and guidelines. Consumer awareness of the map could be secured via a link on each merchant's site as well as by links from other consumer and business sites. A European panel is not necessary at this stage. However, should a European panel develop at a later stage, UNICE would have an interest in being involved.

Finally, although UNICE agrees that mutual recognition should be encouraged, and links between existing trustmarks fostered and considers that the detailed arrangements of the system should be left to the stakeholders. Industry therefore supports Option 2 on the role of business, public authorities and consumer stakeholders in approval and monitoring.

III) CONCLUDING REMARKS

UNICE very much hopes that these comments will be taken into account. The level of detail reflects our interest in this initiative and our belief that consumers and business should continue to work together and share expertise in helping to build on-line trust and confidence.

UNICE has long been committed to enhanced dialogue between consumers and business. We very much hope that the Commission will continue to involve UNICE closely as the e-confidence initiative moves forward.
