

Stockholm, 17 October 2003

**European Network of Ombudspersons for Children (ENOC)****Statement on Childhood and Commercial pressure: EU-proposal for a  
“Directive on unfair business-to-consumer commercial practices”  
2003/0134 (COD).**

We, as children’s ombudspersons in 21 European states, are concerned at the lack of special protection for children from unfair business practices in the proposal for a new EU Directive.

Unfair business practices are recognised as a problem in all EU countries and harm consumers as well as respected companies with established business practices. Through the proposed new Directive, consumers' rights will be clearer and cross-border trade made simpler. The Directive establishes a single, common, general prohibition of unfair commercial practices distorting consumers' economic behaviour (Article 5).

Children and youth are a vulnerable consumer group across Europe. As children’s Ombudspersons, our experience is that children and youth are exposed to enormous commercial pressures. Children and youth of today represent a billion-dollar target. They are the trend-industries main target group, children’s fashion is big business, and consumer goods have been deliberately marketed to become part of children’s and young people’s status symbols. Through online and mobile phone marketing, children can be targeted directly and information collected from them without their parent’s knowledge.

**As children’s Ombudspersons in 21 European states, we are thus concerned at the lack of special reference and special safeguards for children and young people as consumers in the proposal for a new Directive.**

**Article 3 of the Convention on the Rights of the Child requires states to make the best interests of the child a “primary consideration” in all actions concerning children. Also, Article 17 (e) of the Convention on the Rights of the Child states that the parties shall**

*“Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18 “.*

**ENOC urges individual states to view the proposed Directive against the requirements of the CRC and the European human rights instruments and national legislation protecting the rights of the child. ENOC urges the European Union to ensure adequate protection of human rights standards applicable to children across Europe.**

## **Proposal for a General prohibition of unfair commercial practices.**

Article 5 in the New Directive proposes a general prohibition on unfair commercial practices. The benchmark consumer to be considered in assessing the impact of a practice is the 'average' European consumer who is “reasonably well informed and reasonably observant and circumspect” (Article 5 2. Ref. Article 2 (b)). However, where a specific group of consumers is targeted (for example, children or adolescents), the characteristics of the average member of that group, must be taken into account in assessing the impact of the practice (Article 5 2.). There is no specific reference to children and young people, or to vulnerable consumer groups whatsoever. ENOC therefore strongly urges the EU Commission to include specific reference to children and young people as a vulnerable group of consumers in the Directive.

Because the Directive ensures EU-wide standards of protection, businesses will only have to comply with the requirements of their country of origin when selling to consumers around the EU. The Directive prevents other Member States from imposing additional requirements on them. This means that with regard to children, the national legislation for protection of children from unfair commercial practices will have to submit to EU standards, even if these are less conducive to respecting children’s rights. This makes it imperative that the EU standards give sufficient protection for children and youth as a consumer group.

The proposed Directive is weak in the sense that it makes little reference to children. We know that the targeting of children as an important consumer group is increasingly aggressive. In order to protect them, ENOC members strongly emphasise the need for specific reference in the Directive in the following alternative ways:

- The Directive should in Article 5.2 include in the general prohibition a specific reference to children as a vulnerable group
- The Directive should in the “list of specific unfair practices prohibited by the Directive” (supplement 1), introduce a new 8<sup>th</sup> point, referring to practices directly targeting children as aggressive.

A full version of the Directive can be found at:

[http://europa.eu.int/comm/consumers/cons\\_int/safe\\_shop/fair\\_bus\\_pract/index\\_en.htm](http://europa.eu.int/comm/consumers/cons_int/safe_shop/fair_bus_pract/index_en.htm)