EUROPEAN
COMMISSION

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ANNEXES 1 to 2

SENSITIVE*
UNTIL ADOPTION

ANNEXES

to the

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on promoting fair business-to-consumer practices in the offline and digital single market, repealing Directive 2005/29/EC
(Digital Fairness Act)

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ANNEX 1

COMMERCIAL PRACTICES WHICH ARE CONSIDERED UNFAIR IN ALL CIRCUMSTANCES

Part I. Misleading commercial practices

1. Claiming to be a signatory to a code of conduct when the trader is not.

2. Displaying a trust mark, quality mark or equivalent without having obtained the necessary authorisation.

3. Displaying a sustainability label that is not based on a certification scheme or not established by public authorities.

4. Claiming that a code of conduct has an endorsement from a public or other body which it does not have.

5. Claiming that a trader (including the trader's commercial practices) or a product has been approved, endorsed or authorised by a public or private body when the trader or the product has not or making such a claim without complying with the terms of the approval, endorsement or authorisation.

6. Making a generic environmental claim for which the trader is not able to demonstrate recognised excellent environmental performance relevant to the claim.

7. Making an environmental claim about the entire product or the trader's entire business when it concerns only a certain aspect of the product or a specific activity of the trader's business.

8. Claiming, based on the offsetting of greenhouse gas emissions, that a product has a neutral, reduced or positive impact on the environment in terms of greenhouse gas emissions.

9. Making an invitation to purchase products at a specified price without disclosing the existence of any reasonable grounds the trader may have for believing that they will not be able to offer for supply or to procure another trader to supply, those products or equivalent products at that price for a period that is, and in quantities that are, reasonable having regard to the product, the scale of advertising of the product and the price offered (bait advertising).

10. Making an invitation to purchase products at a specified price and then:

(a) refusing to show the advertised item to consumers;

or

(b) refusing to take orders for it or deliver it within a reasonable time;

or

(c) demonstrating a defective sample of it,

with the intention of promoting a different product (bait and switch).

11. Providing a price comparison based on a reference price by advertising a benefit in percentage or absolute monetary value, or by crossing-out the reference price, or by using other similar techniques suggesting a price reduction, where the reference price for the comparison is not a current price charged for the product by a clearly identified competitor on the market.

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12. Presenting a price to the consumer for a product without including, in the price displayed at the first stage at which pricing information is given to the consumer, all foreseeable fees, taxes, charges or other payments that the consumer will unavoidably incur if the consumer purchases the product.

13. Falsely stating that a product will only be available for a very limited time, or that it will only be available on particular terms for a very limited time, in order to elicit an immediate decision and deprive consumers of sufficient opportunity or time to make an informed choice.

14. Stating that a product will only be available for a very limited time, or that it will only be available on particular terms for a very limited time, without disclosing the duration of the promotional offer.

15. Undertaking to provide after-sales service to consumers with whom the trader has communicated prior to a transaction in a language which is not an official language of the Member State where the trader is located and then making such service available only in another language without clearly disclosing this to the consumer before the consumer is committed to the transaction.

16. Stating or otherwise creating the impression that a product can legally be sold when it cannot.

17. Presenting rights given to consumers in law as a distinctive feature of the trader's offer.

18. Presenting requirements imposed by law on all products within the relevant product category on the Union market as a distinctive feature of the trader's offer.

19. Using editorial content in the media to promote a product where a trader has paid for the promotion without making that clear in the content or by images or sounds clearly identifiable by the consumer (advertorial). This shall be without prejudice to Directive 2010/13/EU.

20. Providing search results in response to a consumer's online search query without clearly disclosing any paid advertisement or payment specifically for achieving higher ranking of products within the search results.

21. Making a materially inaccurate claim concerning the nature and extent of the risk to the personal security of the consumer or their family if the consumer does not purchase the product.

22. Promoting a product similar to a product made by a particular manufacturer in such a manner as deliberately to mislead the consumer into believing that the product is made by that same manufacturer when it is not.

23. Establishing, operating or promoting a pyramid promotional scheme where a consumer gives consideration for the opportunity to receive compensation that is derived primarily from the introduction of other consumers into the scheme rather than from the sale or consumption of products.

24. Claiming that the trader is about to cease trading or move premises when they are not.

25. Claiming that products are able to facilitate winning in games of chance.

26. Falsely claiming that a product is able to cure illnesses, dysfunction or malformations.

27. Passing on materially inaccurate information on market conditions or on the possibility of finding the product with the intention of inducing the consumer to acquire the product at conditions less favourable than normal market conditions.

28. Claiming in a commercial practice to offer a competition or prize promotion without awarding the prizes described or a reasonable equivalent.

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29. Describing a product as ‘gratis’, ‘free’, ‘without charge’ or similar if the consumer has to pay anything other than the unavoidable cost of responding to the commercial practice and collecting or paying for delivery of the item.

30. Including in marketing material an invoice or similar document seeking payment which gives the consumer the impression that they have already ordered the marketed product when they have not.

31. Falsely claiming or creating the impression that the trader is not acting for purposes relating to their trade, business, craft or profession, or falsely representing oneself as a consumer.

32. Creating the false impression that after-sales service in relation to a product is available in a Member State other than the one in which the product is sold.

33. Falsely stating or otherwise creating the false impression that a seller has the product in stock where the product is supplied directly to the consumer by a third party (dropshipping).

34. Falsely stating or otherwise creating the false impression that the consumer cannot exercise their rights against the seller because the order is fulfilled by a third party (dropshipping).

35. Reselling events tickets to consumers if the trader acquired them by using automated means to circumvent any limit imposed on the number of tickets that a person can buy or any other rules applicable to the purchase of tickets.

36. Stating that reviews of a product are submitted by consumers who have actually used or purchased the product without taking reasonable and proportionate steps to check that they originate from such consumers.

37. Submitting or commissioning another legal or natural person to submit false consumer reviews or endorsements, or misrepresenting consumer reviews or social endorsements, in order to promote products.

38. Withholding information from the consumer about the fact that a software update will negatively impact the functioning of goods with digital elements or the use of digital content or digital services.

39. Presenting a software update as necessary when it only enhances functionality features.

40. Any commercial communication in relation to a good containing a feature introduced to limit its durability despite information on the feature and its effects on the durability of the good being available to the trader.

41. Falsely claiming that under normal conditions of use a good has a certain durability in terms of usage time or intensity.

42. Presenting a good as allowing repair when it does not.

43. Inducing the consumer to replace or replenish the consumables of a good earlier than necessary for technical reasons.

44. Withholding information concerning the impairment of the functionality of a good when consumables, spare parts or accessories not supplied by the original producer are used, or falsely claiming that such impairment will happen.

Part II. Aggressive commercial practices

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45. Creating the impression that the consumer cannot leave the premises until a contract is formed.

46. Conducting personal visits to the consumer's home ignoring the consumer's request to leave or not to return except in circumstances and to the extent justified, under national law, to enforce a contractual obligation.

47. Making persistent and unwanted solicitations by telephone, fax, e-mail or other remote media except in circumstances and to the extent justified under national law to enforce a contractual obligation. This is without prejudice to Regulation (EU) 2016/679.

48. Requiring a consumer who wishes to claim on an insurance policy to produce documents which could not reasonably be considered relevant as to whether the claim was valid, or failing systematically to respond to pertinent correspondence, in order to dissuade a consumer from exercising their contractual rights.

49. Including in an advertisement a direct exhortation to children to buy advertised products or persuade their parents or other adults to buy advertised products for them.

50. Demanding immediate or deferred payment for or the return or safekeeping of products supplied by the trader, but not solicited by the consumer (inertia selling).

51. Explicitly informing a consumer that if they do not buy the product or service, the trader's job or livelihood will be in jeopardy.

52. Creating the false impression that the consumer has already won, will win, or will on doing a particular act win, a prize or other equivalent benefit, when in fact either:

– there is no prize or other equivalent benefit,

or

– taking any action in relation to claiming the prize or other equivalent benefit is subject to the consumer paying money or incurring a cost.

Part III. Dark patterns

53. Making false claims about the availability or the popularity of a product, or not clearly and unambiguously disclosing relevant qualifications about the availability or the popularity of that product.

54. Persistently displaying statements throughout the ordering process about the availability or popularity of a product or promotional offer to create an impression of scarcity.

55. Using default options which the consumer is required to reject or otherwise inferring the consent of the consumer to payment for an additional product, a different quantity of the product or a different product.

56. Presenting the option to decline an invitation to purchase or to continue the supply of a product as the wrong choice.

57. Creating the false impression that the consumer does not have any other option apart from the prominently featured option.

58. Persistently requesting that consumers make a choice or change their choice where that choice has already been made, where this is not necessary for the trader to comply with legal requirements.

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59. Using misleading or ambiguous language in the presentation of choices to consumers, including by reversing the linguistic or framing logic within a list of choices, or using double negatives.

60. Presenting the price or, where applicable, information about the duration of the contract and its automatic renewal, in an invitation to purchase with less prominence than other items of material information.

61. Sending or displaying to the consumer notifications that falsely suggest that another consumer, the trader or a third party has contacted the consumer, or that a matter requires the consumer's attention.

62. Making the steps required to refuse, withdraw or change a choice disproportionately more numerous, complex or time-consuming than is reasonably necessary.

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ANNEX 2

CORRELATION TABLE

Directive 2005/29/EC	**This Regulation**
Article 1	Article 1
Article 2, point (a)	Article 3, point 1
Article 2, point (b)	Article 3, point 2
Article 2, point (c)	Article 3, point 5
Article 2, point (ca)	Article 3, point 4
Article 2, point (d)	Article 3, point 3
Article 2, point (e)	Article 3, point 7
Article 2, point (f)	Article 3, point 32
Article 2, point (g)	Article 3, point 33
Article 2, point (h)	Article 3, point 9
Article 2, point (i)	Article 3, point 8
Article 2, point (j)	Article 3, point 10
Article 2, point (k)	Article 3, point 6
Article 2, point (l)	Article 3, point 31
Article 2, point (m)	Article 3, point 14
Article 2, point (n)	Article 3, point 12
Article 2, point (o)	Article 3, point 25
Article 2, point (p)	Article 3, point 26
Article 2, point (q)	Article 3, point 30
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Article 2, point (s)	Article 3, point 27
Article 2, point (t)	Article 3, point 24
Article 2, point (u)	Article 3, point 29

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Article 2, point (v)	Article 3, point 23
Article 2, point (w)	Article 3, point 28
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Article 7(7)	Article 7(8)
Article 8	Article 8
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Article 10, first subparagraph	Article 31, first subparagraph

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Article 10, second subparagraph	Article 31, second subparagraph
Article 11	Article 30
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Article 11a(1), second sentence	Article 32(2)
Article 11a(2)	Article 32(3)
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Article 17	Article 31, third subparagraph, for the information on codes of conduct; for the rest: –
Article 18(1), first sentence	Article 39(1)
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Annex I to Directive 2005/29/EC	**Annex I to this Regulation**
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