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Unfair Competition in The European Union: Doctrinal Evolution, Legal Harmonization, And the Role of Directive 2005/29/EC

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Abstract: This article offers a comprehensive analysis of the legal regulation of unfair competition within the European Union, focusing on the doctrinal development and harmonization efforts that culminated in the adoption of Directive 2005/29/EC on Unfair Commercial Practices. Drawing on comparative perspectives, the paper examines the historical foundations and divergent regulatory approaches of EU member states, highlighting the shift from traditional business protection models toward a consumer-centered framework. Special attention is paid to the implementation challenges, structural components, and harmonization impact of the Directive, particularly in balancing national legal diversity with supranational standards. The study also addresses persistent discrepancies in the interpretation of key legal terms such as "unfairness," "misleading," and "professional diligence," as well as the limits of voluntary self-regulation. The article concludes that while Directive 2005/29/EC has significantly advanced the alignment of national laws with EU competition principles, the complete unification of unfair competition regulation remains a long-term objective, impeded by both legal pluralism and conceptual fragmentation.

Keywords: Unfair competition, Directive 2005/29/EC, EU competition law, harmonization, consumer protection, commercial practices, misleading advertising, legal regulation, comparative law, internal market.

Introduction: According to the well-founded observation made by Z. Pitzker and S. Bretthauer, legal regulation of unfair competition is essential for the protection of competitors, consumers, and the public at large. This perspective underscores that competition law is not solely about regulating market conduct, but also about maintaining trust in market systems and ensuring that economic players adhere to rules of fairness and integrity.

With the economic integration of EU member states, a single competitive space has emerged, which in turn necessitates the harmonized legal regulation of unfair competition across the European Union. The goal is to provide equal conditions for businesses and protect the integrity of the internal market, preventing national disparities that could lead to competitive imbalances or regulatory arbitrage.

EU member states have adopted diverse models of legal regulation concerning relationships that arise in the context of preventing unfair competition:

For example, in Germany (FRG), Austria, and Hungary, there is specialized legislation explicitly devoted to the prevention and suppression of unfair competition. These legal frameworks offer clear definitions, enumerated prohibited acts, and procedural mechanisms tailored specifically to this area of law. Germany's Gesetz gegen den unlauteren Wettbewerb (Law Against Unfair Competition), for instance, is a leading example of such legislation, combining traditional civil law principles with modern commercial realities.

In contrast, countries such as France, the United Kingdom, Italy, and the Netherlands regulate unfair competition primarily through general provisions of civil law, particularly those dealing with tort liability (delict). This approach treats unfair competition as a form of unlawful conduct that causes harm, and relies

heavily on judicial interpretation and case law to apply broad civil norms to specific commercial disputes. While this provides flexibility, it may lack the legal precision found in codified, specialized statutes.

This divergence in regulatory models reflects both legal traditions and policy preferences. Countries with a civil law tradition tend to favor codification and specificity, whereas common law countries rely more heavily on judicial discretion and precedents. Regardless of the model, however, the overarching aim remains consistent: to safeguard market integrity and ensure that competitive practices do not cross into deception, coercion, or manipulation.

In the broader context of EU law, the European Commission and the Court of Justice of the EU (CJEU) play an increasingly important role in interpreting competition rules and ensuring that national measures align with the objectives of the Treaty on the Functioning of the European Union (TFEU), particularly Articles 101 and 102 concerning anti-competitive agreements and abuse of dominant position. However, unfair competition—while closely related—is not fully harmonized at the EU level, which leaves room for national diversity, especially in matters not directly involving cross-border or internal market effects.

At the core of the supranational legal regulation of the institution of unfair competition in the European Union lie the provisions of Article 3 of the Treaty on European Union (TEU) , which ensures the establishment of a highly competitive social market economy, and Chapter 1 of Title VII of the Treaty on the Functioning of the European Union (TFEU) , which lays down the general competition rules applicable across the EU internal market.

However, true harmonization of EU legislation in the field of unfair competition can only be seen with the adoption of Directive 2005/29/EC of the European Parliament and of the Council on Unfair Commercial Practices towards Consumers in the Internal Market (hereinafter – Directive 2005/29/EC). This Directive represents a significant milestone in the EU's effort to create a uniform legal framework for combating unfair business practices, particularly those that affect consumers' economic interests.

The EU's attempts to harmonize the legal regulation of unfair competition date back to the 1960s, when the first working group was convened to draft unified standards in this area. In the 1980s, several sectoral directives were adopted that addressed specific aspects of unfair competition, such as misleading advertising and comparative advertising. During that time, advertising law was chosen as a common foundation for the development of unified unfair competition regulations, since advertising was (and remains) one of the primary vehicles through which unfair commercial practices are conducted.

However, in the early 1990s, the development of EU unfair competition law entered a phase of stagnation. This was eventually overcome through a shift in doctrinal focus: the concept of unfair competition moved from the protection of competing business entities toward a consumer-oriented model. That is, the doctrinal transformation involved re-framing unfair competition as a consumer protection issue, especially in the context of deceptive, aggressive, or otherwise unethical commercial practices.

This evolution reflects a broader trend in EU law, where consumer welfare has become a central pillar of internal market policy. The Directive 2005/29/EC thus represents a culmination of decades of doctrinal and regulatory development and aims to ensure that consumers across the EU are equally protected from unfair commercial practices, regardless of the Member State in which a business is established. The Directive takes a maximum harmonization approach, meaning Member States may not introduce stricter national rules than those provided in the Directive, thereby ensuring uniform standards of consumer protection across the internal market.

The general clause on unfair competition at the EU level is enshrined in the provisions of Directive 2005/29/EC, the primary aim of which is to ensure the proper functioning of the internal market and to achieve a high level of consumer protection.

Although Directive 2005/29/EC is primarily focused on protecting the economic interests of consumers from unfair commercial practices, it also indirectly protects honest businesses from dishonest competitors. This dual effect reinforces market integrity by ensuring that not only consumers but also law-abiding traders are shielded from predatory or unethical behavior by rivals.

The broad scope of the Directive is confirmed by its provisions regarding its field of application, which state that the Directive shall only not apply in situations where there is a conflict with other EU legal provisions that govern specific aspects of unfair commercial conduct. This clause underscores the general applicability of the Directive within the EU legal system while allowing room for sector-specific regulations to prevail in their respective domains.

It is appropriate to distinguish four key substantive components of Directive 2005/29/EC, which together form a comprehensive legal framework against unfair commercial practices:

A General Prohibition of Unfair Commercial Practices –

This is the core clause that prohibits all commercial behaviors that are contrary to the requirements of professional diligence and that materially distort or are likely to distort the economic behavior of the average consumer.

Prohibition of Misleading Practices – This includes both misleading actions (e.g., providing false information about products or services) and misleading omissions (e.g., withholding essential information), particularly where such practices deceive or are likely to deceive the average consumer.

Prohibition of Aggressive Practices – This concerns commercial behavior that involves coercion, undue influence, or harassment, and which significantly impairs the consumer's freedom of choice.

The "Blacklist" of Commercial Practices – This is an annexed list of 31 commercial practices that are always considered unfair, regardless of their actual effect on consumer behavior. These include false "limited time" offers, fake claims of professional endorsement, and other deceptive tactics.

This structure allows the Directive to act both as a general framework and as a detailed regulatory instrument, promoting uniform consumer protection across the EU while facilitating the free movement of goods and services by eliminating divergent national rules.

Directive 2005/29/EC of the European Parliament and of the Council represents a fundamentally new legal regulatory mechanism within the European Union's framework for addressing unfair commercial practices. Unlike the majority of EU directives, which typically establish only minimum requirements for the harmonization of national laws among member states, Directive 2005/29/EC mandates a maximum level of harmonization. This means that member states are not permitted to legalize any unfair commercial practice that is prohibited by the Directive, nor are they allowed to prohibit practices that are not explicitly forbidden by it. Consequently, the Directive obliges member states to revise and align any general provisions or legal principles that conflict with the EU's unified legal standards on unfair competition. Although A. Yu. Zak has expressed doubts regarding the feasibility of implementing the Directive's norms into national legislation, these concerns appear unconvincing. The Directive is structured around general provisions that, while binding, neither conflict with the foundational models of national legal systems nor drastically alter them. The unifying role of the Directive, however, is somewhat mitigated by the partial retention of the country-of-origin principle and by the divergent approaches among EU member states in interpreting core legal terms such as "unfairness", "misleading", and the "professional duty of an economic operator to respect the interests of a counterparty". Moreover, although the Directive promotes the establishment of sector-specific standards of conduct through voluntary codes of practice, only two such codes had been adopted at the EU level as of January 16, 2012. This signals a limited effectiveness of the Directive's reference mechanism encouraging self-regulation. Nevertheless, despite these shortcomings, Directive 2005/29/EC has undoubtedly stimulated the harmonization of legal regulation concerning unfair competition within the EU. Notably, the Directive introduced the novel concept of "unfair commercial practice", which has since been incorporated into the national laws of several member states. For instance, Germany's Law Against Unfair Competition now defines commercial practice as any conduct by a trader, whether acting in their own interest or that of a third party, before, during, or after a business transaction, provided that the transaction is objectively aimed at the sale or purchase of goods or services, or the conclusion and execution of a contract relating to such goods or services. This shift reflects a broader doctrinal transition from protecting competitors to safeguarding consumers, marking a significant milestone in the evolution of EU competition law.

Historically, in Germany, the primary criterion for determining whether a business practice constituted an act of unfair competition was rooted in the broad and ethically charged concept of "good morals" (gute Sitten) . This approach, grounded in moral and customary expectations of fairness in commerce, lacked legal precision but reflected prevailing societal norms. In the contemporary legal framework, however, this standard has been replaced with a more objective and legally definable criterion — the notion of unfairness (Unlauterkeit), which is assessed based on the need to protect the legitimate interests of market participants, including business entities, consumers, and the broader public. This shift mirrors a transition from a moralistic to a more structured and rights-based approach within EU legal systems. The provisions of Directive 2005/29/EC have been effectively implemented into the national legislation of several member states. For example, Hungary has adopted the Directive's standards, achieving a significant degree of harmonization. Nonetheless, Hungarian law continues to exhibit a hybrid legal regime in which elements of both antitrust regulation and unfair competition controls are intermixed — with the dominant regulatory emphasis still leaning toward antitrust mechanisms. One of the key legal challenges addressed by the Directive was the so-called "competition of

claims" problem in the United Kingdom. Prior to the Directive's adoption, overlapping legal protections under the Competition Act and the Trade Descriptions Act both of which sought to defend the interests of honest market players and consumers — created practical difficulties in distinguishing claims based on unfair competition from those based on intellectual property infringement. The Directive contributed to resolving this confusion by introducing a harmonized legal standard, helping to streamline legal actions involving deceptive or misleading practices. Despite measurable progress in aligning national regulations with EU standards, it would be premature and unconvincing to claim that a uniform legal regime governing unfair competition has been fully established across the European Union. Significant divergences remain in how national legal systems define and enforce rules concerning dishonest commercial practices. While a long-term objective may involve the construction of an integrated and cohesive EU-wide model for the regulation of unfair competition, current harmonization efforts have only partially bridged legal and doctrinal discrepancies among member states. Thus, while Directive 2005/29/EC has undeniably catalyzed reform and stimulated legal convergence, full unification remains a distant and incremental goal.

CONCLUSION

The regulation of unfair competition within the European Union reflects a complex interplay between national legal traditions and supranational harmonization efforts. The adoption of Directive 2005/29/EC marked a turning point in EU competition policy by introducing a unified legal framework aimed primarily at protecting consumers, while also indirectly safeguarding fair market practices among businesses. The Directive's approach—centered on maximum harmonization—has prompted significant legislative reforms across member states and helped resolve longstanding issues such as overlapping legal claims and inconsistent standards.

Nevertheless, the goal of establishing a fully integrated legal regime for unfair competition throughout the EU remains only partially achieved. Member states continue to diverge in their definitions, enforcement strategies, and interpretation of core concepts such as "unfairness" and "misleading conduct." The coexistence of general civil law provisions in some countries and specialized legislation in others illustrates the enduring diversity of legal cultures within the Union. Moreover, the limited uptake of sector-specific codes of conduct reveals the practical challenges of relying on self-regulation mechanisms envisioned by the Directive.

In sum, while Directive 2005/29/EC has laid the foundation for a more coherent and consumer-focused regulatory landscape, further doctrinal refinement, institutional cooperation, and legal convergence are needed to realize the vision of a truly unified EU framework against unfair commercial practices.

REFERENCES

Основы германского и международного экономического права / Х. Й. Шмидт-Тренц, Ю. Плате, М. Пашке. – СПб: Издательство СПбГУ, 2007. – 736 с.

Договор о Европейском Союзе (Маастрихт) от 07.02.1992 (в ред. Лиссабонского договора 2007 г.) [Электронный ресурс]. – Режим доступа: http://www.eulaw.ru/treaties/teu

Договор о функционировании Европейского Союза (Рим) от 25.03.1957 (в ред. Лиссабонского договора 2007 г.) [Электронный ресурс]. – Режим доступа: http://www.eulaw.ru/treaties/tfeu

Пирогова, В. В. Европейское законодательство против недобросовестной конкуренции: от Парижской конвенции до новой Европейской директивы / В. В. Пирогова // Законодательство и экономика.– 2006. – № 4. – С. 41-46.

Директива Совета ЕС 84/450/ЕЭС от 10.09.1984 «О сравнительной и вводящей в заблуждение рекламе» [Электронный ресурс]. – Режим доступа: http://bazazakonov.ru/doc/?ID=2405161 (дата обращения 16.01.2012); Директива Совета ЕС 89/552/ЕЭС от 03.10.1989 «О координации определѐнных положений, установленных законодательно, регулятивно либо административно странамиучастницами в области осуществления телевизионного вещания» [Электронный ресурс]. – Режим доступа: http://www.medialaw.ru/laws/other_laws/european/dir_89-552-ec/text.htm

Директива Европейского парламента и Совета ЕС 2005/29/ЕС от 11.05.2005 «О недобросовестной коммерческой практике по отношению к потребителям на внутреннем рынке» [Электронный ресурс]. – Режим доступа: http://bazazakonov.ru/doc/?ID=2405227

The Act against Unfair Competition (as amended 22.06.1998). 07.06.1909. [Электронный ресурс]. – Режим доступа: http://www.wipo.int/wipolex/en/details.jsp?id=1013

The Act against Unfair Competition (as amended 03.03.2010). 03.07.2004. [Электронный ресурс]. – Режим доступа: http://www.gesetze-im-internet.de/englisch_uwg/index.html

Закон «О запрещении недобросовестного

рыночного поведения и ограничения конкуренции» LVII. 1996. (Венгрия) [Электронный ресурс]. – Режим доступа: http://www.ebrd.com/russian/ downloads/research/law/lit041ru.pdf

Competition Act (the UK). 1998. [Электронный ресурс]. – Режим доступа: http://www.legislation.

gov.uk/ukpga/1998/41/contents

Copyright, etc. and Trade Marks (Offences and Enforcement) Act (the UK). 2002. [Электронный ресурс]. – Режим доступа: http://www.legislation.gov.uk/ukpga/2002/25/contents

Сухоруков, А. В. Антимонопольное и конкурентное право в российской и немецкой правовых системах / А. В. Сухоруков // Российский юридический журнал. – 2010. – № 1. – С. 206-208.