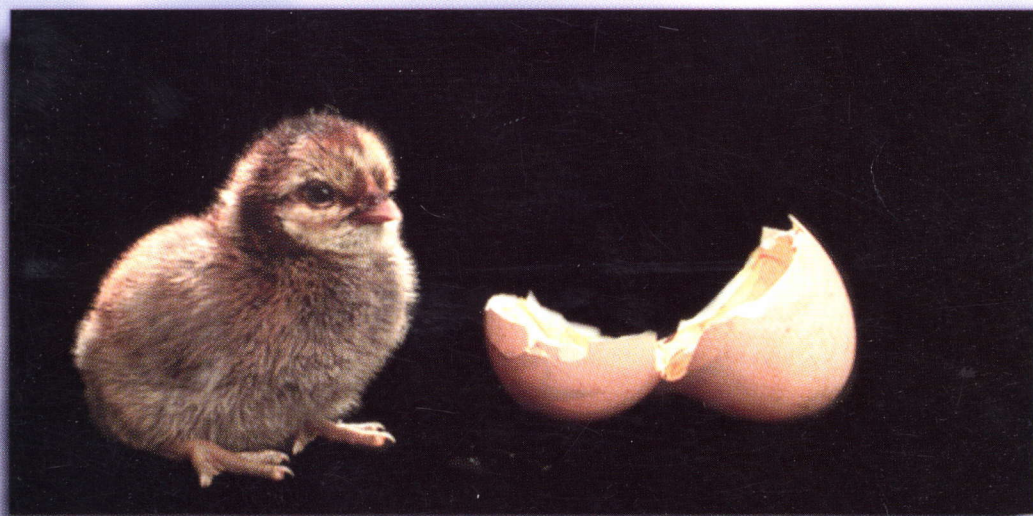


ECONOMIC AND SOCIAL COMMITTEE
OF THE EUROPEAN COMMUNITIES

**TOWARDS AN EU
CONSUMER PROTECTION POLICY**



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INTRODUCTION

This brochure is a sequel to the stocktaking undertaken by the Economic and Social Committee (ESC) in 1995 on the application of consumers' rights since the launch of the single market on 1 January 1993, and regarding the application of Article 129a of the Treaty on European Union which made consumer policy a fully-fledged and coordinated Community policy and a specific EU area of activity. It follows on from the 1996 brochure on *An integrated consumer protection policy for the EU* (catalogue no. CES-96-002).

This sector received new impetus in 1996, with the setting of consumer policy priorities for 1996 to 1998, the launch of a major debate on how financial services can best meet consumer expectations in the single market, and the tabling of a draft directive on the sale of consumer goods and associated guarantees. Consumer organizations had been calling for the latter for some time.

The ESC gave its views on each of these issues and called for a wide debate involving all interested sectors, with a view to consolidating the dialogue between consumers, producers, service providers and distributors. A strong consensus emerged which led to the framing of constructive proposals. These proposals have been taken up by the other EU institutions and are being discussed by civil society as part of efforts to build a citizens' Europe founded on openness, the widest possible consultation, and protection of basic rights which must be regularly updated to meet the needs of an increasingly sophisticated and complex society.

The three ESC opinions contained in this brochure bear witness to this important debate and to the ongoing commitment to promote consumer protection in the context of completion of the single market.

OPINION
of the
Economic and Social Committee

on the

Proposal for a European Parliament
and Council Directive
on the sale of consumer goods and guarantees

(COM(95) 520 final - 96/0161 COD)

Rapporteur: Mr Ettl
Co-Rapporteur: Mr Folias

1. Introduction

1.1. The draft Directive seeks to establish a minimum degree of harmonization of national legislation on legal guarantees. It also lays down framework provisions for commercial guarantees, but does not seek to harmonize legislation in this field or in that of after-sales services.

1.2. Efforts to address problems consumers encountered with guarantees and after-sales services at European level have been going on for the past twenty years and have found expression in a whole range of Council resolutions and Commission action programmes. The Commission Green Paper on consumer goods guarantees and after-sales services sparked off a far-reaching consultation process on how the Community could possibly and advantageously take action in this field.

1.3. In its Opinion on the Green Paper, the Committee considered that the approximation of provisions concerning consumer goods guarantees and after-sales services was a desirable step, but noted the problems to be faced. The Committee gave its broad backing to the gradual harmonization of minimum standards in the field of legal guarantees, but rejected the full-scale and obligatory harmonization of commercial guarantees.

1.4. The draft Directive now submitted is considerably less comprehensive than might have been expected given the time it took to draw up. In particular, the issues discussed within the Commission during the preparatory phase - a manufacturer's direct liability in cases of claims under the legal guarantee schemes, the explicit provision for liability for substandard durability and finally the entire spectrum of after-sales services - have been completely omitted from the draft Directive.

1.5. The Committee backs what the proposed Directive is seeking to achieve, namely to ensure that consumers buying a substandard product within the single

market have a minimum corpus of rights. It agrees with the Commission on how important it is to make progress quickly in the field of consumer goods guarantees, and recognizes that, in consumer terms, this represents an important step towards the completion of the single market.

1.6. The Committee also stresses the importance of the quality aspect which is closely linked to all the rules governing statutory and commercial guarantees. Clear arrangements, which meet consumer expectations, coupled with consumer goods guarantees which take account of the high standards of quality in Europe, help boost overall quality levels.

2. General remarks

2.1. For consumers, the single market can only be deemed to be functioning properly if, when buying goods in a Member State other than their own, they can be sure of a comparable degree of protection against faulty goods as they enjoy at home. The reports quoted by the Commission very clearly show that, as the law stands at the moment, many consumers are wary of purchasing items abroad for fear of encountering difficulties when exchanging them or having repairs carried out. This not only means that consumers are losing out on the advantages of the single market; suppliers too are unable to utilize all the opportunities offered by the free movement of goods.

2.2. To remedy this deplorable state of affairs, which has come in for particular criticism from consumer groups, legislation has to be harmonized on the basis of a Directive passed under Article 100 a of the EEC Treaty. It must be remembered that, while systems of private law are in many ways similar, they are each built on very differing concepts. Complete harmonization of legal and commercial guarantee systems therefore would not appear advisable, or indeed necessary to provide consumers with a minimum degree of rights. The Committee feels that harmonization should be limited to the core area of legal guarantees, particularly since these cannot be effectively covered either by international private law or by non-binding instruments such as recommendations or codes of conduct.

2.3. Given the number of national moves on reform, the Committee had also expected the Commission to come up with more innovative approaches in the proposed Directive. The Commission commentary on the draft Directive refers explicitly to developments in some Member States such as the United Kingdom, Greece and Finland only in respect of shortcomings in product durability and operational life, after-sales service and manufacturers' liability. The Committee would stress that arrangements concerning durability and service life, after-sales service and spares inventories could send out a clear signal to promote sustainability and resource conservation, and would also be in keeping with the Commission's aim of achieving long-term environmentally sound consumption patterns.⁵

2.4. Rules on legal, and also commercial guarantees are designed to ensure consumers' money is well spent. Consumer goods, particularly durables, are investments which can only be shown to have "paid off" in the buyer's household after years of use. This is recognized by many manufacturers and is used in advertising by, for example, stressing a product's durability or above-average resistance to wear and tear. The draft Directive, however, provides no remedies in cases where, after the

legal guarantee period has expired, the advertisers' claim that a product is long-lasting is proved false. The Committee therefore would ask that the issue of durability be reconsidered.

2.5. Although, generally speaking, no contractual link exists between manufacturers and consumers, the decision to buy is often strongly influenced by consumer trust in a particular brand. However, the Draft Directive gives consumers no direct rights of redress against the manufacturer. The Committee is well aware of the problems which would arise if consumers were allowed to make direct claims against manufacturers - particularly as regards choice of method of redress; the example of individual Member States, where arrangements of this kind have already proven satisfactory, nonetheless demonstrates that these problems can be solved in a practical way. It is therefore proposed that, where the fault lies on the manufacturing side, consumers should be granted the right of recourse to either the manufacturer or his regional representative; this would be particularly important where, in the case of transboundary purchases, it is difficult for the consumer to contact the trader.

2.6. The Committee would stress that issues regarding legal and commercial guarantee arrangements and after-sales service should not be viewed in isolation as consumer problems alone, but considered part of the chain manufacturer-wholesaler-retailer. Greater attention must therefore be paid to relationships within the marketing chain, in particular, the unsatisfactory contractual or de facto situation in which retailers often find themselves with regard to their suppliers. The options open to retailers for gaining redress from the person in the marketing chain responsible for a defect is generally a crucial consideration in how far they are willing to go to find a solution acceptable to their customers.

2.7. The proposed Directive deals exclusively with the purchase of consumer goods, not with issues relating to legal or commercial guarantees for services.

3. Legal guarantee

3.1. In the draft Directive, the Commission has opted for a minimum level of harmonization affecting only a few core areas of legal guarantee, especially how defects are defined, the time limit set for the guarantee and legal remedies. It was decided not to include any other aspect of contract law or to attempt full-scale harmonization in the areas concerned.

3.2. The Committee Opinion on the Green Paper backed gradual harmonization based on a minimum corpus of rights across the Community. The Committee also rejected any dismantling or loosening of national arrangements. The Commission approach - rejecting full-scale harmonization in favour of a Directive laying down minimum provisions - is therefore to be welcomed.

3.3. The fact that the Directive has been significantly tightened up and that it is limited to a few core areas brings with it the danger that, in practice, both consumers and businesses will be unclear on important aspects of the text or that consumers will perceive the lack of a minimum degree of harmonization on these issues as a continued hindrance to cross-border shopping. This applies, for example, to issues such as the nature of guarantee time limits and the period in which claims must be made, or to the legal implications when the type of redress selected by the consumer

does not lead to the defect being rectified. The Directive must address these issues in order to give consumers better access their rights.

3.4. The Committee is also pleased that the Commission has largely clarified definitions and removed a number of ambiguities which had already been criticized in the Opinion on the Green Paper. The definitions are pragmatic and easily understandable to consumers. The Committee takes the view that consumers should mean not only natural, but also legal persons (where these are not acting for economic gain or in a professional capacity) so as not to discriminate in the protection offered by the Directive.

3.5. The deliberations on how to define a defect were the subject of much controversy during the Green Paper consultation process. Consumers backed the more subjective approach, whereby one of the most important criteria was "conformity with the consumer's legitimate expectations". Suppliers however expressed many reservations on this point and these are broadly reflected in the proposed text. Article 2(2), which lists the criteria to be used to assess whether goods are in conformity with the contract, now omits any explicit reference to conformity with the consumers' legitimate expectations.

3.6. The first criterion listed in Article 2(2) to assess conformity with the contract is whether the goods comply with the description (of a sample or model) and are suited for a particular purpose which is either self-evident or described by the seller. The only further criterion is given in point d) of the same Article which lays down that the a good's "quality and performance (must be) satisfactory given the nature of the good and the price paid and taking into account the public statements made about them by the seller, the producer or his representative."

3.7. The Committee feels that the word "satisfactory" is an inadequate criterion here, particularly since, obviously, minor defects would not be precluded. Generally, conformity with the contract can only be said to obtain if a good is delivered fully defect-free, unless the consumer agrees to accept a minor defect in return for a price reduction.

3.8. The Committee feels that the price paid for a good may only be used as a criterion for conformity with the contract as indicated in Article 2(2)d) where there are other indications that the quality of the good is in some way impaired (for example, if the goods are labelled as "seconds"). If, however, two products are described in the same terms and the only difference is in price, consumers should not necessarily expect to have an inferior product merely because they paid less for it. Indeed, were the Draft Directive taken to its logical extreme, a retailer offering a product more cheaply would be deemed to be less liable under legal guarantee provisions than one selling the same product at a higher price. People tend to buy items abroad precisely because they are cheaper than at home, so the Commission proposal would, in practice, undermine the objective of the full-scale opening-up of the single market to consumers.

3.9. Unless explicit agreement is reached to the contrary or the seller corrects the statement (as provided for in the second indent of Article 3(2)), an obligation to ensure goods are in conformity with public information provided by the manufacturer (for example in advertising and labelling) would clearly meet consumer expectations since, in practical terms, consumers almost never distinguish between whether the information comes from the retailer or the manufacturer. An arrange-

ment of this kind would also enhance fair trading practices since it would avoid liability being shifted back and forth to the detriment of the consumer. In the Committee's view, however, it should be clearly stated that the public information provided by manufacturers or their representatives pursuant to Article 3(2) is only to be viewed as information on product properties, not as general advertising information.

3.10. The time limit of two years set for the legal guarantee corresponds to the time limit set under UN law of sale and represents a compromise among the existing, very different time limits set in the Member States. This time limit would appear acceptable from the point of view of consumer protection, given that the objective here is to guarantee a minimum degree of harmonization. It is recognized, however, that the proposed two-year time limit is considerably longer than that provided for in some Member States. Since this limit applies to all products, the Committee feels that it would be wise to allow a certain degree of flexibility in contractual agreements (cf. Point 5.1).

3.10.1. The time limit of two years does not mean, as is often erroneously believed, that the goods must remain defect-free for the entire two-year period. Rather, it allows claims to be made within the space of two years for a defect which was present at the time of delivery, but could only be detected at a later stage. This arrangement would also remove the problem area of consumers having less substantive rights than traders in cross-boundary transactions. Traders who conclude with each other cross-border transactions within the scope of the UN Sales Law Convention are at present covered by a two-year time limit for the legal guarantee; consumers, on the other hand, often have a time limit of just six months or a year, depending on which national law applies.

3.10.2. The Committee notes that the time limit pursuant to Article 3(1), within a claim has to be lodged on a defect which was present from the outset, but only became apparent at a later stage, does not prejudice the time limits set for commercial guarantees. Unlike legal guarantees, commercial guarantees usually comprise all defects which arise within a certain period after buying the product, regardless of whether they were present at the time of delivery. A commercial guarantee covering defects for a period of, say, one year, remains an option under Article 5(1) provided the guarantor is also willing to fulfil the markedly less substantive obligations incumbent on him under the legal guarantee.

3.11. The time limit is deemed to begin when the goods are delivered. The draft Directive is worded in such a way that the time limit cannot be extended where goods are defective (i.e. developing a defect) at the time of delivery, but where, because of their nature, such a defect could only be determined at a later date. Practical problems arise, for example, where faulty design means that goods do not last as long as originally claimed.

3.12. Opinions differed within the Committee about the "supposition" rule laid down in Article 3(3). Even where an arrangement of this kind has not yet been enshrined in the national law of the Member States, most companies interested in maintaining healthy relations with their customers already apply this principle on a voluntary basis. The Committee feels that the "supposition" rule is not applicable where the "defects" result from the normal use of the product or are in any other way incompatible with the physical characteristics of the goods. Since the legal guar-

antee only covers defects which were present at the time of delivery, the "supposition" rule cannot apply where the "defective" state of the product is the result of normal wear and tear. It must be recognized, however, that this arrangement may well result in a situation, during the first six months after delivery, in which retailers may experience difficulties in discharging the burden of proof. The Committee feels that consideration could be given to applying the "supposition" rule only where the economic operator should normally be in a better position than the consumer to determine the existence or otherwise of a defect.

3.13. The issue of the options consumers should have regarding rights of redress was a matter of controversy in the consultations on the Green Paper. The Committee subscribes to the principle that consumers must be in a position to enforce their right to conformity with the contractual agreement as quickly and efficiently as possible. For this reason, it would be advisable to grant consumers the right to choose, where this is economically viable from the trader's angle, between the various different forms of redress. In individual cases, whether because of the particular characteristics of a product purchased or the specific form of sale, contractual agreements may be permitted, not least in the consumers' own interests, but also from an economic angle. The Commission should look into a possibility of this kind.

3.14. However, the Committee understands that an immediate rescission of the contract because of minor defects could, in individual cases, place an unjustifiable burden on the retailer. Nonetheless, giving Member States the option of excluding certain forms of redress for minor contractual infringements, as the draft Directive now proposes, would again encroach on the legal certainty of both consumers and sellers alike. The Committee therefore recommends that the Directive should determine which rights of appeal are to be allowed, including the case of minor defects. The Directive may, the first sentence of Article 3(4) indicates, allow all forms of redress, but admit the right to rescind on a contract may be admissible where the defects concerned are minor.

3.15. The draft Directive makes a strong distinction between the right to have a good repaired, and the right to have it replaced. Generally speaking, in the case of mass-produced goods, it is usually more advantageous for the consumer to have an item replaced rather than repaired (exchange of the defect item with one which is defect-free). Where Member States are to have the option of excluding certain forms of redress - as provided for by the last sentence of Article 3(4) - or certain types of contract, replacement should only be excluded in favour of repair whether this does not reduce the objective value of the good concerned.

3.16. The draft Directive makes no reference to what happens when a consumer claim is not met. This is a particularly important aspect in cases where a consumer initially makes a claim for repair, but no repairs are carried out by the seller. The consumer must have the right to demand rescission of his contract if repairs remain undone, even where delivery took place more than a year before.

3.17. Even where a company has made an unsuccessful attempt to repair the good, the consumer must retain the right of rescission even after the time limit set in the second sentence of Article 3(4) has expired.

3.18. The draft Directive also makes no mention of whether, after repairs have been carried out or the item replaced, the legal guarantee starts to run again. The objective assumedly is not to have a company repair an item continually until the

guarantee expires, but for the consumer to have a defect-free good even after the guarantee has run out. Where a defect is removed, the time limit, at least for that particular defect, must start again from scratch. The Committee also feels that clarification is needed to ensure that the repair time is not deemed part of the time limit and that the repair is considered a contractual obligation to which other rules of contract law - such as national provisions for legal guarantees in services - also apply.

3.19. Another problem area left unaddressed by the draft Directive is the place at which the legal guarantee conditions are to be fulfilled. This is important when it is not possible to transport the goods easily, for example because they have been installed and can no longer be moved. The Committee believes that, for practical purposes, it would be useful if this issue were clarified in the draft Directive.

3.20. The Committee welcomes the provision of Article 3(5) which deals with who bears responsibility in the chain of contracts (right of recourse between the final seller and a previous supplier), and is designed primarily to ensure SMEs have a clear legal basis on which to work with suppliers. The wording remains obscure in two places though; firstly, the term "responsible person" is not defined and, secondly, the extent to which the right of recourse may also be restricted by national legal provisions also remains unclear. The Committee feels that this right should not be restricted either by national legal provisions or by any contractual agreement. The binding nature of the arrangements designed to benefit consumers under Article 6(1) and (2) should also benefit final sellers exercising their right of recourse pursuant to Article 3(5).

3.21. From a consumer viewpoint, the obligation to notify the seller laid down in Article 4 poses a major problem, not least since the one-month time limit for notification does not start at the moment when the consumer actually detects the lack of conformity, but rather from the time when he ought normally to have done so.

3.22. The notification obligation is a transposition from UN purchase law, which, however, also stipulates that a buyer (who in the eyes of UN purchase law is always classed as a retailer) has a duty to examine the goods in the tradition of the retail trade (cf. Article 38 of the UN Convention). In the case of consumer goods, however, in some Member States no such obligation exists and should not, as far as the Committee believes, be introduced in any binding way, even indirectly. It would be extremely unrealistic to expect every consumer to check each and every one of his purchases comprehensively and without delay; indeed in many cases, he is in no position to do so.

3.23. An obligation for the consumer to notify the seller is therefore only a sensible option for the period during which the time limit for "supposed defect" is valid and where the burden of proof can be reversed, which, in the case of this draft Directive, is six months after delivery. Any plans to extend this obligation beyond six months should be dropped. In any case, a consumer who fails to notify the seller in time only weakens his own legal position since it is up to him to prove that a defect existed and that it has existed from the start; this becomes increasingly difficult with the passage of time. At most, the fact that a consumer failed to notify the seller of a defect should only restrict his rights under legal guarantee arrangements where this has had an effect on the defect (for example where the defect has worsened in a way which would not have happened had it been reported earlier).

4. Commercial guarantees

4.1. In its Opinion on the Green Paper, the Committee explicitly rejected full-scale harmonization of the commercial guarantee and noted the possibility of a code of conduct in this field.

4.2. The Commission has now decided not to proceed with a detailed harmonization of commercial guarantees and, in the draft Directive, has limited itself to two aspects alone: namely, the obligation that commercial guarantees must be more favourable than legal guarantees, and that basic procedural requirements must be met (these broadly cover existing good business practice).

4.3. The Committee backs the Commission approach. The idea of “advantage” propounded in Article 5(1) helps protect consumers from being misled and also enhances honourable trade practices. The obligation to provide a minimum level of legal guarantee once again enhances the status of the commercial guarantee not only merely as an advertising tool, but increasingly as a competitive tool.

5. Binding nature of the provisions

In the light of point 3.10 above, the following sentence should be added to Article 6(1) of the Draft Directive: “This shall exclude agreements on the guarantee time limit in cases where, because of the particular properties of the good purchased, it would seem appropriate to limit the guarantee to one year”.

Brussels, 27 November 1996.

The President
of the
Economic and Social Committee

Tom Jenkins

The Secretary-General
of the
Economic and Social Committee

Adriano Graziosi

OPINION
of the
Economic and Social Committee

on the

Communication from the Commission:
Priorities for Consumer Policy (1996-1998)

(COM(95) 519 final)

Rapporteur: Mr Koopman

The Committee has made a number of observations on these priorities and hopes the Commission will take note of these views. These priorities for action are subsequently:

- ➔ a major effort to improve consumer education and information;
- ➔ completion, review and updating of the framework needed to ensure that consumers' interests are fully taken into account in the single market;
- ➔ the consumer aspects of financial services;
- ➔ the protection of consumers' interests in the supply of essential services of public utility;
- ➔ measures to enable consumers to benefit from the opportunities presented by the Information Society;
- ➔ measures to improve consumer confidence in foodstuffs;
- ➔ encouragement of a practical approach to sustainable consumption;
- ➔ strengthening and increasing consumer representation;
- ➔ assistance for Central and Eastern European countries to develop consumer policies;
- ➔ consumer policy considerations in developing countries.

1. General remarks

1.1. This is the sixth plan of activities for EC consumer policy. The first (five year) programme of activities was launched in 1975. Its achievements were very modest as hardly any proposed measure was adopted at the expiry of the plan period. Much progress has since then been made resulting in a substantial improvement in the pro-

tection of the interests of consumers which also illustrates that consumer policy has gained a firm position in the policies of the Community.

1.2. This positive judgement should not be misunderstood. There is no room for complacency, as much still needs to be achieved. In this respect it is a pity that, in this Communication, the Commission did not analyze, or otherwise look back to, what successes and shortcomings it had experienced with respect to the activities it had set out to do when it presented its last three year Action Plan that expired at the end of 1995. For such analysis and accountability may yield insight into the efficacy of the instruments and powers for pursuing the stated objectives. It may help to account for policy proposals which were not accomplished and to better shape policies.

1.3. It would, for example, be useful to know of the Commission's judgement on the functioning of Article 129A. It should also be established how the legislation enacted in the first and second three-year Action Plans has been implemented and handled. Furthermore, it is relevant to know what it intends to do with "left overs" from the second three-year action plan such as the issue of food claims.

1.4. The Committee agrees with the Commission that it is now time "to face up to other questions and problems which confront consumers", than those that are exclusively linked to completing the internal market. It fully endorses the new directions in the Communication and the considerations upon which these choices are based. It recognizes, however, that the Single Market is far from complete. Much still remains to be done in order to create and stimulate consumer confidence in the Single Market, as the Commission also acknowledges in its various reports. A conscious adherence to consumer rights is a basic condition for gaining that confidence from the consumer.

1.5. In this context, it surprised the Committee that the Commission did not make any reference to the significance of competition policy for the attainment of consumer (policy) objectives. Competition policy essentially aims at opening up markets and preventing firms from unjustly appropriating benefits from restrictive trade practices at the expense of consumers and enterprises that adhere to the rules of competition. These benefits for the consumers express themselves in more choice, in a supply of goods and services that is better tuned to consumer needs and in lower prices.

1.6. The ESC would also have liked to find a reflection by the Commission on the significance of its choice of priorities from the angle of subsidiarity. Where does the Commission aim at proposing harmonized solutions and where does it intend to leave Member States a framework, or other instruments, to help them find solutions for problems? The fact that the Commissioner responsible for consumer policy will not occupy the driver's seat for most of these subjects also deserves attention from the Commission; the Committee is interested to learn whether the Commission sees the need for further measures to facilitate the integration of the consumer aspect into these other policies.

1.7. From an analytical point of view, the message contained in this Communication would have gained in persuasion if a strict format had been applied: (1) problem identification, (2) goals for consumer policy and (3) strategy.

1.8. The new directions in the Communication also illustrate an important feature of consumer policy: due to its horizontal nature, it always follows economic and

other societal developments. It moves with the tide. In that sense consumer policy is never finished.

1.9. The ESC urges the Commission to come forward quickly with concrete proposals in which the often vague ideas offered in these priorities will be given substance. Nobody expects from the Commission that it spell out at this stage already the precise action needed to attain the aims in these new areas, but first steps on the road towards more substance should be set before long. The aim of this Opinion is to contribute to the public debate needed to achieve more clarity and the ESC hopes that other players will do likewise.

1.10. The ESC refers to its recently adopted Opinion on the "Single Market and Consumer Protection: Opportunities and Obstacles in the Internal Market" in which a number of important judgements and recommendations were made which are not repeated here.

2. The priorities

2.1. Information and education

2.1.1. Information and education have always been cornerstones of consumer policy and their fundamental significance has long been recognised as shown by the fact that the European Summit back in 1972 proclaimed them as one of the five consumer rights. Consumer choice lies at the heart of any market-led economy and informed choices are not possible without a transparent market place.

2.1.2. The Committee fully endorses the priority for information and education. It stresses the need for visible, legible and understandable information. The consumer should be informed about his rights and obligations in order to use them properly. To make information meaningful, language must be clear.

2.1.3. The suppliers of goods and services in dialogue with consumer organizations could improve the quality of sector-specific labelling. Recent initiatives to develop, subscribe to and introduce sectoral product information codes at the European level should be continued. The development of standard product information is a key contribution towards improving market transparency. For the integration of these aspects into a successful marketing strategy, **in cooperation with organizations with demand-side knowledge and "centres of excellence" (of which the Communication speaks)**, better use may be made of the producer's own knowledge of the properties and functioning of his products.

2.1.4. Irrespective of the obligation of the suppliers to inform the consumer correctly about the products and services on offer, the ESC insists that consumer organizations also exist to provide independent advice and information to the consumer.

2.1.5. The Committee stresses the crucial role of Member States in promoting consumer education, without which much information would fall on deaf ears. Basic knowledge on consumer rights and duties and the functioning of markets have to be acquired in order to assess information. Consumer education should start in primary school.

2.1.6. The ESC suggests to the Commission that, in the interests of improved European consumer information, a reference framework be established for educational policy, ranging from basic education through to university-level studies, in order to enable the Member States to compare positive action in this regard.

2.1.7. Continuous training in consumer matters at the various levels should also be provided for educators.

2.1.8. The Committee requests the Commission to clarify what actions it intends to take in response to the Council Resolution of November 1995, calling on it to study before the end of 1996 whether an initiative at European level to improve the exchange of information and co-operation between Member States in the field of consumer education was necessary.

2.1.9. While endorsing this priority, the ESC does not consider these efforts should be at the expense of other vital interests of the consumer.

2.2. The legislative framework and the single market

2.2.1. The ESC welcomes the proposal for a Directive on Injunctions For the Protection of Consumer Interests and the Communication from the Commission regarding an "Action Plan on Consumer Access to Justice and the Settlement of Consumer Disputes in the Internal Market". It agrees that both initiatives, on which it is preparing a separate Opinion, will contribute to the completion of the single market.

2.2.2. The Committee considers that, **from the consumer's point of view**, the completion of the single market requires further measures. It refers in particular to its comments on the shortcomings of Article 129A and expresses the hope that this Article may be revised in the process of the IGC as also suggested by some members of the Reflection Group. Furthermore it notes with satisfaction that as follow-up to the Green Paper on Guarantees and After-Sales Services, the Commission has now presented a proposal on which it will be issuing its Opinion. The Committee urges the Commission to come forward with a proposal to amend the Product Liability Directive with a view to extend its scope to non-processed agricultural products. Finally, the ESC is eager to learn about new initiatives of the Commission with respect to service liability and would urge the Commission to study whether there is a need for legislative action at EU-level to protect consumers in the face of the increasing diversity of commercial practices used to sell services.

2.2.3.1. The ESC welcomes the Commission's statement that it will ensure that Single Market legislation is properly implemented and notes its current work on evaluation of the enforcement of legislation, assessing its effects on the consumer and suggestions for necessary adjustments. It is particularly interested in such analyses of product liability and product safety legislation.

2.2.3.2. The ESC recalls in this context the Commission's and Parliament's stated intention to work closely with the ESC, which "combines technical knowledge with the political sensitivity needed" for a constant evaluation of the effectiveness of Community rules. The Committee reconfirms its readiness to work closely on a permanent basis with the EU Institutions and the relevant professional organizations in this regard and to lend its full support to the current review of the effectiveness of

the Single Market, assessing in particular its effects on the consumer and suggestions for appropriate adjustments.

2.2.3.3. In that perspective the Committee invites the Commission to bring forward proposals for improved structures for interchange of information at Community level with the aim of ensuring systematic and consistent monitoring, analysis and information on hazards and risks to which consumers in Europe are exposed and the effective implementation of existing Community regulations and actions.

2.2.4. The consumer will generally profit from increased competition in the market sector and a further liberalization (subject to safeguarding vital societal interests) of markets. In order to stimulate consumer confidence in the Single Market, genuine efforts to free still heavily protected markets ought to be undertaken. A review of the Common Agricultural Policy from the consumer's point of view is called for. Equally important are the Commission's efforts to liberalize the energy market. Finally, measures are warranted for preventing concerted practices in fixing passenger air fares.

2.3. Financial services

2.3.1. The Committee welcomes the enumeration of issues which are mentioned. It would appreciate a timetable for the actions that the Commission considers.

2.3.2. The ESC welcomes the proposal by the Commission with respect to the further examination of the consumer credit market and the remedy for the exclusion of financial services from the Distance Selling Directive. In particular the ESC calls on the Commission to present a proposal for legislation on minimum consumer protection requirements for distance selling of financial services. It welcomes a pledge from the Banking sector to bring forward propositions to fill this gap.

2.3.3. The Committee notes with regret that, as an EBCU study and a 1994 study by Mitchell and Thomas have shown, compliance by (general) providers of bank and non-bank debit cards with the Recommendation on Payment Systems has been very uneven and at times even dismally poor. Since it has to be concluded that these non-binding measures have yielded insufficient protection for the economic interests of card holders, the ESC urges the Commission to propose legislation which will offer the European consumer sufficient and equal protection. The rapid increase in non-bank cards necessitates speedy action. The Committee calls on the Commission to include in its proposals a discussion of the study which it sponsored in 1995 and also to look at the content of the new code of conduct proposed by the banking sector last year.

2.3.4. In financial services especially, the emergence can be observed, all over the EU, of complicated tailor-made (individual) services, containing savings, insurance and spending elements and which involve long-term contractual obligations. It is becoming increasingly difficult for consumers to choose a "package" most suited to their needs and equally problematic to compare performance aspects of various offers. Consumers must be warned that financial markets are inherently risky and that outside the tried and tested methods of investment returns on capital cannot be guaranteed. The element of risk makes it difficult to compare offers. Although the future is by definition uncertain, experience shows that uncertainty can be contained. The relative attractiveness of different offers can be compared on the basis of: (i) standardized disclosure of the assumptions on which the institutions' forecast returns are based, (ii) standardized use of variables deemed to be outside the investment manager's control and (iii) track record. Making the information needed for

well-informed choices available to the consumer is thus both possible and highly desirable in that it creates a level playing field for competition.

2.3.5. The Committee also considers it important to examine with care how consumers can or do benefit from the Single Market in insurance and where necessary to bring forward solutions for remedying problems so identified. In its capacity as Single Market Observatory it is ready to assist the EU institutions in this regard. It will be particularly concerned, given the pervasive influence of multinational factors on the European insurance market, to ensure strict enforcement of EU anti-trust rules.

2.3.6. The ESC would like to reiterate that safeguarding of consumer interests is a vital element in bringing about smooth introduction of the Single Currency. These measures are absolutely necessary to create consumer confidence in the Single Market.

2.3.7. It welcomes the announcement by the Commissioner responsible for the internal market and financial services at the third European Consumer Forum of the establishment of a Working Committee of DG XV and DG XXIV. It hopes this committee will contribute to inter-departmental cooperation, the speedy introduction of the above-mentioned proposals and their timely adoption.

2.4. Public (utility) services

2.4.1. The Committee is pleased that the Commission pays attention to public services. It notes that the Commission has not defined the term "essential services of public utility". The Committee understands by these services: services which are provided by the Community (central or local government or public bodies), or services which may be provided by the private sector in a regulated manner because of a government concern for the quality of, or access to, these services (health, education, public transport, museums, etc.).

2.4.2. From the consumer's point of view, attention to public services is of utmost importance, because all these services have in common that the consumer, in contrast to the (competitive) market for goods and services, either has no choice of a supplier or only a limited one. Moreover, range, quantity, quality and price of these services are not determined by the free market forces of supply and demand, but rather by political decision-makers or regulatory bodies.

2.4.3. Consequently, these markets do not always function efficiently. It is in the interest of both individual consumers and (local) governments to improve the accountability, efficiency and effectiveness with which these public services are supplied, leading to an improvement in consumer satisfaction and savings in public expenditure.

2.4.4. The Committee agrees that in certain cases more competition may be brought about by liberalizing these services, such as may be the case for (parts of) public transport services. But it may not always be possible to render certain services because of their (near) monopoly character in a competitive manner (for example the natural monopolies of municipalities and public utilities). Moreover, Government has to ensure quality and access to essential public services. It also has to see to it that less privileged consumers are not excluded from these services.

2.4.5. Indicators for the various types of services may be developed. The establishment of performance standards for particular public services that cannot or should not

be (completely) liberalized may also help improve the quality of these services and bring about a reduction of prices. It is of prime importance to devise a standard for accountability to the consumer by providers of such services. Perhaps the experience of "The Citizen's Charter" and possibly other experiments may yield relevant information. A horizontal approach to improve the quality of these public services is also possible. Horizontal aspects concern the contractual relationship between consumer and operator, models for consumer representation, complaint handling, etc..

2.4.6. Consumers should be involved in a participatory way by the establishment in Member States of sectoral consumer panels, especially where Regulatory Bodies control service obligations and prices. These consumer panels with representation from various socio-economic activities, including the individual citizen, should have rights to inform the user, receive and investigate complaints and refer if necessary to the Regulatory Body for sanction. They should be funded by the Regulatory Body or by the public service provider.

2.4.7. The Committee urges the Commission to issue a Green Paper to explore how the consumer voice may be strengthened in the provision of these services, their quality and the effects on prices and tariffs, recognizing that the principle of subsidiarity will place the responsibility for taking such measures primarily with the Member States.

2.5. The information society

2.5.1. In the near future almost every citizen and consumer will feel the effects of the new information and communications technology. It will bring innovation to the consumer sector as it will revolutionize the production and marketing process for goods and services. These effects will pervade the market place and areas such as health care, traffic and transfer of education. For this reason, the Committee expresses the conviction that the active participation of the consumer (organizations) in building this information society is a condition for its potential success.

2.5.2. The Commission has already presented various proposals with direct bearing on the development of the information society and on which the Committee has issued its Opinion. Although the Commission, and of course the Committee too, have given their attention to consumer aspects, constant vigilance is required to keep abreast of new knowledge and developments. The ESC urges the Commission to work closely with it and the Information Society Forum in developing continuous analysis and to scrutinize further what all these changes imply for the consumer and what action should be undertaken by the different players to promote the full and satisfying participation of the consumer in this new Information Society.

2.5.3. The Committee agrees with the direction the Commission has set out under this heading. The design of the system requires great care so as to avoid the exclusion of large numbers of (less privileged) consumers. Consumer-friendly technology ought to be developed so that it is usable by ordinary people performing ordinary tasks.

2.5.4. The ESC points also to other important concerns, not mentioned by the Commission in its Communication. It recognizes for example the potential benefits of the development of electronic medical dossiers for the treatment of patients/consumers. But before such dossiers may become operational, solutions have to be found for the protection of privacy sensitive data. Sanctions should be provided for

persons, firms, or Government for using this data without authorization. Responsibility for ensuring compliance with these obligations rests with the Governments.

2.5.5. Other concerns relate to quality standards, the further development of the concept of "universal service", contractual relations and conditions and the security of transactions. These aspects should also be covered in the requested Communication.

2.5.6. The Commission should examine the requirements set by various operators for binding contractual agreements which have to be signed by consumers, so as to assess the need for cooling-off periods, expiration of the contract after the term without any fixed penalty and nullification of the contract in case of damaged goods or poor service.

2.6. Foodstuffs

2.6.1. The Commission's reference to consumer groups' studies about the food safety/purity control system has received a dramatic dimension in the wake of the recent EU measures with respect to the incidence of BSE in the United Kingdom. It illustrates the need for strengthening the authority of control systems, so as to reassure consumers that health concerns take precedence over economic interests with total loss of consumer confidence, the penalty for failure. The Committee is most interested in the Commission's promised analysis and proposals.

2.6.2. The Committee would be critical if the Commission's comments on food labelling were to imply that existing requirements on food labelling could be taken away. The information provided in conformity with EU labelling legislation is very important for consumers. As well as providing vital information about the expiry date of the food, instructions for use, etc., this information also includes a list of food ingredients, which is particularly important for consumers with allergies or consumers who wish to avoid certain substances for religious, health or other reasons. Furthermore, the importance of providing consumers with clear and better information about food should not be underestimated in maintaining consumer confidence in food.

2.6.3. The Committee supports the Commission's statement that certain key information needs of consumers are not met at all and recommends that the Commission bring forward proposals for legislation to require labelling of alcoholic drinks and compulsory nutritional labelling, and consider amending existing labelling rules to require the labelling of the quantity of ingredients present over a certain amount.

2.6.4. These views find support in recent European research in six Member States. This study shows that of all the compulsory indications on food labels, the consumer is preponderantly interested in the sell-by date, the list of ingredients and storage instructions.

2.6.5. All the information has to be in the national language resulting in severe space and legibility problems on multilingual labels. Nutritional labelling is a good example. It is almost universal in the UK where labels tend to be monolingual but not elsewhere since it requires too much space on multilingual ones.

2.6.6. The Commission should therefore look at symbols to denote the various nutrients. Symbols have been successfully introduced for laundry instructions and shoe composition.

2.6.7. The research also revealed that consumers show a lesser interest in nutritional labelling. This may be caused by the fact that consumers are not now very accustomed to nutritional labelling and therefore may not always be able to understand it easily. Major information and education campaigns will be needed to make nutritional labelling more effective. The Survey also mentions a second factor as its final conclusion (p. 28): "Unfortunately, as it is currently presented, this information is only accessible to a minority". It is important therefore that the information should be clearly worded. This also applies to the list of ingredients. It welcomes efforts by the Commission to review food labelling in order to make it simpler and better geared to the real needs of (the various categories of) consumers for information, subject however to account being taken of the comment in the first sentence of point 2.6.2.

2.6.8. The Committee calls on the Commission to deal with the issue of food claims in the upcoming Green Paper on food issues. Food claims are important for consumers, as they are becoming increasingly aware of the significance of a healthy diet. For that reason, strict rules should apply for the use of such claims in general and more specifically with respect to nutrient content claims.

2.6.9. The Committee is in favour of a comprehensive Regulation on novel food and novel food ingredients. It recognizes the potential benefits which these could have for consumers and the environment. In a number of Member States these genetically manufactured ingredients are already in use. EU legislation is badly needed to ensure that the safety of these foods is guaranteed at European level.

2.6.10. Much still remains to be done to create consumer acceptance of and confidence in (permitted) genetically modified organisms in foodstuffs. The following may serve as an example to be followed elsewhere of a responsible joint approach by trade and industry and consumer organizations.

In the Netherlands an informal consultation group on biotechnology consisting of enterprises of food sector, consumer- and environmental organizations was established in 1991 to discuss conditions for responsible market introduction of genetically modified foodstuffs. This group published its results in Spring 1995, as decision-making at the European level was stagnating. The agreement reached on labelling was quite similar to the second reading of the European Parliament.

2.6.11. The above Dutch group sets out the products and ingredients by category which require labelling and which are exempted from labelling. In principle, labelling obligation applies to foodstuffs and ingredients that are or contain genetically modified organisms. This obligation may be waived only if labelling is no longer meaningful for pragmatic reasons. No full agreement between parties exists on the labelling requirements for processes in which these organisms are not, or not any longer, present in a foodstuff. These subject matters are also listed and constitute the agenda for further discussion in the consultation group. The agreements reached in this group constitute an important element in the legislative process for admitting novel foods to the Dutch market. The United Kingdom also has a similar approval system for genetically manipulated foodstuffs.

2.7. Sustainable consumption

2.7.1. The Committee agrees to the need for sustainable consumption, i.e. a level of consumption (patterns) that can be sustained without harming and degrading the

potential for the fulfilment of the needs of our children and grandchildren. The term "sustainable consumption" remains, however, vague as to its content. The aim is, in general, to reduce the environmental impact of the consumption of products and services. In this connection consumers can exercise a pressure by their choices of products and services, but the extent to which they can influence the supply of goods and services is not always clear.

2.7.2. It is the producer who has the know-how to develop products in a more environmentally-friendly way and it is the Government that, given technological development, may impose stricter environmental standards for products and production processes. Government may also stimulate with fiscal measures the marketing of products with a reduced environmental impact.

2.7.3. Awareness of environmental degradation is growing among consumers and so is their willingness to play a more active role in contributing towards a more healthy environment as the successes, for instance, of the many waste-separation schemes show. The national and EU eco-labelling schemes are directed at these consumers. The objectives of these schemes are the marketing of products which cause less harm to the environment and the provision of information to the consumer about these products.

Research has shown that consumers are prepared to buy such products, even at prices slightly higher than comparable products, subject to the existence of reasonable performance standards. The ESC concurs with the Commission's statement that consumers can make these choices only if information is provided covering the relevant environmental and performance aspects.

2.7.4. It is unfortunate that only a few producers are as yet prepared to compete in the market place with such more environmentally-friendly products, as the results of the various national environmental schemes and the EU eco-label scheme show.

2.7.5. Also given the trade barrier implications of the national schemes, the future of environmental labelling lies with strengthening the EU scheme and retaining national schemes only for products which are typical to the national market. A first step in this direction would be further coordination of national bodies with a view to the establishment of environmental assessment criteria.

2.7.6. In the revision of Council Regulation 880/92, attention should be paid to simplifying procedures for the adoption of ecological criteria and thereby reducing the burden on the manufacturer to comply with the requirements. Also cost reduction of the system should be explored. The role of the competent bodies setting up the criteria may be strengthened. The role of the Consultation Forum is of great importance as it provides for influence by wider interests in society at the European level.

2.7.7. The ESC Environment Section Secretariat serves as the contact point for the Forum and acts as the liaison body with the Commission. It assists in the elaboration of its Opinions and also fulfils other secretarial functions. This informal provision should now be formalized in Article 6 of the Regulation, for it represents the ideal framework for the Forum's activities.

2.8. Consumer representation

2.8.1. The ESC shares the Commission's hope that its reformed consultative relationship with consumers will secure a speedy input of advice from them. Although

the Committee recognizes that the new Consumer Committee has been designed according to the Commission's general model for such committees, it expresses its surprise that the Commission determines membership of the Consumer Committee as well as whether and when the Committee will meet. The right to representation clearly implies that the consumer organizations should determine who represents them and when they deem it appropriate to advise the Commission. This right should moreover not be confined to proposals in the domain of consumer policy proper, but should also extend to (important) horizontal consumer policy issues.

2.8.2. Support from the Commission for the consumer organizations in Southern Europe is important. It should be recognized that this is primarily a task for the national Governments in accordance with the principle of subsidiarity.

2.8.3. The Committee recognizes the importance of consumer representation in the field of standardization. It is pleased with the Commission's commitment to support this representation through ANEC (European association for coordination of consumer representation for standardization) as it provides an excellent platform for European standardization.

2.9. Development of consumer policy in Central and Eastern Europe

2.9.1. Although consumer policy owes its prime value to the rightful protection of the interest of the consumer, it may well be that the development of consumer policy in Central and Eastern Europe is of fundamental significance for bringing about the transition from a command economy towards a market economy.

2.9.2. The problems of these countries, especially in the former USSR, are immense and intertwined. The decline of domestic production is of staggering proportions. The market place is full of foreign goods, often of low quality, or counterfeit goods. These goods may still be preferred to domestic consumer goods, because of the bad reputation they acquired under the command economy system. The EU and other exporting countries would be well advised to restrain their exporters from exporting substandard goods to the region in the absence of adequate controls in these countries. For the unchecked appearance of such inferior goods may not only retard economic reconstruction but also give rise to a loss of faith in the market economy among the poor masses.

2.9.3. Comparative testing, fair consumer information and consumer economic protection may fulfil a key role in stimulating domestic producers to perform better, and thereby accelerating the process of reconstruction of their national resources.

2.9.4. The emergence of independent consumer organizations in these countries should be strongly supported. The development of civic society is of utmost importance and an indispensable ingredient for a market economy. For civic society represents the ethical and cultural values of society. This constitutes the normative element in the laws and rules that govern the market economy.

2.9.5. DG XXIV may, under the auspices of TACIS, "adopt" a country in transition, for instance Belarus.

2.9.6. The Committee is furthermore of the opinion that DG XXIV should play an active role in contributing to the development and execution of consumer policy projects under the PHARE and TACIS programmes, as this input is of vital importance to their effectiveness.

2.10. Developing countries

2.10.1. EU development policy may not as yet have recognized the relevance and importance of consumer policy aspects for its own programmes. In a number of Member States, however, consumer organizations have made significant contributions to their development policies. IOCU, the predecessor of Consumers International, can moreover show an imposing record of support to (emerging) consumer organizations in the Third World.

2.10.2. As has been shown in para. 1.8., consumer policy constitutes an (essential) element of policies directed at economic development. This also applies to development in Third World countries: see the significance of the UN Guidelines for Consumer Protection as part of their development strategy; of particular importance for the consumers of the Third World is Section G (measures relating to specific areas) and Chapter IV, International Cooperation.

Consumer organizations in the Third World are particularly active in safeguarding the right to safety and health. They monitor the market place and induce governments and international organizations such as the World Health Organization and the Codex Alimentarius Commission to adopt legislation and codes of practice in pursuance of this goal. As is true for Central and Eastern Europe, consumer organizations play an important role in institution-building in these countries and are an important factor in their economic development.

2.10.3. The Committee notes with approval the contribution consumer policy will make to the EU-development policy to the benefit of the consumers in Third World countries.

3. ESC Recommendation

Consumers are an essential ingredient to the development of a successful economy in Member States. This should be acknowledged both at European and Member State levels by their involvement, preferably on a sectoral basis for ease of effective participatory involvement.

As an on-going action plan at Community level, the ESC calls for the Council, Parliament and Commission, together with support from the National Parliaments of the Member States, to designate the year (1999 or 2000) as the "Year for the Consumer" and forge its action plan and policies accordingly.

Done at Brussels, 11 July 1996.

The President
of the
Economic and Social Committee

Carlos Ferrer

Acting Secretary-General
of the
Economic and Social Committee

Adriano Graziosi

N.B. Appendix overleaf.

A P P E N D I X

to the Opinion of the Economic and Social Committee

Defeated amendments

The following amendment, which received more than a quarter of the votes cast, was defeated in the course of the debate:

Add the following new point 2.8.4.:

"The Committee recommends that the Commission, in accordance with Article 195(2) of the EC Treaty, advise all the Member States to put forward at least one consumer representative to sit on the ESC."

Reasons:

To extend the range of interests represented on the Committee in future, it would be advisable for it to include at least one consumer representative per Member State.

Result of the voting

For :	36
Against :	65
Abstentions :	22

O P I N I O N
of the
Economic and Social Committee

on the

Green Paper - Financial services: meeting
consumers' expectations

(COM(96) 209 final)

Rapporteur: Mr Pellarini

1. Introduction

1.1. In recent years, financial services have taken on a fundamental role in the lives of individual consumers and families. At the same time, the services on offer have proliferated: from the payment of bills to house mortgage, from compulsory third-party car insurance to credit cards, and including supplementary pension schemes and health insurance policies. Many forms of payment can now be made only through a banking transaction.

1.2. This has however entailed an increase in the problems involved in offering and providing these services, in safeguarding the rights of users and hence in the related legal disputes. The contracts for many financial services are necessarily complex and are not easy for the consumer to understand.

1.3. The completion of the single market must offer the consumer the opportunity to choose among various suppliers and various services, through full, clear information on the conditions in force, so that the consumer has a chance to make comparisons. However, the greater range of choices also makes it more difficult to navigate among them and makes transparency and information all the more necessary.

1.4. For the firms supplying these services, it means on the one hand a wider market, which increases the opportunities for expansion, but on the other hand fiercer competition in each country.

1.5. Adoption of a single currency will also inevitably lead to profound changes in the conditions for granting credit and remuneration of savings. It would also be desirable to take account of this impending development, which will involve greater uniformity of rules and conditions in financial services.

1.6. The proposal for a Green Paper on financial services and the consumer made by the Commissioners responsible thus has its starting-point in existing problems which have become more urgent and complex, and changed their nature, with the completion of the single market.

2. Contents of the green paper

2.1. **Part 1 of the green paper** summarises the approximately fifty directives that deal with financial services. The Commission considers that the objective of a single market in this sector “has now been largely achieved”.

2.2. This single market is based on the principles of country-of-origin control and mutual recognition; as a result “providers of financial services may operate freely across the European Union”.

2.3. This freedom of provision should lead to an increase in competition, greater economies of scale and a wider choice for consumers. There has already been an increase in the availability of new financial products and new ways of doing business.

2.3.1. The Commission’s review of the impact of single market legislation, currently in progress and covering inter alia the financial services sector, will allow more detailed assessment of these effects in the near future. It will be particularly interesting to see the impact of the single market on the prices of various products and services and thus on consumer choice.

2.4. The Commission considers that the financial services sector has traditionally been subject to strict regulation, with far-reaching “minimum” standards intended to establish the necessary conditions for a free market in financial services, with the knock-on effect of increasing the protection available to the consumer.

2.5. The green paper then outlines the legislation regarding consumer information, legal protection and systems of redress in more detail.

2.6. The green paper notes that proper information is essential if a consumer is to be able to make an informed choice of product or service. There are thus a number of provisions laying down information to be provided in the banking and insurance sectors and for trading in shares and securities.

2.7. Regarding legal protection, reference is made to the right of host countries to “impose rules they have adopted to protect the interest of the general good”.

2.7.1. The green paper goes on to mention the Rome Convention of 19 June 1980 on the law applicable to contractual obligations, and notes that there is potential for conflict between the provisions of the Convention (which give precedence to the law of the State of residence of the consumer) and the single market principle of mutual recognition, which tends towards the application of the law of the service provider.

2.8. Regarding systems of redress it is noted that depositors are able to take legal action to secure their right to compensation. For consumer credit the consumer has the right to pursue remedies against the grantor of the credit.

2.9. Finally, the first part of the green paper describes a number of other measures intended to guarantee the trustworthiness and strength of bodies offering financial services. It notes that, in line with the principles of the single market and the “Cassis de Dijon” judgement, “any financial service benefiting from mutual recognition may, if it is legally provided in the home country, be offered in the host country, ... even if the service in question does not exist in the latter country or even if domestic institutions may not offer it”.

- 2.10. **The second part of the green paper** deals with problems that have already become evident, such as discrimination against non-residents, difficulties in providing financial services freely across the EU, the lack of information and the failure to harmonize taxation.
- 2.11. The Commission accepts that much remains to be ascertained, both because there is as yet little data on the single market, and because not all the directives have been implemented by the Member States.
- 2.12. Regarding refusal of services to non-residents, it is noted that Community law cannot oblige institutions to accept clients.
- 2.13. There is also a problem with restrictions on supply in certain countries under the general good clause. The green paper states that "the proportionality of such restrictions with the objective pursued" must be demonstrated⁶.
- 2.14. In many cases absence or inadequacy of information is a cause of dissatisfaction for consumers, or leads them into errors in their choice of financial services. This is particularly the case for the most complex services arranged on a cross-border basis, such as mortgages and consumer credit.
- 2.15. *For credit cards the question of responsibility for misuse after loss or theft arises, and there is also a demand for greater transparency in the conditions for their use in other countries.*
- 2.16. One significant problem is that of unregulated intermediaries making attractive offers in foreign markets.
- 2.17. Another matter often raised is the failure to harmonise taxation, which distorts competition and leads to significant financial movements.
- 2.18. There are also certain problems associated with compulsory civil liability motor insurance for vehicles taken to another State. The green card system does not cover damage to a foreign car caused by a locally registered one, which leads to delays and problems with legal proceedings. The Commission is in the process of examining the compatibility of compulsory uniform "bonus-malus" tariffication systems with Community legislation.
- 2.19. **The third part of the green paper** summarises the measures that are currently under consideration or due for adoption. It refers specifically to the rules for the distance selling of financial products, which because of its peculiarities is not covered by the directive on distance selling in general. These rules are to involve a requirement for prior information, written confirmation of the content of a contract, and a cooling-off period.
- 2.20. *The complexity of the problems of distance selling has also grown as a result of the use of information technology and computerised trading. When the systems - currently used at national level - expand to the international level, new problems will result; these need to be anticipated and studied in order to provide a level of security equal to that applying to distance selling of other products.*

3. General comments

3.1. A number of significant contributions were made to the in-depth study and discussion of the subjects raised in the green paper by representatives of consumers' associations and banking, insurance and financial organisations at a hearing held by the Economic and Social Committee on 15 July 1996. The observers present also included CEEC representatives.

3.2. The **green paper**, while fully setting out many problems connected with financial services, **seems to show traces of the immediate cause of its drafting, namely the draft directive on consumer protection for distance selling**. Indeed, in the third part, covering the prospects for Community action, only cases involving distance selling of financial services are mentioned. If it confined itself to this, **the green paper would be greatly impoverished**, and there would be no justification for its title which appears to cover all the expectations of consumers.

3.2.1. The ESC reiterates, however, that the Commission's green paper constitutes an important opportunity to study the existing problems and barriers in greater depth, in order to provide better protection for the user of financial services and encourage wider cross-border provision of financial services.

3.2.2. Moreover, such protection has been included by the Commissioner responsible among the ten priorities in consumer affairs proposed by the Commission in its document of October 1995; it should also be noted that the year 1996 has been dedicated to consumer affairs.

3.2.3. As the Commission is the first to acknowledge, experience of the operation of the single market is still limited, and this means that only certain problems encountered already can be identified. However, these are enough for an initial analysis and for possible action to remedy them at Community level.

3.2.4. The green paper is thus not intended by the Commission to be exhaustive on questions relating to financial services, but aims to set off a wide-ranging debate involving the specialised press and trade associations in the banking and insurance sectors and consumer organisations.

3.2.5. There will be an important opportunity to compare notes and bring together different views on this matter at the hearing to be held by the Commission in November 1996, at which the ESC will be represented.

3.2.6. The document, presented by the Commission's DG XV and DG XXIV, must be seen in that light. It is full of information, reflections, sets of problems, but - one could say - above all, questions and contradictions.

3.3. Protection of the economic interests of the consumer must not come second to completion of the internal market. Referring to existing legislation on financial services the green paper notes that "the primary objective ... has been to establish the necessary conditions for the free circulation of financial services" and that it "has also had the effect of increasing the protection available to the consumer". The Commission clearly refers here to the **prudential rules**, which are intended to ensure the **stability of the financial sector**, and hence to regulate its relations with the supervising authorities. The consumer is thus indirectly protected insofar as the **security of deposits and investments** relies on that stability."

3.3.1. The green paper seems to present protection of the economic interests of the consumer as secondary and subordinate to the completion of the single market. Various Commission documents also take this line, most notably the Communication on Priorities for Consumer Policy 1996-1998 cited above.

3.3.2. **This viewpoint ought to be changed**, insofar as it is equally important to pursue the objective of ensuring an adequate return for consumers in terms of convenience and service. The single market must not benefit producers of goods and providers of services alone, whilst remaining irrelevant (if not actually prejudicial) to the citizen. This would be a further hindrance to acceptance of the sacrifices needed for the completion of EMU and to citizens' ability to identify with the European ideal.

3.3.3. Consumers' requirements should be given the same weight as the needs of companies, who furthermore have themselves an interest in ensuring that the services that they provide and the way that they deliver them are best able to meet their clients' needs.

3.3.4. Furthermore the significance of such consumer protection is also recognised in the Treaty on European Union, which requires the Community to "contribute to the attainment of a high level of consumer protection" (Article 129a).

3.4. The difficult position of consumers faced with the complexities of many financial services and the laws governing them should thus always be borne in mind. It would be useful if the Commission were to prepare a publication for a general readership giving an easily understandable summary of the most important measures in the fifty Directives on financial matters.

3.4.1. This means that consumer protection should be a fundamental political and legal priority for national and Community legislators; such protection cannot be left to the automatic operation of single market mechanisms, as the green paper appears to presume. This does not necessarily imply a multiplication of rules, but rather that consideration of consumer protection should be central to the legislative process where financial services are involved.

3.4.2. Account must also be taken of the fact that **at present much of the Community legislation on financial services refers back to national rules.**

3.4.3. The Commission should examine the two possible alternative approaches to producing reliable, comprehensive protection for the economic interests of those using financial services. A horizontal Directive, establishing common rules for financial services targeted at private individuals and, if necessary, directives laying down specific rules for individual sectors; or alternatively the continuation of the current situation - namely, specific Community legislation for each sector, but with the aim of identical treatment for all financial products as regards the protection of consumers' economic interests.

3.4.4. The codes of conduct adopted by various trade associations, either spontaneously or as a result of requests by consumer groups, are certainly useful and should be encouraged. However, a basic legal framework is required for both more effective protection and more transparent competition with a level playing field across the Community.

3.4.5. Companies would be able to base their activities on precise rules, knowing that all other companies would be equally bound by them, and consumers would gain in assurance when buying services from abroad.

3.5. **Community level harmonisation** should deal with three principal aspects: transparency of the market and information for consumers, contractual terms, and consumers' right to redress.

3.5.1. Where **transparency and information** are concerned, **particularly for the most complex services**, there should be a requirement to inform the consumer **as far as is technically feasible** (including a description of the elements of the financial service and their prices, as is the practice in commercial transactions) prior to purchase.

3.5.2. The **contract** should be in writing, signed by and available to the client. The text should make explicit mention of the binding terms of the contract, and unfair and oppressive clauses should be deleted.

3.5.3. The consumer must always have a right of redress, this could be exercised in a variety of ways. In the first instance every provider of financial services should set up an internal procedure to handle claims, and their clients should be made aware of its existence at the moment of purchase.

3.5.4. Apart from recourse to the courts, two other systems for resolving disputes exist. The first involves representatives of the client and the service provider appearing before an independent arbitrator.

3.5.5. The second system, involving an ombudsman, has been operated successfully for a number of years in several countries.

3.6. There are problems, such as that of **different taxation arrangements for certain products and services**, which are closely related to the economic and financial policy choices of each Member State.

3.6.1. Moreover, differences in tax treatment give rise to distortions which, given the completion of the single market, cannot be ignored and must be taken into account. And, as the green paper rightly states, "As long as unanimity is required in the Council on tax questions, there is little prospect of resolving these fiscal obstacles to the operation of the single market for financial services".

3.7. Another important problem is the definition of "**general good**", taken into account by every Member State to limit the supply of financial services. The problem of legal safeguards, too, is extremely important. The green paper includes it in the paragraph dealing with the "general good" question in Part One, referring to the Rome Convention of 19 June 1980 and the case law of the Court of Justice. **But there is a need for a more precise definition of the concept of "general good", to prevent it being used simply for protectionist purposes, and certainly to the detriment of consumers' freedom of choice.**

3.7.1. The green paper notes that "host countries may still impose their domestic rules adopted in the interest of the general good This may significantly reduce the range of services offered. ... Limitations of supply caused by the application of the general good clause are a matter of concern".

3.7.2. In the green paper the Commission cites the Rome Convention of 19 June 1980 on the law applicable to contractual obligations, which contains specific rules covering all kinds of contracts concluded with consumers. For contracts concluded with consumers, the Convention lays down that the courts of the consumer's country of residence shall be competent where the case is brought by the other contracting party, while the consumer also has the option of taking legal action in the country where the other party is based.

3.7.3. The Commission states that the option of applying the law of the consumer's country of residence "may create a potential conflict with the principle of mutual recognition applicable within the single market, which tends towards the application of the law of the service provider". Where there is a conflict, "the consumer's home state law can take precedence over the law of the supplier provided that it respects the 'general good' criteria laid down by the Court of Justice"¹⁶. Otherwise, the law of the country of the service provider applies.

3.7.4. These principles clearly offer little in the way of legal certainty, with the likelihood of long and costly legal proceedings in case of a dispute. The green paper seems to accept this state of affairs unquestioningly.

3.7.5. The ESC, however, **considers this state of affairs to be wholly unsatisfactory**, and suggests a number of possible steps towards resolving it.

3.7.6. A first solution, which would consist of **harmonising the general good provisions** applicable to contracts made by consumers, would be a difficult and lengthy process, primarily because there has been no harmonisation of Member States' contract law.

3.7.7. There is a need for short-term solutions in anticipation of future uniform legislation, and the ESC would like to suggest a few points for consideration.

3.7.8. The problems lie in the fact that the concept of "general good" is only vaguely defined and interpretations could diverge widely between two countries or between a country and the Court of Justice.

3.7.9. There is thus a primary requirement for a distinction between public administrative law and private contract law. The former includes, inter alia, provisions regarding trade and "trading practices", **which latter quite clearly include those which protect consumers**.

3.7.10. The two Banking Directives and others connected with it are based on Article 57 (2) of the Treaty, as are those on insurance. These directives regulate the activities of bodies offering credit or insurance. In practice this means checks on the enterprise concerned and its ability to carry out the regulated activities, and continuous monitoring of their compliance with the appropriate prudential rules.

3.7.11. As far as this very tightly defined area of good trading practice is concerned, the Member States are no longer able to invoke the general good clause, except in regard of measures regulating commercial practice but unrelated to the monitoring of the enterprise, i.e. those on economic organisation, distribution, production, or the use of a service.

3.7.12. Consider the problem from the point of view of contract law, and in particular the way in which protection of consumers' economic interests is organised. In private international law the Rome Convention seeks to unify the rules on conflicts

between laws in the European Community. The aim is to introduce a uniform set of rules governing contractual obligations into the national laws of Member States.

3.7.13. As far as a contract concluded with a consumer is concerned, **the applicable law is that of the country where the consumer usually resides**, under Article 5 of the Rome Convention.

3.7.14. Not all consumer credit contracts are in accordance with Article 5 of the Rome Convention, or with the analogous conditions of Article 13 of the Brussels Convention. This will be the case if the conclusion of the contract has not been preceded by a special proposal or advertising in the country, or in general if the consumer has actually travelled abroad in order to settle the price.

3.7.15. However, even in such cases it is not necessarily certain that consumers would be deprived of protection under the law applicable in their country of residence, which might be more favourable to their interests. In effect, if the courts of the country of the consumer's residence are considered competent, then the laws of that same country should be applied.

3.7.16. This is a **clear and satisfactory solution** for all parties: consumers benefit from the protection of the legislation of their countries, while services providers know which laws are applicable.

3.7.17. Unfortunately the Commission chooses to reject this clear and simple solution, since it "considers that application of the rules for determining the law applicable laid down in the Rome Convention may conflict with the principle of mutual recognition of banking activities, the cornerstone of the Second Directive".

3.7.18. **The ESC does not share this view.** The rules of the Rome Convention cannot conflict with the principle of mutual recognition, since they deal with two different fields of activity. The principle of mutual recognition is only applicable in the field of public commercial law, not contract law, particularly given the provisions in favour of the protection of consumers' economic interests.

4. Specific observations

4.1. If consumer credit is excepted, current Community legislation on banking and insurance services only offers real protection to users of complex, sophisticated services (shares, securities, secured deposits); those who use "everyday" services are protected by improvised measures rather than by a well-defined universal framework of guarantees.

4.1.1. This green paper aims explicitly at protecting the economic interests of the individual consumer. It is therefore necessary to make **a clear distinction between financial services for large-scale users** (company credit, reinsurance contracts, etc.) **and those for individuals and families** which are the subject of this opinion.

4.1.2. The provision of **basic banking facilities** (current and deposit accounts) should be ensured for every citizen, on the condition that the costs of such a service are not imposed on other citizens. Banks are a service **to** the public, not a public service. Non-residents should be able to make use of at least these basic services, without discrimination in treatment and charging by comparison with residents.

4.1.3. Inter-bank agreements (such as the Eurocheque system) and cooperation agreements between insurers are widely exempt from Community competition rules. The result is that there is practically no competition on charges.

4.1.4. A **table** of the most common financial services needs to be drawn up so that clients can make a simple and immediate comparison of their suitability. This table could be produced with the assistance of businesses' and consumers' organisations.

4.1.5. It would be better still to be able to choose between various suppliers on the basis of their **overall attitude** to customer service (quality of service, better information and transparency, pricing levels, etc.)

4.2. For **distance selling of financial services** in particular, rules should be applied that are equivalent to those laid down in the horizontal directive on contracts negotiated at a distance. However, care should be taken not to damage consumers' interests by applying over-general rules. A cooling-off period is inappropriate for services that require immediate execution, such as the sale or purchase of shares, or credit urgently needed by the consumer.

4.2.1. More and more sales use **information technology** (e.g. across the Internet) and this is set to boom in the next few years. Given the nature of the medium, these transactions merit particular attention within the regulation of distance selling of financial services.

4.2.2. **Television advertising of financial products** should be heavily regulated, particularly if it is by unauthorised intermediaries.

4.2.3. The Commission could examine the possibility of considering, as part of its ongoing research into the information society, the problems associated with new forms of marketing using television and information technology.

4.3. Given their complexity, considerable attention needs to be paid to **integrated pension** and **health insurance policies**. The current EU-wide rethinking of welfare schemes has already opened up enormous possibilities for this type of service and will continue to do so; at present this type of service is amongst those subject to the lowest levels of transparency.

4.3.1. For premiums, the client should first and foremost be given a realistic estimate of the revenue which will arise, without projections that often turn out to be completely implausible. There should be very clear information about the procedures for withdrawing from the contract and the costs incurred, the consequences for the heirs in the event of the death of the policyholder, and the tax advantages and disadvantages.

4.3.2. At the time a health insurance contract is made the client should receive precise details of what is not covered and excesses. Furthermore there must be the strictest limits on an insurer's ability to unilaterally terminate the contract; this should be totally banned in the event of a policyholder's serious illness.

4.4. Mortgage circulation and market transparency should be favoured, establishing Community rules on procedures and required information, rates, forms of guarantee, etc. The Commission should consider the possibility of a directive on this important subject.

4.5. The Commission should also consider the case for a directive on **insurance** along the same lines as the Banking Directives, in order to ensure a minimum level of protection to all insured persons.

4.6. The practice of **usury or loan-sharking** has reached worrying levels in recent years in various countries. This delicate matter has significant social consequences, such as excessive levels of debt, and is subject to no regulation at Community level. The ESC would repeat what it said in its 1992 opinion on the consumer and the internal market, namely that "there have not as yet been any Community legislative initiatives in this area, although there is a Community dimension to the problem". The ESC would also remind the Commission that the Council is giving priority to "investigating the question of excessive levels of consumer debt". It urges the Commission once more to state what action at Community level is desirable in order to contribute towards alleviating the debt problem. Finally, it asks the Commission, when formulating a view, to refer to the study which it commissioned from the University of Leiden's Instituut voor Recht en Beleid in 1992.

4.7. **Means of payment** also deserve greater attention. For **cheques**, for example, the possibility of abolishing the value date should be considered, as this is a source of considerable abuse and does not improve security. For a view on the inadequate observance of the recommendation on payment systems, reference is made to the position taken up only recently by the ESC.

5. Conclusions

5.1. The ESC endorses the initiative taken with this green paper, which could be an important first step towards resolving the problems involved in best meeting the needs of users of financial services.

5.2. The first important task for the Commission is to draw up a **White Paper on financial services and consumers**, listing the rights to be protected and the mechanisms for protection. Certainly to be included among the former are the right of access, exhaustive information, transparency of services and means of redress.

5.3. In this light, the lack of data on the effects of the single market is particularly important and should be rectified at the earliest possible opportunity. Better targeted and more efficient intervention needs **information on the most common causes of disputes on the various services**. It would therefore be appropriate first to hold a **broad inquiry** into these, in collaboration with trade associations from the sector and consumer organisations. This would also enable the priorities for Community intervention to be identified. The inquiry should be carried out quickly and should not be allowed to delay a decision on immediate action.

Brussels, 31 October 1996

The President
of the
Economic and Social Committee

Tom Jenkins

The Secretary-General
of the
Economic and Social Committee

Adriano Graziosi

APPENDIX

ARTICLE 129a

1. The Community shall contribute to the attainment of a high level of consumer protection through:
 - a) measures adopted pursuant to Article 100a in the context of the completion of the internal market;
 - b) specific action which supports and supplements the policy pursued by the Member States to protect the health, safety and economic interests of consumers and to provide adequate information to consumers.
2. The Council, acting in accordance with the procedure referred to in Article 189b and after consulting the Economic and Social Committee, shall adopt the specific action referred to in paragraph 1 b).
3. Action adopted pursuant to paragraph 2 shall not prevent any Member State from maintaining or introducing more stringent protective measures. Such measures must be compatible with this Treaty. The Commission shall be notified of them.


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