

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM(77) 171 final.

Brussels, 24 May 1977.

DRAFT DIRECTIVE ON CONSUMER PROTECTION  
IN THE MARKING AND DISPLAY OF THE PRICES  
OF FOODSTUFFS

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(submitted to the Council by the Commission)

COM(77) 171 final.

## EXPLANATORY MEMORANDUM

### I. GENERAL

1. For some years now, certain Member States of the Community have been actively trying to make the marking or display of prices per unit of measurement (unit pricing) compulsory.

This has led to the adoption of special legislation in several of these countries.

The need for unit pricing is also stated in the preliminary programme of the European Economic Community for a consumer protection and information policy which was adopted on 14 April 1975 by the Council of Ministers of the Community.<sup>(1)</sup>

2. By enabling the consumer to make comparisons at the point of sale unit pricing is likely to increase market transparency and intensify competition. It is also counter-inflationary because of its effect on prices. And it may thwart certain misleading advertising ~~practices~~ and reduce the waste resulting from the use of certain types of packaging.

### II. LEGISLATIONAL ASPECTS

3. Between 1969 and 1975, four Member States of the Community adopted laws and regulations on unit pricing.

4. In the Federal Republic of Germany, the Law of 11 July 1969 on weights and measures and the order on prepackaging which came into force on 1 January 1972 made unit pricing compulsory for foodstuffs and certain household products.

(1) OJ N° 8 92 of 25 April 1975 (Fifth paragraph of Article 35(i)).

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A number of exceptions are possible for products prepackaged in standardized weights or volumes and for some categories such as luxury foods, ready meals and dietary foods.

5. In France, Ministerial orders of 16 September 1971, 20 September 1973 and 8 November 1973 deal with the advertising of selling prices to consumers. Some categories of prepackaged foods must indicate the price per unit of weight or measurement : fish, meat, cooked and prepared cold meats, poultry and rabbits, fruit and vegetables, butter and cheese, rice and meal.

There are several exceptions, however, for products sold in statutory quantities or by the piece and products prepackaged in multiples or fractions of a kilo.

6. The United Kingdom's 1974 Act empowers the government to make orders requiring the unit pricing of certain products, prepackaged or otherwise. Orders have been made in respect of fresh, chilled and deep-frozen meats. An order is being drafted on prepackaged fish, poultry, cheese, fruit and vegetables.

7. The Belgian Royal Decrees of 10 July 1972, 30 January 1975 and 12 February 1975 empower the government to make price and quantity marking and/ or display compulsory. These provisions apply to products sold in bulk and prepackaged products - both foodstuffs and household products. Exceptions are made for products marketed in standardized weights or volumes.

8. The other Member States do not have specific legislation on the matter but most, especially Denmark, have detailed price legislation. The Netherlands and Denmark have already taken steps to make unit pricing compulsory. This Directive is designed to make unit pricing general in all Community countries.

In addition, the Commission has sent to the Council of Ministers a proposal for a Directive on the approximation of the laws of Member States on the labelling and presentation of foodstuffs to the end consumer and on the advertising of foodstuffs which goes much further.

9. It is one of the Community's objectives to protect the consumer as evidenced by the adoption by the Council of Ministers on 14 April 1975 of the Preliminary Programme of the European Economic Community for a Consumer Protection and Information Policy. Community action is therefore needed to make the marking and display of unit prices compulsory. As the Treaty does not specifically provide for such action, Article 235 is taken as the legal basis for this draft Directive. Under Article 235 of the Treaty establishing the European Economic Community, the European Parliament has to be consulted as should the Economic and Social Committee.

III. REMARKS ON THE PROPOSAL FOR A DIRECTIVE

10. Scope

The Directive covers all foodstuffs for supply to the end consumer and put up for sale; it does not include foodstuffs sold between traders or in bulk to trade buyers, whether or not the depots or stores are in the immediate vicinity of the place of sale. Article 1 of the Directive does not expressly define the end consumer but lays down the scope of the Directive. Advertising offers for sale and catalogues mentioning prices of foodstuffs are subject to the same rules as foodstuffs displayed at the place of sale. Information displayed and disseminated in this way is increasingly used to promote sales and the drawing power may work to the consumer's disadvantage. Therefore every special offer must include a statement of its period of validity.

Three product categories are laid down :

1. Foodstuffs sold in bulk i.e. unpackaged
2. Foodstuffs prepackaged in variable quantities
3. Foodstuffs prepackaged in predetermined quantities.

These are the different ways in which foodstuffs are currently put up for sale. Lastly the scope of the Directive includes foodstuffs sold in bulk as it is not limited only to prepackaged products. The consumer must be given sufficient information to make simple price/quantity comparisons.

11. The relationship between the standardization of packages and unit pricing

The Commission has also forwarded to the Council of Ministers a proposal for a Directive, much wider in scope, on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs for sale to the final consumer. Community provisions on prepackaged products and the standardization of prepackaging <sup>(1)</sup> have been adopted or are before the Council of Ministers of the Community.

These provisions may make it easier for the consumer to compare products at the point of sale by providing additional information on the quantities sold.

Several Member States, e.g. Federal Republic of Germany, France and Belgium contemplate the standardization of packages and unit pricing as further measures. <sup>Therefore</sup> categories of foodstuffs for which it has proved possible to establish simple ranges of package sizes may be exempted from the requirement for unit pricing.

The proposal for a Directive therefore provides that foodstuffs prepackaged in ranges of nominal quantities laid down by Community Directives or recognized by the competent authorities in Member States shall be exempt. Particular attention will be paid to these ranges and there will be continuous exchanges of information between the Member States and the Commission on the matter. Attempts will be made at Community level to simplify these ranges.

Where they exist, Community quantity ranges alone are exempt from unit pricing in order to avoid juxtaposition with other ranges - if any - approved in one or more Member States. Such juxtaposition would make it more difficult to inform consumers about price comparisons.

(1) The Council of Ministers has adopted two directives :

- Directive 75/106/EEC on the making-up by volume of certain prepackaged liquids;
- Directive 76/211/EEC on the making-up by weight or by volume of certain prepackaged products.

A proposal for a directive on ranges of quantities for certain prepackaged products has been sent by the Commission to the Council of Ministers.

12. Ways of marking and displaying the price per unit of measurement.

In view of the possible effect of the requirement for unit pricing on retail prices the proposal for a Directive is flexible about forms of price marking or display - in particular by sign, shelf label or poster.

The proposal for a Directive takes into account the provisions in Directive 71/354/EEC of 18 October 1971 as amended by Directive 76/770/EEC of 27 July 1976 and allows national authorities to decide how and when unit pricing is to be in imperial units and then in SI units.

The Commission intends to extend greatly the application of the principle of the marking and display of unit prices to other categories of product frequently purchased by consumers.

Proposal for a Council Directive on consumer  
protection in the marking and display of the  
prices of foodstuffs

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THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic  
Community, and in particular Article 235 thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament,

Having regard to the Opinion of the Economic and Social Committee,

Whereas the Preliminary Programme of the European Economic Community  
for a Consumer Protection and Information Policy<sup>(1)</sup> provides for the  
establishment of common principles regarding the marking and display  
of the price per unit of weight or volume;

Whereas such marking and display of the unit price of foodstuffs will  
make it easier for consumers to compare prices at the place of sale;  
whereas this would thereby increase market transparency and ensure  
greater protection for consumers;

Whereas these rules concerning the compulsory marking and display of  
the sale price and the unit price should in principle apply to all  
foodstuffs offered to the final consumer, irrespective of whether they  
are marketed in bulk, separately or in prepackaged form;

Whereas such rules should also apply to advertising, special offers,  
offers on normal trade terms and catalogues wherever these mention  
the price of foodstuffs;

(1) OJ No C 92, 25.4.1975, p.

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Whereas the marking and display of the unit price per litre for liquid foodstuffs and per kilogram for other foodstuffs is likely to make it easier for the consumer to make comparisons relating to price and quantity;

Whereas the unit price and the selling price must be marked and displayed in accordance with the procedures relating to each category of foodstuffs so as not to place an undue burden on the retailer as regards labelling;

Whereas an exception should be made for those categories of foodstuffs which are usually sold separately and prepackaged in accordance with range of quantities decided at Community or national level in order to take account of consumer habits in the Member States and whenever it is possible, to replace the obligation to mark and display the unit price by standardising the range of prepackaging;

Whereas the present regulation is needed for consumer information and protection purposes, which is one of the Community's objectives concerning the improvement of living conditions and the harmonious development of economic activities throughout the Community;

Whereas the requisite powers of specific action have not been provided for by the Treaty,

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Article 1

This Directive related to the marking and display of the selling price and the price per unit of measurement (hereinafter called "the unit price") of foodstuffs for supply as they are to the final consumer, whether sold in bulk or prepackaged in pre-established or variable quantities.

This Directive does not apply to foodstuffs sold in hotels, restaurants, cafés, public houses and similar establishments where consumption takes place on the premises or to foodstuffs which the consumer purchases for professional or commercial reasons.

Article 2

For the purposes of this Directive:

(a) foodstuff sold in bulk means any foodstuff which is not packaged until the time of the final sale or is broken down for sale only in the presence of the final consumer.

(b) prepackaged foodstuff means a unit of sale intended to be put up for sale to the final consumer as it is and consisting of a foodstuff together with the individual wrapping in which it was packaged before being put up for sale and, whether the wrapping covers the product wholly or partially, wrapped in such a way that the contents cannot be altered unless the packaging is opened or altered.

- foodstuff prepackaged in pre-established quantities means foodstuff prepackaged in such a way that the quantity in the package corresponds to a previously selected weight or volume.

- foodstuff prepackaged in variable quantities means foodstuff prepackaged in such a way that the quantity contained in the package does not correspond to a previously selected weight or volume.

### Article 3

Subject to the conditions set out hereinafter, the foodstuffs referred to in Article 1 shall be marked with and shall display their selling price and the unit price. The same shall apply to all advertising, special offers, offers on normal trade terms and catalogues mentioning prices of foodstuffs. Any selling price and unit price marked and displayed shall include all taxes.

### Article 4

The marking and display of the selling price and the unit price at the place of sale shall be effected by means of labels, shelf labels, notices, posters or wall charts in a clear and accessible manner and in a manner which is not likely to mislead the consumer.

When foodstuffs are offered for sale, but are not accessible to the public, eg. in a refrigerated cabinet, the price may be marked and displayed by means of a poster or wall chart.

### Article 5

In the case of advertisements, special offers, offers on normal trade terms and catalogues, the prices shall be marked and displayed in the same manner as the other information required to identify the foodstuffs put up for sale.

Any advertisement displayed at a place other than the place of sale and which mentions prices, shall state the date of expiry of the offer or that it applies only while stocks last.

## Article 6

1. The unit price marked and displayed shall be expressed as a price per litre in the case of liquid foodstuffs and as a price per kilogram in the case of other foodstuffs, except where special Community provisions apply. However, if the foodstuffs are prepackaged in quantities of less than 10 centilitres or 100 grams the unit price marked and displayed may be expressed as a price per 10 centilitres or per 100 grams.
2. The unit price of foodstuffs shall refer to the net quantity of foodstuffs, and where appropriate, to the net drained weight.

## Article 7

Foodstuffs sold in bulk shall be marked with and shall display the unit price and no other information relating to price.

## Article 8

Foodstuffs sold separately shall be marked with and shall display both the unit price and the price of each item. However, foodstuffs sold separately, whether packed or not and set out restrictively in lists published by each national administration shall not be required to be marked with or to display the unit price. Member States shall communicate these lists to the Commission together with any amendments thereto.

## Article 9

Foodstuffs prepackaged in variable quantities shall be marked with and shall display both the unit price and the price of the quantity sold.

Article 10

In the case of foodstuffs pre-packaged in pre-established quantities both the unit price and the price of the quantity contained in each package shall be marked.

Foodstuffs prepackaged in pre-established quantities in accordance with the range of nominal quantities laid down by Community Directives shall be exempt from the requirement to be marked with and to display the unit price.

Where no range of nominal quantities is laid down by Community Directives, the range of nominal quantities laid down by national regulations shall be exempt from the requirement to be marked with and to display the unit price.

The exemption of the range of nominal quantities standardized by national regulations shall cease to have effect for each foodstuff or category of foodstuffs when the said range of quantities is laid down by a Community Directive. The exemption shall cease to have effect at the end of the period allowed for the competent national authorities to apply each individual Directive.

Article 11

1. Until the expiry of the transitional period during which the use of the imperial units of measurement given in the Annex to Council Directive 71/354/EEC of 18 October 1971 on the approximation of the laws of the Member States relating to units of measurement <sup>(1)</sup>, as amended by Directive 76/770/EEC <sup>(2)</sup>, is permitted in the Community the competent national authorities in Ireland and the United Kingdom shall determine for each category of products, the units of mass (the kilogram and gram in the international system; the pound and ounce in the imperial system) and of volume (the litre and millilitre in the international system; the pint, gallon and fluid ounce in the imperial system) in which the unit price shall be marked and displayed.

(1) OJ No L 243, 29.10.1971, p. 29

(2) OJ No L 262, 27.9.1976, p. 204

2. They shall take all steps necessary to ensure that, during the transitional period, the unit of measurement used for the marking and display of the unit price of a particular foodstuff, shall refer to one or other of the two systems and, where appropriate, to both systems, if the consumer is thereby better informed.

#### Article 12

1. Member States shall bring into force the necessary laws, regulations and administrative provisions in order to comply with this Directive within eighteen months of the date of notification and shall immediately inform the Commission thereof.

2. Member States shall send the Commission the text of the provisions of their national laws which they have adopted in the field covered by this Directive.

#### Article 13

This Directive is addressed to the Member States.