

UNOFFICIAL TRANSLATION

Notification by GERMANY of 12 October 2021

Article 3(5)-(6) of Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market

Rules on unsolicited visits to a consumer's home

Point 32 of the Annex to Section 3(3) of the Law against unfair competition (*Gesetz gegen den unlauteren Wettbewerb- UWG*)- new

The following commercial practices shall always be prohibited when conducted in dealings with consumers:

(...)

32. requesting payment on the day the contract is concluded in the context of an unsolicited visit to a consumer's home

where a contract is concluded in the context of an unsolicited visit to a consumer's home, requiring the consumer to pay for the good or service before the end of the day on which the contract was concluded; this shall not apply if the consumer owes less than EUR 50.

Rules on excursions:

Amendments to the Trade and Industry Code (*Gewerbeordnung – GewO*)

Section 4(1) *GewO* – new

(1) Where traders established in another European Union Member State or another signatory state to the Agreement on the European Economic Area are temporarily acting on a self-employed basis in the area covered by this piece of legislation, Section 34b(1), (3) (4), (6) and (7), Section 34c(1), first sentence, points 1, 3 and 4, and Section 38(1) and (2) shall not apply. In such cases, Section 14, Section 55(2) and (3), Section 55c, Section 56a(2), (3), (5) and (7) and Section 57(3) shall not apply either unless commercial activities are being carried out that are excluded from the scope of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ L 376, 27.12.2006, p. 36) on the basis of Article 2(2) of that Directive or are excluded from the freedom to provide services on the basis of Article 17 of that Directive.

(...)

Section 56a *GewO* – new

(1) Anyone who holds goods for sale, seeks orders for goods, offers services or seeks orders for services from a fixed sales outlet that is not their premises, a trade fair, an exhibition or a market shall be deemed to be organising a promotional or sales event.

(2) The organiser of a promotional or sales event must notify the authority responsible for the location of the promotional or sales event at least four weeks before the event, and in line with the requirements laid down in paragraph 3, if the promotional or sales event is to be advertised publicly and the participants are to be transported to and from the location of the promotional or sales event, using means of commercial transport, by the organiser or by persons acting in conjunction with the organiser. If the promotional or sales event is to take place abroad, the notification referred to in the first sentence must be submitted to the authority responsible for the location in which the organiser is established.

(3) The notification referred to in the first sentence of paragraph 2 must contain the following:

1. the place, date and time of the promotional or sales event;
2. the name and address of the organiser and the person on whose behalf the goods or services are being marketed; for legal persons, the legal form and the authorised representatives must also be mentioned;
3. information allowing the organiser to be contacted quickly and directly, including a telephone number and an email address;
4. details of the commercial register, register of associations or register of cooperatives in which the organiser is registered, and their registration number;
5. the wording and type of the planned public advertisement; and
6. the name of a person who has written authorisation to represent the organiser of the promotional or sales event named in the notification, and who manages the event on-site on the organiser's behalf.

(4) The organiser of a promotional or sales event must ensure that the public advertisement for the event contains the following information:

1. the nature of the goods or services being marketed at the promotional or sales event;
2. the location of the promotional or sales event;
3. the organiser's name, the address at which they are established, and information allowing the organiser to be contacted quickly and directly, including a telephone number and an email address; and
4. information, presented in an easily recognisable and clearly legible or otherwise easily visible format, about the conditions under which the consumer is entitled to withdraw from any contract concluded in the context of the promotional or sales event.

Public advertisements for promotional or sales events must not advertise free gifts in the form of goods or services; this shall include competitions, raffles and prize draws.

(5) If notification is to be given of the promotional or sales event as described in the first sentence of paragraph 2, the event may only be run on-site by the organiser named in the notification, subject to the second sentence. The organiser may be represented by a person whom they have authorised in writing to do this.

(6) It is prohibited to market or broker the following services or goods at a promotional or sales event within the meaning of the first sentence of paragraph 2:

1. financial investments within the meaning of the first sentence of Section 34f(1), insurance contracts and mortgage savings contracts, real estate consumer loan contracts within the meaning of the first sentence of Section 34i(1) or equivalent paid forms of financial assistance;

2. medical devices within the meaning of point (1) of Article 2 of Regulation (EU) 2017/745 of the European Parliament and of the Council of 5 April 2017 on medical devices, amending Directive 2001/83/EC, Regulation (EC) No 178/2002 and Regulation (EC) No 1223/2009 and repealing Council Directives 90/385/EEC and 93/42/EEC (OJ L 117 of 5.5.2017, p. 1; L 117 of 3.5.2019, p. 9; L 334 of 27.12.2019, p. 165), amended by Regulation (EU) 2020/561 (OJ L 130 of 24.4.2020, p. 18), as amended;

3. food supplements within the meaning of Section 1(1) of the Food Supplements Regulation (*Nahrungsergänzungsmittelverordnung – NemV*).

The first sentence shall not apply if the promotional or sales event is intended solely for persons who wish to attend it for business purposes. This shall be without prejudice to Section 56.

(7) The competent authority may prohibit the organisation of a promotional or sales event if the notification referred to in the first sentence of paragraph 2 is not submitted in time, is inaccurate or is incomplete, or if the public advertisement does not comply with paragraph 4.

Section 145(3) and (4) GewO – new

(...)

(3) An administrative offence shall also be deemed to have been committed by anyone who, whether intentionally or through negligence:

1. in contravention of Section 55c or Section 56a(2), first sentence, also in conjunction the second sentence, fails to submit a notification, fails to submit an accurate notification, fails to submit a complete notification or fails to submit the notification in a timely manner;

(...)

3. fails to ensure that the information referred to in the first sentence of Section 56a(4) appears in the public advertisement, in breach of that provision;

4. advertises a gift in breach of the second sentence of Section 56a(4);

5. runs a promotional or sales event in breach of the first sentence of Section 56a(5);

6. markets or brokers services or goods in breach of the first sentence of Section 56a(5);

7. contravenes an enforceable order referred to in Section 56a(7);

(...)

(4) Administrative offences (...) falling under paragraph 3 shall be punishable by a fine of up to EUR 10 000.