

**ECONOMIC AND SOCIAL COMMITTEE
OF THE EUROPEAN COMMUNITIES**

**PRODUCER
CONSUMER
DIALOGUE**

OPINION

Brussels 1984

The European Communities' Economic and Social Committee, chaired by Mr François CEYRAC, approved this own-initiative Opinion at its 217th Plenary Session of 23 and 24 May 1984.

The preliminary work was done by the Section for Protection of the Environment, Public Health and Consumer Affairs with Mr G.H.E. HILKENS as Rapporteur.

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PREFACE

In a market economy consumers must have a free choice of goods and services and at the same time enjoy adequate protection. This requirement is not satisfied in practice however. This observation forms the point of departure of an Own-initiative Opinion which the Economic and Social Committee adopted on 24 May 1984 and in which it called for a number of measures to improve the dialogue between producers and consumers.

The Committee considers that such a dialogue at both national and Community level accords with the general principle of subsidiarity between government and private initiatives and therefore might contribute to the development of EEC consumer policy by backing up existing legislation with a voluntary and more flexible element.

In most Member States some form of dialogue, whether institutionalized or not, is currently in operation; in some Member States some form of voluntary codes or agreements are either in force or under negotiation, and in all Member States there are procedures for the enforcement of consumer rights, although the quality, accessibility and effectiveness of these procedures vary greatly.

Furthermore, agreements and codes, voluntary or otherwise, have been introduced in several Member States in recent years with regard to both goods and services. However, coordination between the Member States is either inadequate or non-existent. For this purpose the idea of the dialogue should be developed further at Community level, where it can supplement the traditional means of conducting consumer policy.

A framework Directive which embraces the various forms of dialogue, agreements and codes, as well as the means of enforcement and redress, should be drawn up. This framework Directive should be sufficiently broadly based to allow each Member State to adopt implementing provisions of its own to suit its own situation and level of developments, and it should also be sufficiently broad to allow for considerable variation in points of detail as long as this does not obstruct the rational functioning of the EEC.

Voluntary agreements or codes whose observance cannot be ensured are not of much use in many cases. The Committee therefore considers that such agreements and codes could include provisions for ensuring their observance.

In addition to the existing forms of dialogue at local, regional, national and Community level, action should be taken to improve and extend the dialogue at Community level between consumers and other socio-economic groups in other areas, e.g. the dialogue between consumers and industry/trade with regard to public services and the compiling of information material and material for consumer education. At the same time consideration should be given to improving and, where necessary, extending consumer information and advisory systems. The European Commission should initiate and promote action in this field.

The Committee is convinced that the dialogue between consumers and industry/trade can be intensified given greater support from the Commission.

A. OPINION OF THE ECONOMIC AND SOCIAL COMMITTEE ON THE PRODUCER-CONSUMER DIALOGUE

On 23-24 February 1983 the Economic and Social Committee, acting under the fourth paragraph of Article 20 of its Rules of Procedure decided to draw up an Opinion on the

Producer-Consumer Dialogue.

The Section for Protection of the Environment, Public Health and Consumer Affairs, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 26/27 April 1984 in the light of the Report by Mr HILKENS.

At its 217th Plenary Session (meeting of 23 May 1984) the Economic and Social Committee adopted the following Opinion by 63 votes to 48 with 27 abstentions :

The Second Consumer Action Programme for 1980-1985 adopted by the Council in May 1981 must be regarded as an extension and elaboration of the First Programme for 1975-1980. However, it also includes a new element, viz. the producer-consumer dialogue, which is seen as a new way of developing consumer policy in addition to legislation.

The Committee's point of departure is that consumers should have freedom of choice with regard to goods and services in a market economy, which must provide adequate safeguards for consumers too.

This requirement is not satisfied in practice, and as a result imbalances have occurred between supply (producers/suppliers) and demand (consumers).

This imbalance manifested itself clearly in the so-called affluent society of the post-war years, when the large variety of consumer goods available led to a lack of transparency in the market.

This lack of transparency creates serious problems for consumers and also means disadvantages for producers in certain circumstances. Since the consumer is generally the weaker party, in the Committee's view, a balance must be established for his protection.

The need for balance between producers (sellers) and consumers (buyers) has led to:

- the setting-up of consumer organizations to defend consumer interests, by disseminating information both to their members and to the public at large, by acting as pressure groups and by participating in negotiations with producers, and with government;
- government action at national level through the establishment of consultative bodies representing consumer interests and/or the development of consumer protection legislation; in a number of cases the government itself acts as supplier (e.g. public utilities);
- attempts by consumers to have complaints or disputes settled through judicial or non-judicial channels.

As the Community has become more integrated, these activities have been extended from national to Community level.

The Committee considers that all the foregoing so-called "traditional" activities contribute to a certain extent to the restoration of balance between producer and consumer. However, there are also certain disadvantages such as :

- the acquisition and dissemination of information may place too heavy a burden on the financial resources of consumer organizations.
- the information supplied by producers lacks the necessary objectivity in many cases and often contains some form of advertising;
- legislation is not a very flexible instrument and may therefore operate to the disadvantage of the producer/distributor whilst also causing problems for the consumer on occasions;

- seeking redress is frequently time-consuming and expensive, particularly if attempted through the normal legal channels.

The Committee has accordingly decided to promote the concept of a producer-consumer dialogue, as put forward in the Second Consumer Action Programme, and to examine what form this dialogue might take.

The Committee considers that such a dialogue at both national and Community level accords with the general principle of subsidiarity between government and private initiatives and therefore might contribute to the development of EEC consumer policy by backing up existing legislation with a voluntary and more flexible element.

A dialogue can be considered in the broader sense as an exchange of views leading to greater understanding between the parties concerned. In this Opinion, it means a dialogue which leads to the drawing-up in certain trades and sectors of voluntary agreements or codes of practice between producers/distributors and consumers so as to avoid government intervention where possible.

According to information obtained by the Committee the dialogue has developed in different ways in the Member States.

It can be said that

- a) in most of the Member States some form of dialogue, whether institutionalized or not, is currently in operation,
- b) in some of the Member States some form of voluntary codes or agreements are either in operation or under negotiation, and
- c) in all Member States there are procedures for the enforcement of consumer rights, although the quality, accessibility and effectiveness of these procedures vary greatly.

Furthermore, agreements and codes, voluntary or otherwise, have been introduced in several Member States in recent years with regard to both goods and services. The main sector involved here is advertising, but the travel trade, insurance, electrical goods and car sales and repairs are also covered.

Although there is a trend towards dialogue leading to the adoption of codes, it must be added that coordination between the Member States is either inadequate or non-existent. The types of codes being adopted in the Member States differ: the codes can be either voluntary, statutory or self-regulatory.

If this development continues and if no attempt is made to attain some sort of uniformity with regard to (voluntary) codes of conduct, a whole battery of divergent standards and regulations both binding and non-binding will be gradually built up in the various Member States.

Steps can, of course, be taken to harmonize "hard" law at Community level, but the Committee thinks that attempts must also be made to achieve closer coordination between the Member States on the subject of voluntary agreements.

For this purpose the idea of the dialogue should be developed further at Community level, where it can supplement the aforementioned traditional means of conducting consumer policy.

This development of a dialogue at Community level means that - in addition to the promotion of consultation such as already takes place periodically in the Member States and in addition to the exchange of information - it will also be necessary to draw up, for the sake of good coordination, a framework Directive which should embrace the various forms of dialogue, agreements and codes, as well as the means of enforcement and redress.

This framework Directive should be sufficiently broadly based to allow each Member State to adopt implementing provisions of its own to suit its own situation and level of development; it should also be sufficiently broad to allow for considerable variation in points of detail, as long as this does not obstruct the rational functioning of the EEC.

In developing the concept of dialogue, the Committee has reached the conclusion that voluntary agreements or codes whose observance cannot be ensured are in many cases not of much use. It therefore considers that such agreements and codes could include provisions for ensuring their observance and still remain within the spirit of a voluntary dialogue.

The framework Directive mentioned above should cover the following points, with which the voluntary codes or agreements referred to in this Opinion will have to comply :

- (I) the parties to the agreement, with precise indication of name, address and function; whether or not they are principals or representatives (in the latter case precise details on who they represent);
- (II) the territorial or geographical applicability of the agreement;
- (III) the precise nature of the goods or services to which the agreement applies;
- (IV) the good-conduct objectives of the agreement;
- (V) references to any applicable Community, national or regional statutory provisions or codes;
- (VI) the time elements in the agreement (i.e. duration of the agreement; age of products to which it applies);
- (VII) the options involved for producers and consumers (if any);
- (VIII) the existence of a consumer compensation fund (if any);
- (IX) conditions applicable to advertising directed at consumers in the mass media (press, T.V., radio);
- (X) the possible courses of action, the complaints or arbitration procedures available in the case of non-compliance or default, with a distinction between individual and class action;
- (XI) the sanctions applicable in the case of continued non-compliance or default.

Under point (VII) the Committee envisages that some agreements might include special provisions relevant to a particular industry or trade. Thus the consumer might be offered the choice for example between replacement of the product, or free repair of the product or money back, or a combination of these options.

As regards point (VIII), the Committee proposes that if a consumer compensation fund has been set up by unilateral decision or voluntary agreement, as in the travel trade, for example, the consumer's entitlements should be specified.

In addition to the existing forms of dialogue at local, regional, national and Community Level, action should be taken to improve and extend the dialogue at Community level between consumers and other socio-economic groups in other areas, e.g. the dialogue between consumers and industry/trade with regard to public services and the compiling of information material and material for consumer education. At the same time consideration should be given to improving and, where necessary, extending consumer information and advice systems. The European Commission should initiate and promote action in this field.

The framework legislation should also provide for the following :

- the exchange of information between all organizations directly or indirectly involved in the drawing up and implementation of codes and voluntary agreements, including such existing organizations as the CCC (Consumers Consultative Committee);
- coverage of situations where legislation will be necessary because of the particular nature of the subject, e.g. health care products. Compulsory codes may have to be introduced for dangerous products to cover emergencies.

Finally, the framework legislation should lay down the Commission's role, which, apart from the drawing up of the Directive itself, would be limited to providing an institutional/administrative framework for registering voluntary agreements and codes at Community level, in other words giving the codes a "certificate of conformity".

The Committee thinks that the dialogue at Community level must be stepped up in areas where Community policies are being pursued. The Commission is asked to give its full support to this and to inform the Committee about the relevant proposals and other initiatives in this field.

B. REPORT OF THE SECTION FOR PROTECTION OF THE ENVIRONMENT, PUBLIC HEALTH AND CONSUMER AFFAIRS

(Rapporteur Mr. G.H.E. HILKENS)

Chapter.I - Introduction

Following the adoption by the Council of the Second EEC Consumer Action Programme in 1981, which recommended that a dialogue between producers and consumers should be encouraged, the Section for Protection of the Environment, Public Health and Consumer Affairs of the Economic and Social Committee made the proposal that an Own-initiative Opinion on this subject should be drawn up.

After some deliberation, the Committee decided to accept this proposal and at its Plenary meeting of 23/24 February 1983 charged the Section with this task.

The Section organized its work at its 73rd meeting of 1 March 1983 setting up the following Study Group :

Chairman: Mr SCHNEIDER

Rapporteur: Mr HILKENS

Members: Mr BROICHER (in place of Mr SCHNIEDERS
- Art. 50 of the Rules of Procedure)

Mr d'ELIA

Mr EELSEN

(in place of
Mr VAN DER MENSBRUGGHE
- Art. 50 of the Rules of Procedure)

Mrs GREDAL

Mr HADJIVASSILIOU

Mr LAUGA

Mr MURPHY

Mr RAMAEKERS

Mr REGALDO

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The Study Group met four times and submitted its Draft Report and Draft Opinion to the Section which adopted them at its meeting on 26/27 April 1984.

Chapter II - Development of Community Consumer Policy

Although legal justification for a Community consumer policy was found in Article 2 of the Treaty of Rome, which refers to the need to raise the standard of living of EEC citizens, consumer policy was not regarded as a serious issue during the initial period of European integration following on the Treaty, when emphasis was placed on the formation of a customs union and the development of the Common Agricultural Policy. However with the gradual evolution of interest in customer affairs in the individual Member States, and the growth of consumer organizations in these States, interest was gradually stimulated at Community level also.

As the process of legislative harmonization at Community level got under way, it became apparent that there were considerable variations in existing consumer legislation at national level, and it was not until the early 1970s that a start was made at Community level with the formulation of an EEC consumer policy.

At the Paris Summit of 1972 the heads of government stated that an EEC consumer policy was necessary. This was followed in 1973 by the establishment of the Environment and Consumer Protection Service, now DG XI of the Commission, of the Consumers Consultative Committee (CCC), and of course of the Environment, Public Health and Consumer Affairs section of the Economic and Social Committee.

The policy itself was first given form in the First Consumer Action Programme 1975-1980.

In this first Programme the "consumer" was defined in rather broad terms as a partner in the socio-economic process and the Programme set out the objectives and general principles of a consumer policy, and prepared a number of priority measures to be taken in the future. Although a number of these priorities have been dealt with, many of the items in the programme were not implemented at all, or not in the manner that might have been expected.

The Second Consumer Action Programme 1980-1985 adopted in May 1981 was considered as an extension and elaboration of the first, but included a new element - a dialogue between producers and consumers.

The dialogue is specifically referred to in the text of the Programme itself from which the following adapted extracts are taken⁽¹⁾.

"5. ... The Community should try to encourage a dialogue and consultation between representatives from consumers and representatives from producers, distributors and suppliers of public or private services with a view, in certain cases, to arriving at solutions satisfactory to all the parties in question."

⁽¹⁾ OJ N° C 133 of 3 June 1981, page 3, paragraphs 5 to 7.

"6. Although legislation ... will still be needed, ... other means might be sought such as the establishment of specific agreements between the various interests which would have the advantage of giving consumers additional assurances of good trading practice."

"7. Obviously, the use of this voluntary formula should in no case prejudice the application of existing laws and regulations, nor exclude the adoption of statutory and administrative provisions at either national or Community level."

Thus, in order that consumer policy should make progress it is desirable that in addition to legislative provisions which will always be necessary, the concept of a dialogue should also be developed. Given that it takes so long to produce EEC laws there could be a case for the development of the voluntary dimension or so-called "soft law" - i.e. law which is less than fully enforceable and which derives from the common will of the producer and consumer. This could mean in practice the adoption of voluntary codes of conduct and/or voluntary agreements between the parties concerned.

Chapter III - Points of view

The Economic and Social Committee made the following comments in support of the dialogue in its Opinion on the second draft Action Programme issued in December 1979⁽²⁾.

"The Committee agrees that the Commission should - for the time being on an experimental basis - try to initiate a dialogue between consumer representatives on the one hand and representatives of manufacturers and retailers on the other. In the Committee's view such a dialogue must not, however, be restricted to private firms and consumer organizations, but must also include consultations between consumer organizations and public institutions and the government on issues with consumer aspects."

⁽²⁾ OJ N° C 83 of 2 April 1980, page 25, paragraph 1.6.

*"The question of whether and, if so, to what extent such a dialogue can lead to effective agreements between producers/distributors and consumer organizations is a matter which **requires further study**. The main issue here will be whether effective instruments acceptable to both sides can be developed. **In a subsequent study the Economic and Social Committee could define the general framework for such codes.**"*

In its Report on the Second Consumer Programme, the ESC went into further detail on the subject, as follows :

"The question of whether and, if so, to what extent such a dialogue can lead to binding agreements between producers/distributors and consumer organizations is a matter which requires further study. At all events, the conditions will have to be : parties to be equal and have the same information; imposition of conditions to be legitimate; effective penalties to be laid down for failure to conform to the outcome of discussions."

Thus the ESC not only supported the idea of a dialogue but said that it could undertake further work on the matter and it is on this concept that the proposal for an Own-initiative Opinion is based.

The European Parliament also considered the matter at a public hearing on the consumer action programme organized in Dublin in February 1980 to help it formulate its views. A report was drawn up (ref. PE 63.673) on which the Parliament adopted a Resolution (October 1980) which included the following paragraphs in support of the dialogue⁽³⁾ :

The Parliament :

(3) Considers that the Commission must encourage industrial codes of conduct which take account of the interests of consumers and that it should also promote consultation between

⁽³⁾ OJ N° C 291 of 10 November 1980 - page 40, paragraphs 3 and 11.

the consumers, industry and traders with a view to the conclusion of agreements; legislative provisions are necessary only when voluntary agreements do not suffice or do not work;

(11) Requests that efforts should be stepped up to achieve better dialogue and consultation between representatives of consumers, producers and traders.

The Consumers Consultative Committee (CCC)⁽⁴⁾, although endorsing the principle of a dialogue between producers and consumers, does not think that this need necessarily leads to agreements in the form of codes of conduct, although if codes of conduct are established, they must be backed up by sanctions.

The CCC would prefer to see consumers protected by legislation rather than voluntary agreements on the grounds that the effectiveness of a dialogue is doubtful, and that voluntary agreements might in themselves constitute an obstacle to the introduction of legislation. Although it has agreed to take part on a trial basis in consultations with producers, it believes that such consultations and whatever may emerge from them must never take the place of legislation. In the final analysis the consumer would be still in a weaker position than the producer.

The CCC does not think that voluntary codes are feasible at Community level and considers that in proposing this idea the Commission has set too much store by the success of the codes in Britain. This is alleged to be misleading since in Britain the Office of Fair Trading acts as a supervisory body, while there is at present no Community institution which can act as such a body.

Since the four principle European consumer organizations (BEUC, ETUC, COFACE and EURO-COOP) are represented on the Consumers Consultative Committee, it is not necessary to discuss each

⁽⁴⁾ Established by the Commission in September 1973 : consists of 25 members/experts including representatives of BEUC, ETUC, COFACE and EURO-COOP, all regarded as consumer organizations.

organization's separate view in this document. Their views are set out in the report on the hearing held by the European Parliament in Dublin in 1980⁽⁵⁾.

The Commission's basic attitude is that dialogue would be useful anyway, even if it led to no formal agreement; if however the dialogue developed, it should be initially between consumers and producers and not with the Commission itself. The Commission's role would be to facilitate the dialogue (provision of secretariat, background research), to note the outcome, to inform the other Community institutions, and if it found a good agreement compatible with EEC objectives, to recommend its adoption by the Member States.

It is difficult to make voluntary agreements part of EEC legal provisions, even though Art. 155 of the Treaty allows the Commission to deliver Opinions and Recommendations related to the voluntary agreement process.

Also, the mere fact that voluntary agreements may have been reached through the consumer-producer dialogue at EEC level does not make them enforceable at either Community or national level.

At present no institution at Community level is in a position to act as a policeman to ensure the observance of codes, and such surveillance could only be effected at national level.

What would happen is that, in any given Member State, a voluntary code agreed at Community level would be endorsed by the national producers and consumers associations. This would result in the translation of the EEC-level agreement into a counterpart agreement at national level, although there might be some adaptation of the terms to national situations in the process.

The problem of enforcement at national level would still remain. Conflict might arise with national law for example, and national courts might well consider that a mere voluntary instrument did not have the force of Community law.

⁽⁵⁾ Verbatim Report of the Public Hearing on the Consumer Action Programme, Dublin 26-27 February 1980 - PE 63.673.28 March 1980.

Despite these potential obstacles however, the Commission is still of the opinion that the producer-consumer dialogue is to be recommended. Such a dialogue could lead, without the need for too many regulations, to the creation of specific agreements in certain sectors.

Hence the ESC has decided to prepare an own-initiative Opinion on the dialogue, taking into consideration the fact that all the parties, producers, distributors and consumers, to such a dialogue are represented on the Committee. It is hoped that the resultant discussions will help to clarify this part of the consumer programme, and that such discussions will produce some practical proposals on how the idea of such a dialogue can be further developed.

In this way the ESC hopes to make a contribution to the deblocking of Community consumer policy which is currently stagnant, and to encourage the development of such policy through the dialogue.

Chapter IV situates the consumer in the market economy with a view to assessing the basic conditions for a dialogue.

Chapter V makes an inventory (set out in an Appendix) of the practices in the individual Member States with regard to the dialogue.

Chapter VI distinguishes the various forms of dialogue in operation in the Member States.

Chapter VII lists the various consultation procedures with consumer interests in operation at EEC level.

Chapter VIII states the simple conclusion that framework legislation for a dialogue at Community level is recommended. The actual detailed proposals are issued separately in the form of an Opinion.

Chapter IV

The Consumer in the Market Economy : Basic Conditions for Dialogue

To place consumer policy in its correct context, it is useful to trace the position of the consumer in a market economy system such as operates in the EEC countries.

All groups within the Economic and Social Committee are generally agreed that the best means of maximizing prosperity is through the free market economy, provided that there are adequate safeguards for the consumer in conditions of "perfect" competition.

Unfortunately, however, such "perfect" conditions are not obtained in practice; imbalances tend to develop, and what we are concerned with here is the imbalance which has developed in recent years between the producer/supplier and the consumer.

This imbalance did not develop through any deliberate policy but by force of economic circumstances when during the affluent society of the sixties and seventies, the vast proliferation of consumer goods led to a lack of transparency in the market.

This lack of transparency created problems for consumers and in certain circumstances for producers also. However, it would appear that the greater disadvantage was to consumers as being the weaker party, and consequently in need of protection to establish and maintain a true equilibrium in the market.

This is in contrast with earlier and simpler economic circumstances when the consumer was in a position of considerable strength vis-à-vis the local supplier - even though his range of choice was more limited and there was a reasonable balance or equilibrium between consumer and producer/supplier.

To redress the imbalance which tended to arise between producers (sellers) and consumers (buyers), consumer organizations emerged to defend consumer interests.

Government action at national level also became necessary in many cases, by the establishment of consultative bodies involving consumer interests and by the introduction of consumer protection legislation.

Indeed, in some cases government or public authorities at national or local level have become producers themselves, and state corporations (manufacturing or service) of a monopolistic nature have been established. Thus government can play a dual role, acting both as a producer and an upholder of the common good.

Finally, interest was stimulated at international level leading, after a time-lag, to initiatives within the European Community.

Given that the problem is to redress the balance in favour of the consumer, the "traditional" means of so doing are :

- a) consumer information, i.e. making the consumers aware of the choices open to them; drawing attention through the press and TV to drawbacks in certain products and services, etc.;
- b) consumer legislation, i.e. regulations imposed on producers and distributors at national government level, and by extension at Community level; and
- c) remedial action, i.e. attempts by consumers to seek judicial or non-judicial remedies to redress grievances or complaints.

There are, however, certain disadvantages :

- a) dissemination of information is undertaken by consumer organizations but the task is so enormous that it quickly outruns the resources of such organizations and full and adequate dissemination cannot be achieved; dissemination of information by producers is also effected but this tends to be of a publicity nature and not necessarily objective;
- b) consumer legislation can be too rigid and inflexible, not be transparent enough for either producer or consumer, and once adopted can be very difficult to change;
- c) remedial action is frequently time-consuming and expensive, particularly if attempted through the normal legal channels.

Given the limitations to the "traditional" methods, it may well be asked what other means are available for bringing about a proper balance between the interests of producers and consumers in a market economy. As has been said earlier, in the second consumer programme the Commission floated the idea of bringing about a dialogue between producers and consumers as a supplementary instrument of consumer policy.

Other possibilities can be envisaged, such as for example stricter advertising controls on the press, radio and TV, but these would in fact come under codes envisaged as being the outcome of the dialogue.

If "dialogue" is taken to mean consultations between two parties (producers and consumers), then there is nothing new in the idea. For some time now there has been ongoing institutionalized dialogue at both national and EEC level between producers and consumers. In France, for instance, through the Economic and Social Council; in the Netherlands through the Economic and Social Council's Consumer Affairs Committee; in Belgium through the Consumers' Council, and so on. Similar discussions are taking place at EEC level, including the ESC and the CCC.

Such an institutionalized dialogue can be said to have the positive result, in that contacts enable both sides to gain a greater understanding of each other's positions. The question is whether or not such consultations have been too non-binding and too non-committal. However, if real results can be obtained through the dialogue, then the dialogue will become less non-committal.

It seems from the passages from the Second Consumer Programme quoted in chapter II above that the Commission is also thinking about more than mere voluntary consultations when it talks about a dialogue, and such a dialogue must satisfy a number of conditions if it is really to achieve the substitution of standards, agreed between producers/distributors/traders on the one hand and consumer organizations on the other, for legislative provisions which might otherwise be necessary.

In the first place there must be agreements between the parties; in the second place the scope and duration of the agreements must be clearly defined; and thirdly, if agreements are concluded, the penalties for non-compliance must be clear.

In this connection, some members of the Section are against the concept of a "voluntary" agreement which would incorporate provisions for enforcement and penalties for non-compliance. Other members, however, consider that such agreements would be useless if such sanctions were not included.

Experience has shown that it is particularly difficult to reach agreements at national level, and it may be assumed that it will be even more difficult at EEC level. Perhaps consideration should be given to general Community provisions which each Member State could then supplement and apply according to its own resources and in a way appropriate to that state.

Before making proposals regarding such general Community provisions however, an examination of the dialogue as it actually works in practice in the Member States, could be useful and this is set out in Chapter V.

Chapter V

The Situation in the Member States

The practices in the Member States are so varied that it is extremely difficult to arrive at classifications common to all, but three very broad headings have been adopted as follows :

The instructional/organizational framework within which dialogue can take place which could lead to the adoption of voluntary codes.

The voluntary codes which have actually been adopted by mutual agreement as well as self-regulatory codes adopted unilaterally by a particular trade or industry.

The dialogue as seen through methods of enforcement and redress.

A breakdown of the situation country by country is attached as an Appendix.

Chapter VI

Classification of Forms of Dialogue in the Member States

Dialogue through established institutions

The basic and most obvious form of dialogue is that which involves consultation through established institutions between consumers on the one hand and producers, distributors and providers of services, both public and private, on the other hand.

In most Member States there is now a government ministry or agency with overall responsibility for consumer affairs. This is the case in Belgium (Ministry for Economic Affairs), in France (Secrétariat d'Etat à la Consommation), in Ireland (Department of Industry, Trade, Commerce and Tourism), in Luxembourg (Ministry for Economic Affairs and the Middle Classes), in the Netherlands (Ministry of Economic Affairs), in the UK (Department of Trade and Industry), and in Greece (Ministry of Commerce)

In most of the above six countries other ministries, Agriculture, Health, Justice etc. also have some responsibilities in respect of consumer affairs.

In Germany, Denmark and Italy no single Ministry has overall responsibility.

Most of the Member States also have consumer advisory councils established or sponsored by government for the specific purpose of presenting the consumers' point of view to governmental authorities, and on which consumer interests are represented.

In seven of the Member States there are specific advisory councils; in Belgium there is the Consumers' Council, in France the Comité National de la Consommation, in Ireland the National Consumer Advisory Council, in Luxembourg the Consumer Council, in the Netherlands the Consumer Affairs Committee of the Economic and Social Council, and in the UK the National Consumer Council, and recently in Greece the National Council of Consumers.

The situation in the remaining three countries is different. In Germany there are two advisory bodies - the Common Council attached to the Federal Ministry for Economic Affairs and the Consumer Committee attached to the Federal Ministry for Food, Agriculture and Forestry.

In Denmark the Forbrugerradet would appear to fill the role of an advisory council, but it is also the main private organization representing consumers.

Italy has no organization corresponding to an advisory council.

Three countries have government sponsored agencies which do not have counterparts in any of the other countries. The UK has the Office of Fair Trading, which is best known for its negotiation of codes, although it has functions beyond that; Ireland has the Office of Director of Consumer Affairs which also has a role in the establishment of codes; Denmark has the Consumer Ombudsman who deals with marketing practices.

Most of the Member States have fairly strong private sector consumer organizations, politically and financially independent, which act as pressure groups on behalf of consumer interests. These bodies frequently carry out their own tests and studies, and issue publications of consumer interest.

In addition, some consumer organizations represent at national level particular interests common to most countries such as family organizations, women's groups, trade unions, the cooperative movement, prices, or they may cover a particular industry or aspect, such as food, labelling, the post office or tourism.

In some countries specialized organizations have been set up to carry out testing or ensure standards. In fact, the varieties and cross-combinations among the Member States covered are multiple, and can only be categorized in a very general way.

Dialogue through codes and voluntary agreements

Many kinds of codes or voluntary agreements are in use in the different Member States, and while several broad categories can be noted, and are classified below, such classifications should not be regarded as being too rigid or exhaustive, as there can be a certain amount of overlap, and agreements can evolve from one category into another :

- a) Statutory codes, which are established by law. Dialogue may take place prior to their introduction, or in their interpretation. Example : various codes establishing standards.
- b) Self-regulatory codes introduced by a particular trade or industry without any prior consultations with the consumer - hence no dialogue - but which may nevertheless be to the consumer's advantage.

- c) The same kind of self-regulatory codes as in b), introduced unilaterally, but with which consumer interests are nevertheless associated (example : various advertising codes).
- d) The same kind of codes as in b) an c) but applicable only to members of a particular trading association or only a sector of a particular trade or industry.
- e) Voluntary agreements or codes between producers and consumers in a particular trade or industry arrived at and/or endorsed by government agencies, which give them moral backing even though they are not legally enforceable in the last analysis (example : the OFT codes in the UK).
- f) The same kind of agreement as in e) arrived at by voluntary dialogue for a particular sector but extended subsequently by government decree to an entire trade or industry (example : the proposed collectively negotiated agreements in France).
- g) The same kind of voluntary agreements or codes as in e) arrived at without government support and hence with less morally persuasive effect.
- h) A voluntary agreement between a particular industry and the relevant consumer interests in respect of a very precise matter. (Example : an agreement by the tobacco industry not to advertise on television; or by a motor-vehicle manufacturer to recall a particular car model for checking).

Dialogue through enforcement and redress

The judicial position of consumers has already been dealt with at some length by a previous ESC Report⁽⁶⁾, so that the matter is only touched on here in a limited way.

⁽⁶⁾ Study on the use of judicial or quasi judicial means of consumer protection in the EC, and their harmonization (1979) CES 93/79.

All Member States can cover problems of redress through regular judicial channels (but this is usually cumbersome, expensive and lengthy) or through representations by the consumer organizations mentioned above, but certain other states have organizations or instruments for the specific purpose of processing consumer complaints and seeking redress.

Denmark has the assistance in this field of the Consumer Ombudsman who can bring cases to court. In the UK the OFT can pursue offending traders.

In certain other countries, there are facilities for making complaints, but actual redress is much more difficult to come by.

Arbitration is a form of action which would involve a dialogue between consumers and producers in cases where existing voluntary systems do not work, or where parties feel aggrieved or need redress. The hope is that satisfactory solutions can be found outside the formal legal system which would have a similar effect to that of a voluntary agreement reached by dialogue, and perhaps serve as a precedent for the future.

Arbitration Boards for particular industries are a feature of Germany and the Netherlands.

Chapter VII

Consultation procedures at Community level

Within the European Communities the Economic and Social Committee itself which is responsible for this document, has a specific function in relation to consumer affairs.

Among its 156 members are many who represent consumers' interests either directly or indirectly; more specifically its Various Interests Group (Group III) is particularly concerned with consumer affairs, and there exists a special Section - the Section for Protection of the Environment, Public Health and Consumer Affairs - which includes the preparation of Opinions on consumer matters among its responsibilities.

Within the Community a regular consultation procedure has been established between the Consumer Affairs Directorate (DG XI) and consumer interests through the following committees :

Advisory Committee on Foodstuffs

This Committee was set up in 1975 and consists of two representatives -appointed by the Commission - from each of the following five groups : agriculture, trade, consumers, industry and workers.

The Consumers' Consultative Committee (see chapter III above) has the right to propose candidates for nomination as the two permanent consumer representatives on the Advisory Committee on Foodstuffs; pursuant to the Committee's rules of procedure it is required to propose to the Commission four candidates of different nationality, from among whom the Commission selects two. The following four European consumers organisations are also represented on the CCC :

- BEUC (European Bureau of Consumers' Unions)
- ETUC (European Trade Union Confederation)
- COFACE (Committee of Family Organizations in the European Community)
- EURO-COOP (European Community of Consumer Cooperatives).

The CCC issues opinions and statements of positions or resolutions, on draft Directives and Regulations, or on topics of consumer interest. These are not made public, as the CCC is regarded as a Consultative Committee, not a pressure group.

Advisory Committee on Customs Matters

This Committee was set up in 1973. It is made up of a total of 35 members including three consumer representatives.

Advisory Veterinary Committee

This Committee was set up in 1976. Following amendment of its rules of procedure in 1981, it is made up of 14 permanent members, including two consumer representatives, as well as 24 non-permanent members. The Committee's members are appointed by the Commission. The Consumers' Consultative

Committee has the right to propose candidates for nomination as consumer representatives. The task of the Advisory Veterinary Committee is to advise the Commission on all veterinary matters.

Advisory Committee on Feedingstuffs

This Committee was set up in 1977. It is made up of 26 members, three of whom are consumer representatives. The Consumers' Consultative Committee has the right to propose candidates for appointment as consumer representatives.

The Agricultural Advisory Committees

The agricultural advisory committees are each concerned with an agricultural product for which a Community organization of the market exists. It is their business to advise the Commission on all matters relating to the organization of the market for the agricultural product in question. The organizations of agricultural producers and traders regularly provide more than half of the members of these committees, while the consumers provide between two and five members - depending on the size of the committee. The consumer representatives are nominated by the Consumers' Consultative Committee which also coordinates representation on the committees.

Finally, there is the informal procedure of consultation. For any other purpose, and particularly when the preliminary study work is being done for draft legislation, the Consumer Affairs Directorate contacts professional bodies on a purely ad hoc and informal basis. Professional bodies also lobby the Commission and are thus consulted that way.

As time goes on, the Consumer Affairs Directorate gets to know most or all relevant bodies in any particular field, without the necessity for a formal procedure for consultation.

In discussions between the Commission and consumer organizations it is now generally agreed that a simple bland exchange of views between consumers and producers achieves little and that the best procedure would be to narrow the field down to one or two specific issues.

Thus, the Commission has recently persuaded the consumer organizations represented on the Consumers' Consultative Committee to make a start by initiating dialogue with such organizations as UNICE and the European Advertising Tripartite (the media, the advertisers and the advertising agents). The pharmaceutical and white goods industries have also been proposed as sectors in respect of which dialogue could usefully take place.

It should be noted that the COFACE has just finalized a voluntary code on publicity for toys with the EAT (European Advertising Tripartite), which could serve as a headline for other codes.

The general question of standards, which involves some degree of consultation with consumer interests is being progressed at Community level through CEN/CENELEC.

Finally, the producer-consumer dialogue must also be seen in the context of the Community Competition Policy with which it must in the long term be interlocked.

Chapter VIII

The Dialogue at Community Level - Conclusions

On the basis of the foregoing material in this Report the Rapporteur has prepared an Opinion on the Producer-Consumer Dialogue.

The dialogue in this context is considered in terms of voluntary agreements and codes of conduct, and the Opinion proposes the introduction of framework legislation at Community level into which the various forms of dialogue, agreements and codes, and means of enforcement and redress can fit.

The Opinion should therefore be read in conjunction with this Report.

C. APPENDIX TO THE REPORT

The Dialogue in the Member States - Inventory of Practices

BELGIUM

1. Institutional framework

In Belgium, the Ministry for Economic Affairs has overall responsibility for Consumer Affairs.

L'Inspection Générale de la politique de la consommation (General Inspectorate of Consumer Policy)

This is a non-independent body which works within the Ministry for Economic Affairs Trade Department. It has no legal powers of its own over producers or suppliers. Consumers may ask for information by telephone or letter, or request advice in disputes with traders.

L'Inspection Générale économique (IGE) (General Economic Inspectorate)

This is an independent body which works within the Ministry of Economic Affairs. It acts as a kind of policing body in general economic matters, rather than just problems concerning consumer affairs. It operates only on the basis of complaints referred to it, and very rarely on its own initiative. Most of the cases which it sends to court are not followed through.

L'Inspection des denrées alimentaires (IDA) (Foodstuffs Inspectorate)

This is a non-independent body which is directly dependent on the Public Health Administrative Section of the Ministry for Public Health. It is not widely known amongst consumers and adopts a purely technical approach to cases.

Le Conseil de la Consommation (Consumers' Council)

This is a consultative body sponsored by the Ministry for Economic Affairs, and dependent on the Trading Department. Its main task is to issue Opinions on its own initiative or at the request of the executive or legislative authorities on all problems which affect the interests of consumers.

The Consumers' Council is a privileged forum for discussion between 16 recognized consumers' organizations (27 members), and representatives of industry (9 members), large distributors (3 members), small firms and traders (2 members), agriculture (2 members) and the public services (2 members). Specialists in the production, distribution, standardization and analysis of products are also represented.

All drafts of acts of parliament, royal decrees and EEC legislation which affect consumer affairs are submitted to the Council.

Other special committees which include consumer representation

- Price Regulation Commission (Commission pour la Régulation des Prix);
- The Retail Price Index Commission (Commission de l'Indice);
- Central Council for the Economy (Conseil Central de l'Economie);
- National Energy Committee (Comité National de l'Energie);
- Insurance Commission (Commission des Assurances);
- National Distribution Commission (Commission Nationale pour la Distribution);
- Advisory Committee on Foodstuffs (Comité Consultatif des Denrées Alimentaires);
- Pharmaceutical Prices Commission (Commission des Prix pour les Spécialités Pharmaceutiques).

The Ministry for Economic Affairs has recognized sixteen consumers' organizations. These now belong to the Consumers' Council and CRIOC (Consumer Organizations' Research and Information Centre) (see below).

Together with the Ministry for Economic Affairs and the interested parties, they are responsible for submitting winding-up orders to the president of the competent trade tribunal against traders operating commercial practices which are outlawed by the Law of 14 July 1971 on Trading Practices (Art. 47).

These sixteen organizations can be neatly divided into five sub-groups according to their origin, where they operate, the kind of publications they issue, their members and the public they aim to reach :

a) Trade union organizations

- FGTB (Belgian General Federation of Labour);
- CSC (Belgian Confederation of Christian Trades Union);
- CGSLB (Belgian General Confederation of Liberal Trades Unions).

b) Co-operatives

- FEBECOOP (Belgian Co-operatives Federation);
- FNCC (National Federation of Christian Co-operatives);
- OPHACO (Belgian Co-operative Pharmacies Office).

c) Family organizations

- Families' League (Ligue des Familles);
- BC-JG (Association of Large and Young Families).

d) Socio-cultural associations

- FPS (Provident Socialist Women) (French-speaking);
- SVV (Provident Socialist Women) (Flemish-speaking);
- Vie Féminine;
- KAV (Christian Workers' Wives Association),
- KWB (Christian Workers' Movement);
- Les Equipes Populaires;
- MCF/KVB (Women's Co-operative Movement).

e) Consumers' groups

- Consumers' Association;
- UFIDEC/VIVEC.

CRIOC (Consumer Organizations' Research and Information Centre)

This is a public body set up in 1975 by the previously mentioned recognized Belgian consumers' organizations. It receives an annual subsidy from the Ministry for Economic Affairs.

CRIOC's aim is to provide technical assistance to consumers' organizations, to promote consumerism and to defend consumers. It does not represent the political views of consumers (Art. 3 of the Statute).

CRIOC is a technical institution which serves consumer organizations in their work as socio-economic pressure groups and in socio-cultural training.

CRIOC comprises three services, namely the Studies Service, the Information-Education Service and the Documentation Service.

2. Codes

Traditionally, Belgian consumers' organizations are generally not in favour of voluntary codes. They strongly prefer actual legislation to improve information for consumers and provide consumer protection.

The Consumers' Association has recently concluded agreements with a branch of the furniture industry and with Flemish travel agencies on a standard contract and a conciliation procedure. The actual impact of these agreements is very limited.

However, two sectors - advertising and mail order - have decided to adopt voluntary rules on certain trading practices and sales methods.

Several ethical codes are currently in force in advertising :

- The International Code of Unfair Advertising Practices (International Chamber of Commerce);
- Code for the Advertising of Medicines and Medical Treatments (Belgian Advertisers' Union);

- Code for the Advertising of Cosmetic and Hygiene Products (Belgo-Luxembourg Federation of Cosmetic and Hygiene Products).

The Advertising Ethics Board (JEP), the Comité de la publicité pour les médicaments et les traitements médicaux (Medical Advertising Committee), and the Comité de la Publicité pour les cosmétiques (Cosmetics Advertising Committee) are autonomous agencies which ensure that these various codes are respected.

The Groupement des Entreprises de Vente par Correspondance (Mail Order Firms Association) which is affiliated to the AGED (Association of Large Distributors in Belgium) has drawn up a code of ethics for mail order sales.

Product quality and compliance with the law come under the Institut de Contrôle de la Qualité et d'Étiquetage Informatif (Quality Control and Labelling Institute).

3. Methods of enforcement or redress

In Belgium, only a few sectors have voluntary, private and joint (traders/consumers) or unilateral bodies (see above) which deal with consumers' complaints or decide in matters of conflict between traders and consumers.

The only joint initiatives which have been taken are those involving dry-cleaning, the Vertrouwenscommissie Verbruikers-Textielreinigers (Consumers/Cleaners Trust Committee), under the auspices of the BGJG. Initiatives have also been taken in the furnishing and tourist industries, where conciliation bodies have been set up by the Consumers' Association and some members of the sectors concerned.

DENMARK

1. Institutional framework

In Denmark, the Consumer Council (Forbrugerradet) originally established in 1947 to represent household, women's and educational organizations, has now developed into a major umbrella organization for 23 nationwide organizations, and is recognized as the primary consumer interest organization by government, business and the public.

The Council has representation on an equal footing with the business world on commissions, councils, boards, etc; it seeks to formulate and work towards the implementation of consumer policy in relation to all subjects of relevance to consumers, not only goods and services in the normal "consumer" sense, but also public services, traffic conditions and environmental matters.

It supports the establishment of local consumer groups and engages in consumer education and information, particularly through its magazine "Taenk".

The Council is in receipt of a state subsidy which covers most of its expenses.

In addition to the Forbrugerradet itself, there are other consumer organizations which should be noted :

The Danish Government Home Economic Council, which consists of some of the member organizations of the Forbrugerradet, plus government representatives. This Council is under the Ministry for Industry.

The Danish Institute for Informative Labelling was set up to encourage the voluntary use of informative labelling on consumer goods, and has members representing consumers, producers, retailers, etc. It also receives some government subsidy.

An institution peculiar to Denmark among the EEC Member States is the Consumer Ombudsman, whose office is established by law under the Marketing Practices Act 1974, to carry out the supervision and control of good marketing practice, and comes under the Ministry of Industry; some further aspects of its work are dealt with below.

2. Codes

The Forbrugerradet takes a somewhat reserved view of voluntary codes, and feels that such codes are more likely to be introduced by producers in the face of a threat to introduce legislation.

The Consumer Ombudsman however has powers under the Marketing Practices Act to make guidelines for specific subjects; he cannot issue unilateral binding rules but negotiates with industry so as to acquire influence on marketing practices.

Among these are included a set of guidelines for the marketing of solarium apparatuses; TV-rental contracts, rust-protection of cars, marketing of consumer credit accounts, real estate, etc.

In recent years quality and transparency have increasingly been a problem in some sections of the food market. Consequently, in spring 1984, the Danish farming organizations instigated a dialogue between the parties concerned - the consumers' associations and trade unions - along with food production and marketing groups. So far a seminar has been held and a special liaison committee set up.

3. Enforcement and redress

In Denmark the aggrieved consumer, either privately or through a consumer organization, can complain to the Ombudsman who will deal with the complaint under the Marketing Practices Act. Traders and public authorities can also complain to the Ombudsman and he can also act on his own initiative. His decisions are final.

Matters handled by the Ombudsman recently tend to be mainly concerned with misleading advertising as well as mail order, book clubs, etc.

For minor complaints, i.e. concerning goods and services whose cost does not exceed 10,000 DKr (with certain exclusions) the aggrieved consumer can bring his case to the Consumer Complaints Board, a body on which consumer and business interests are represented. There are also Complaints Boards, approved by the main Board, for certain specific sectors.

FEDERAL REPUBLIC OF GERMANY

1. Institutional framework

Dialogue between the consumer and the State

In Germany there are two main bodies concerned with the institutionalized dialogue between the consumer and the State: the Consumer Council (Verbraucherbeirat), attached to the Federal Ministry for Economic Affairs, and the Consumer Committee (Verbraucherausschuss), attached to Federal Ministry for Food, Agriculture and Forestry.

The Consumer Council was set up in 1972 for the purpose of advising the Federal Government on fundamental aspects of consumer policy and submitting proposals to the Federal Government on its own initiative. Consumer organizations and associated bodies are represented in the Council.

The Consumer Committee, which is attached to the Federal Ministry for Food, Agriculture and Forestry, has a similar composition and similar duties.

There are a large number of other advisory bodies attached to federal ministries or other federal authorities on which consumer organizations' representatives sit alongside representatives from other sectors of the economy. The following are examples:

- Advisory Council for Motor Vehicle Insurance Rates
(Federal Ministry for Economic Affairs);
- Insured Persons' Advisory Council
(Federal Supervisory Office for Insurance Matters);
- Food Guidelines Commission
(Federal Ministry for Youth, Family and Health Matters);
- Drug Price Transparency Commission.

Dialogue between the consumer and industry

Stiftung Warentest (Product Testing Foundation)

Board of Trustees of the Stiftung Warentest

The Board of Trustees has 15 members - five consumer representatives, five suppliers' representatives and five independents. It advises the executive and the management committee of the Stiftung Warentest on all fundamental questions and makes proposals for test projects and their execution.

The Stiftung Warentest's committees of experts

For each test project a committee of experts is set up to advise on the aspects to be covered, the evaluation criteria and the test methods and the correct presentation of the test findings. The experts are nominated by the consumer organizations represented on the Board of Trustees and by industry. So far over 1,000 committees of experts have rendered service.

Product information

The German Association for Product Information in which the DIN (German Standards Institute) and the RAL (German Institute for Quality Assurance and Marking) participate, has been in existence since 1977. The dialogue takes place in the Association's committee, which is a joint body and in specialist sub-committees, which are similarly composed.

Standardization

Consumers are involved in standardization through the DIN (German Standards Institute). There are consumer representatives on 400 standardization committees (or sub-committees).

Attached to the DIN is a consumer council with the task of supporting and coordinating consumer activities in the area of standards. There is a special committee on reliability in use to deal with basic questions concerning standardization.

Quality Marks

Quality assurance and the issue of quality marks form the sphere of activity of the RAL (German Institute for Quality Assurance and Marking), with which the AGV (Arbeitsgemeinschaft der Verbraucher) (German Consumers' Association) cooperates. Affiliated to the RAL are 120 quality mark bodies.

Consumer organizations and institutions

The AGV (German Consumers' Association) is the principal consumer organization.

The AGV is a private association which consists mainly of about 30 different associations including the consumer centres of the Länder (provinces), groups interested in consumer problems (e.g. women's organizations) and scientific institutes. It defends and represents consumer interests in the mass media and vis-à-vis public authorities at federal, European and international level. It informs consumers by promoting and coordinating the activities of its member associations and by its own activities. The AGV and most of its member associations are financed by subsidies from the federal and "Land" governments.

A voluntary consumer-trader working party has been in existence for a number of years which brings together representatives of the various trade associations and the AGV, who discuss matters of mutual interest, thus constituting a form of dialogue.

The Stiftung Warentest

The Stiftung Warentest (Product Testing Foundation) was set up in 1964 as a foundation under private law.

There are in all 11 consumer centres in operation in the Länder (provinces) with a total of 120 advisory services.

2. Codes

In addition to the foregoing, a dialogue between consumers and producers, leading to codes of practice, is conducted through the bodies mentioned below :

The standards body in Germany is the Deutsches Institut für Normung (DIN).

Consumer work on standards is supported financially by the Federal Government. Examples of standardization are : public transport tickets; packaging of household chemicals, etc.

In the field of product information (PI), a voluntary product labelling agreement exists between the AGV and the Stiftung Warentest on the one hand and suppliers on the other to provide essential data obtained by testing. Products covered include domestic electrical appliances, photographic equipment, gas, oil and coal heating appliances, etc.

3. Enforcement and redress

The Law on the General Terms of Business (AGBG) entitles consumer organizations to take action against firms which apply unlawful terms, and associations which recommend their members to do so.

In practice the mere threat of legal proceedings is frequently sufficient to bring the parties in dispute to the negotiating table, and to settle the dispute - at least as regards some of the clauses at issue - out of court. This is a form of ad hoc dialogue, which can still produce effective results, even if undertaken under duress.

Thus, as a result of the consumer organizations pressing for restrictions on cigarette advertising, the cigarette industry has agreed not to advertise on public transport, thereby forestalling the need for statutory measures.

There are also various types of arbitration boards in Germany, although not all of them provide for the participation of consumer organizations. Their objective is to settle disputes out of court, although if consumers are not satisfied, they can still take a dispute to a civil court.

These arbitration boards include :

- arbitration boards for consumer complaints, attached to the chambers of commerce;
- arbitration boards for complaints about laundry and cleaning services, set up between "Land" (provincial) associations and central consumer organizations;
- arbitration boards for the motor vehicle trade set up by the ADAC (German Automobile Association) and the Central Association of Motor Vehicle Dealers;
- an arbitration board for the electrical trade.

There are also other arbitration boards, which deal with quality and warranty matters. Consumer organizations are not represented on all of these.

Together with the German Chamber of Commerce and Industry, the AGV (German Consumers' Association) has drawn up price comparison rules which make possible comparisons of prices on the market.

GREECE

1. Institutional framework

In Greece consumer policy and the consumer movement is not as developed as in most of the other Member States but steps are being taken to remedy this defect.

Consumer policy comes under the Ministry of Commerce - Section for Consumer Affairs - and a National Council of Consumers has been set up grouping 19 organizations.

As in other Member States various official organizations exist which may be said to cater for consumer interests (e.g. for the establishment and control of technical standards; for the control of prices etc.) but these could not be considered as being involved in a dialogue with consumers.

A number of consumer organizations have also been set up, but it is too early to say how a possible dialogue might work out in practice.

2. Codes

According to available information, it does not appear that Greece has any codes of conduct, as this term is understood in this report - i.e. voluntary or self-regulatory codes.

A draft law to regulate publicity and advertising has been suggested but this is still very much in the preliminary stages.

3. Enforcement and redress

The only redress open to an aggrieved consumer would be the normal law courts.

FRANCE

1. Institutional framework

The relevant government department concerned is the Secretariat of State attached to the Minister for Economic Affairs, Finance and the Budget, with responsibility for Consumer Affairs, known simply as the Ministry for Consumer Affairs.

The Comité National de la Consommation (National Consumers Committee) is an advisory council in which consumer organizations and government (Ministry for Consumer Affairs) are represented equally.

L'Institut National de la Consommation (National Institute for Consumer Affairs) an autonomous public body is also under the tutelage of the Minister for Consumer Affairs, and has a board consisting of representatives of consumers organizations. It carries out tests and studies and disseminates information, notably through its publication "50 million de consommateurs".

There are also a number of other official bodies dealing with consumer affairs of which the principal are the following :

- Comité National de la Consommation (CNC) - to coordinate consumer affairs matters between the different government ministries
- Comité National des prix
- Comités économiques et sociaux régionaux
- Centre des recherches, d'études et de documentation sur la consommation (CREDOC)
- Direction de la police économique - for misleading advertising and false weights and measures in the Paris region, etc.

In the non-governmental sector France has about 20 national consumer organizations officially recognized as being concerned with consumer affairs, many of which specialize in the defence of family or trade union interests.

The best example of these private bodies is the UFC (Union fédérale des consommateurs) which is completely independent of all political and trade union applications and is best known for its publication "Que choisir".

Most of the major consumer organizations in France are decentralized at regional, department or local level. They are grouped together at regional level in UROCs (Unions Régionales des Organizations des Consommateurs - Regional Unions of Consumers' Organizations), whose main job is to organize TV broadcasts.

2. Codes

In France, negotiations on codes which are generally referred to as collective agreements, have taken place between either consumer organizations and professional bodies, or between the Institut National de la Consommation and those bodies. For example agreements were negotiated in respect of landlords and tenants and in respect of second hand cars.

The difficulty is that such collective agreements are regarded as optional and have only been signed by a minority of "professionals" or as engaging only these persons who personally sign them. The agreements therefore have had only limited applicability and have limited value.

At the moment (early 1984), the possibility of declaring codes which have been negotiated and agreed between professional organizations and consumer associations generally applicable is under consideration, and a Commission for Consumer Law Reform has been working on the matter.

The proposal is that such "collectively negotiated agreements", once negotiated between consumer and professional organizations, would become applicable by government decree to all members of the "profession" concerned, provided the agreement can be deemed to be of national application.

It should be noted that it is envisaged that the Ministry of Consumer Affairs may intervene in the negotiations after they have begun but cannot compel the initiation of negotiations.

These proposals have of course not yet been adopted and are still in the hypothetical stage.

As far as concerns advertising, France, like most countries, has an advertising code administered by the Bureau de Vérification de la Publicité. This dates from 1953, but consumer representatives were appointed to the Board in 1971. Its main function is to hear complaints; it does not cover Radio and TV advertising which is subject to a separate authority. Separate advertising codes also exist for certain other sectors such as mail order and pharmaceuticals.

3. Enforcement and redress

The aggrieved consumer can seek redress through the Institut National de la Consommation or through one of the officially recognized consumer protection organizations which are legally entitled to defend consumers interests (Law of 27.12.1973 known as the Loi Royer).

The consumer may also try to get his complaint settled "peacefully" through official intervention through the appropriate government agency.

The "Boîte Postale 5000" (P.O. Box 5000) scheme enables the administration to deal with minor complaints by consumers in collaboration with regional consumers' organizations.

Complaints in respect of advertising code can be referred to the "Bureau de Vérification de la Publicité".

Apart from the foregoing however the normal form of redress for a consumer organization or an individual consumer would be through the civil courts, a long and expensive procedure, and it is envisaged that this procedure would continue under the proposed reforms for collectively negotiated agreements.

IRELAND

1. Institutional framework

The Department of Industry, Trade, Commerce and Tourism has overall responsibility for consumer affairs.

In Ireland serious interest in the question of consumer protection began in the 1970s when a National Consumer Advisory Council was established to advise the Government on what consumer protection steps should be taken. The Council has representatives of government trade unions and consumers organizations - the Consumers Association of Ireland, the Irish Countrywomen's Association and the Irish Housewives' Association.

Following this body's recommendations, significant legislative progress has been made in the past few years, firstly by the introduction of the Consumer Information Act in 1978 which establishes the Office of Director of Consumer Affairs, and secondly by adoption of the Sale of Goods and Supply of Services Act 1980.

2. Existing codes

The Consumer Information Act 1978 provided for the encouragement of Codes of practice by the Office of Director of Consumer Affairs. Within the comparatively short period of five years, four voluntary codes have been drawn up between producers and consumers with the agreement of this Office. These cover the following :

General Advertising

Establishment in 1981 of a Code of Advertising Standards on the initiative of the ASAI (Advertising Standards Authority of Ireland), an independent self-regulatory body supported by advertisers, media and advertising agents.

Life Insurance -

Code of practice for Advertising and Sales Material for Life Insurance, sponsored by the Life Offices Association of Ireland.

Medicine -

Code of Standards of Advertising Practice for Proprietary Home Medicines sponsored by the Federation of Irish Chemical Industries.

The codes for life insurance and medicine are also in conformity with the general advertising code.

Mail order -

Code of Practice for Catalogue Mail Order sponsored by the relevant trade association.

Travel agents -

Draft code of conduct of the Irish Travel Agents Association.

There also exists a sixth code drawn up without reference to the Office of Consumer Affairs, the Irish Cavity Wall Regulation Code of Practice. This is a self-regulatory code drawn up by this particular trade.

It should be noted that while these codes were not strictly speaking drawn-up as a result of a direct dialogue with consumer organizations, the Consumers Association of Ireland is represented on the National Consumer Advisory Council which in turn recommended the introduction of consumer legislation, so that the Office of Consumer Affairs may be said to indirectly represent consumer interests.

3. Enforcement and redress

It is really too early to decide whether the Irish codes be effectively implemented and monitored. To date however, advertisers have generally taken corrective action once the Advertising Authority has upheld a complaint against them.

A major difficulty with all the Irish codes already adopted however is that none of them (except the draft travel agents code) provide for conciliation or arbitration and the consumer is left to take his case to the ordinary courts. Since the average citizen is not inclined to go to the trouble and expense of resorting to law, it does appear that consumers' right of redress can be very limited.

In practice the Office of Consumer Affairs began by handling general complaints from the public, but has been obliged to limit its interventions to matters strictly falling within the framework of the Consumer Information Act.

In practice also it is worth noting that by far the greatest number of complaints received by the Office referred to travel, and that the draft travel agents code envisages the establishment of a conciliation service. This may be considered as the result of a de facto dialogue.

In Ireland there are a number of miscellaneous bodies working on behalf of consumer interests, some of which have been mentioned already, which are listed below :

- Post Office Users' Council;
- Advertising Standards Authority of Ireland (ASAI);
- Irish Countrywomen's Association;
- Consumer Association of Ireland (CAI) - member of BEUC;
- Irish Housewives' Association;
- Institute of Industrial Research + Standards (IIRS);
- National Prices Commission.

ITALY

1. Institutional framework

Until recently the prospects for the producer-consumer dialogue seemed to have been less promising in Italy than in most of the other Member States.

Unlike other countries, Italy does not have an appropriate joint producer/consumer institution with government involvement at national level in which the two sides could exchange views. This is partly a reflection of the decentralized nature of the Italian administrative system.

Nevertheless there exists on the one hand a number of miscellaneous official or semi-official bodies, concerned with aspects of consumer affairs, and on the other hand, a number of active consumer organizations several of which operate at national level.

These two groups of organizations can in effect be said to have engaged in a form of dialogue, even if not as yet in a very integrated and formalized way.

Matters however, are moving rapidly, and the Italian Parliament has reacted by setting up, on a voluntary basis, a council comprising members of the lower and upper houses of Parliament, drawn from all political groups, with a view to speeding up its work on problems raised by consumers.

In this same context legal provisions are being considered, at both national and regional level, to help consumers and their organizations. Final approval has yet to be given, however. The proposed provisions would recognize the role of consumer organizations and define the instruments to be used to defend consumer interests and promote dialogue.

The current practice is that consumers are represented on various consultative committees set up by individual ministries, quasi-governmental bodies and local government.

A form of dialogue with the national government can take place through consumer representation on these committees and particularly 1) the National Foodstuffs Council; 2) the Italian Foodstuffs Codex Committee; 3) the Committee of Fair Advertising and 4) the Interdepartmental Prices Committees.

The Ministry of Industry, Commerce and Crafts has set up a consultative committee, on which consumers' organizations are represented, to monitor prices fixed by the State (e.g. the prices of petrol, diesel fuel, motor-vehicle insurance etc.). Ad hoc committees have also been set up by the Ministry to monitor the distribution of some products.

Various consultative committees, mainly responsible for overseeing product distribution, are attached to regional and local authorities. Some chambers of trade have joint R & D committees which look into the quality of goods marketed in Italy.

The principal consumer organizations include the FNC (Federazione Nazionale dei Consumatori); and the Comitato Difesa Consumatori (Consumers Defence Committee).

Consumer organizations in Italy mainly act on their own with regard to information, consumer protection and legal proceedings. In addition to recourse to the ordinary courts, consumer organizations are able to call upon the services of public health offices for analyses and specialized university institutes for research work.

2. Codes

In a general sense, the Italian consumer organizations are strongly in favour of codes of conduct. Until recently there had been no significant developments in this field, but with the rapid increase in awareness of this important issue notable progress is being made in the dialogue between producers and consumers with regard to (a) insurance (agreement on a standard form of policy, reached between representatives of the two parties involved) and (b) public transport in towns and cities (establishment of a charter of transport users' rights and user participation in the running of transport undertakings).

Other areas considered by Italian Consumer Organizations to be of particular importance from the point of view of dialogue leading to codes are :

- after-sales services in the case of durable consumer goods (cars, electrical household goods, etc.);
- advertising in its various forms and aspects;
- mail-order selling;
- public and social services provided either by public or private bodies (public transport mentioned above is an example).

3. Enforcement and redress

It appears that at present in Italy consumers have no satisfactory means of redress. It is almost impossible to initiate judicial action against producers and traders, either because no existing legal instrument makes any reference to the consumer, or because any recompense to be gained is vastly less than the expenditure in money and time in trying to claim it.

LUXEMBOURG

1. Institutional framework

In Luxembourg, consumer affairs are dealt with by the Ministry for National Economy and the Middle Classes, and the Ministry of Justice (these Offices are currently held by the same Minister).

Luxembourg has rather comprehensive legislation on consumer protection, reinforced by further regulations introduced in 1982-1983 :

- the coordinated text of 20 January 1982 of the Grand-Ducal Regulation of 23 December 1974 on Unfair Competition, as modified by a further regulation of 22 December 1981;
- the Law of 7 July 1983 modifies previous legislation of 1961 and 1944 on prices; a Prices Office exists, now supplemented by a Prices Commission, on which government, employers' organizations, the liberal professionals, the trade unions and consumers are represented;
- the Law of 25 August 1983 on the Juridicial Protection of the Consumer

Le Conseil de la Consommation (Consumer Council) was set up under government auspices in 1965 to provide the Minister for National Economy and the Middle Classes with the correlated comments of the consumer organizations; it has to make suggestions in connection with prices and the quality of goods, to encourage consumer research and to coordinate information work for the benefit of consumers. The Consumer Council has been particularly concerned with foodstuffs, additives and colouring agents, and misleading advertising.

The Council has 12 members of whom five are from the consumer organization ULC (see below), the other members being representatives of the local price commissions, independent experts and government officials.

L'Union Luxembourgeoise des Consommateurs (ULC) was set up to protect consumers' interests, promote market transparency and represent consumers before the public authorities. It is the only representative consumers body and consists of ten associations ranging from trade unions to women's associations and cooperative societies. It is financed by members' subscriptions and government subsidy. The ULC deals with general information and consumers' problems, and also assists consumers through its legal aid service. It publishes a magazine "De konsument".

2. Codes

As far as legal provisions are concerned, the recently introduced Law of 25 August 1983 on the Judicial Protection of the Consumer (see below) contains legislation relating to four specific fields of activity :

- sales by correspondence
- door-to-door selling
- repair work
- advertising.

Although these are not codes, strictly speaking, they may well serve as regulatory rules covering the subjects mentioned.

3. Enforcement and redress

Under the Law of 25 August 1983 concerning the Judicial Protection of the Consumer, Luxembourg has introduced a comprehensive piece of legislation governing contracts between suppliers of consumer goods (durable or not) and services on the one hand, and the final private consumer on the other.

This Law lists 20 specific types of unfair clause against which the consumer is now given legal protection and applies also to suppliers from outside Luxembourg in respect of goods or services provided within the boundaries of the Grand Duchy itself.

Redress may be sought by an individual consumer, a professional organization or a consumer's association, through the regular legal process.

The legislation on unfair competition (text of 20 January 1983), and the Law of 7 July 1983 on prices also provide for legal redress for consumers through the normal channels.

NETHERLANDS

1. Institutional framework

In the Netherlands, the Ministry for Economic Affairs has overall responsibility for consumer matters in the general sense.

The Consumer Affairs Committee (CCA), a dependent body of the SER (Economic and Social Council), is the principal institution concerned with the consultation of consumer interests within the framework of government policy.

There are two national consumer organizations, the Consumentenbond and the Stichting Konsumenten Kontakt (Consumer Contact Foundation). Both organizations participate in the CCE (Consumenten Commissie voor Europa) which handles consumer affairs at European level on behalf of the Netherlands.

Consumers have substantial representation on the CCA, which body can act as a mediator in the interplay of producers and consumers interests; on the solution of disputes between producers and distributors on the one hand and consumers on the other; and in particular on the formulation of standard clauses in contracts.

2. Codes

In the Netherlands it is in the field of marketing practices where self-regulation and codes have had some success. The most successful achievement is the Dutch Advertising Code (Code voor het Reclamewezen) drawn up in 1964 by advertisers in liaison with consumer organizations, the media and advertising agents.

The code is enforced by the Reclame Code Commissie (Advertising Code Commission) which has at its disposal two types of recommendation : the non- public recommendation - which in reality serves as a mere warning - and the public recommendation in case of repeated violation of the code. The latter recommendation is a real sanction : it is made public and the advertising media may no longer place the advertisement concerned. Research shows that both types of recommendations are quite effective.

Separate Codes exist for medical, pharmaceutical and dental organizations, but these are also administered by the Advertising Code Commission, but here the rules for compliance are stricter.

Radio and TV advertising is however excluded from the scope of the Advertising Code, and is covered separately under formal legislation.

Appeals from decisions of the Advertising Code Commission can be made to a separate body, the College van Beroep (Appeal Commission).

By and large, Dutch consumer organizations are satisfied with the working of the Advertising Code.

Other areas where self-regulation plays an important role are as follows :

- The Mail Order Code, which for instance provides for a cooling-off period for all transactions.

- The setting of norms and the issuing of quality labels, by the Nederlands Normalisatie-Instituut and the Nederlands Electrotechnisch Comité, which are private institutions, although with strong government influence. It should be noted however that in 1975 a government supported attempt to promote informative labelling on a voluntary basis through the Stichting informatieve etikettering Nederland ended in failure because of lack of support from trade and industry, and the foundation was closed down.
- A guarantee fund for Dutch tour operators.
- In the area of consumer credit, two examples of self-regulation may be given. The first concerns the disclosure of interest rates, which a number of companies had already undertaken prior to legislative intervention.
- The second example is debt-counselling and debt-adjusting, for which the association of Volkskredietbanken (the former municipal pawn houses) has established rules.
- With regard to standard contract terms, self-regulation plays an important role in the sense that many national organizations of trade and industry have formulated standard contract terms, which they then either impose upon or - more often - recommend to their members. Only in a limited number of cases have consumer organizations been consulted.
- Self-regulation has had results in certain trades and industries as for example the self-regulatory information schemes for detergents, domestic electrical appliances, and paint.
- Finally, Dutch consumer organizations hold ad hoc consultations with various sectors on matters which benefit the consumer, e.g. negotiations with the Federation of Kitchen Suppliers for better guarantees and with the Federation of Architects about liability.

3. Enforcement and redress

Self-regulation in the form of providing consumers with a speedy, inexpensive and simple procedure exists in many branches of trade and industry in the Netherlands. The procedure for complaints concerning breaches of the Advertising Code has been dealt with above.

In some other cases, consumers' organizations have participated in setting up bipartisan Arbitration or Complaints Boards. Eight such boards are recognized by the Ministry for Economic Affairs : for interior decorating, dry-cleaning, laundry, recreation, travel, wooden floors, kitchens, and public utilities (gas, water, electricity). These recognized Arbitration Boards are subsidized by the Ministry of Economic Affairs, and are members of the Consumer Complaints Foundation.

Retailers who are members of a trade organization which collaborates with the relevant Arbitration Board, are in practice obliged to follow the ruling of such Board. If they do not the consumer can take legal steps to force them to do so. Retailers who are not concerned with a particular complaint can and do sign a declaration stating that they will cooperate and accept the Board ruling in the matter. (A ninth Board on furs also exists which is recognized by the Ministry for Economic Affairs but is outside the Complaints Foundation).

The consumers can also seek redress through the civil courts (Kantongerecht), and it remains to be seen whether the reform of civil procedure currently under way will affect the Consumer Complaints Boards.

UNITED KINGDOM

1. Institutional framework

The relevant government ministry in the UK with overall responsibility for consumer affairs is the Department of Trade and Industry.

The government has also set up and funded the National Consumer Council (NCC) as an independent body to restore a balance between the consumer and industrial interests. It does not deal with individual complaints, but represents consumer interests in discussions with industry and government, national and local.

The Office of Fair Trading (OFT) is an institution peculiar to the UK and is an independent agency established under the Fair Trading Act 1973. It is responsible for keeping under review and taking action of matters which may adversely affect the interests of consumers in a general sense, but does not deal with individual complaints.

The OFT has an obligation to promote codes of practice which are voluntary agreements arrived at as the result of negotiations (i.e. dialogue) between the office and trade associations in a particular field. This is dealt with in more detail below.

The OFT can also make proposals for legislation on consumer matters but such proposals must be examined by the CPAC (Consumer Protection Advisory Committee) which has representatives of industry, consumers and public authorities. No such proposals have been made since 1977.

The Nationalized Industry Consumer Councils are statutory bodies set up to protect the interests of nationalized industry consumers. The Chairman and members of these bodies are appointed by a Minister, the Secretary of State for Trade and Industry.

Examples of these Councils are : the Domestic Coal Consumers' Council, the National Gas Consumers' Council, the Post Office Users' National Council, various regional electricity and transport councils etc. Separate arrangements exist in some cases for Scotland and Northern Ireland.

These bodies deal with inquiries and complaints from consumers and can if appropriate make representation on the consumers behalf to the industries concerned and to the government.

The Consumer Standards Advisory Committee of the British Standards Institution coordinates and provides consumer representation on technical committees of BSI, influencing the development of technical standards for products of consumer interests. It advises the board of BSI on standards policy.

In the private sector the best known consumers protection body is the Consumers' Association (CA) an independent comparative testing organization which reports on goods and services in "Which?" magazine and other publications. CA also represents consumer interests in general in discussions with industry on comparative testing and codes of practice.

Also in the private sector is the National Federation of Consumer Groups with its supportive structure of local voluntary groups. The Federation represents the views of "grass roots" consumers on policy-making bodies, organizes and takes part in inquiries and investigations, and at a local level often deals with complaints.

The Consumers in the European Community Group (CECG), which acts as the umbrella organization for UK consumer bodies on EEC issues, holds regular meetings with trade associations.

2. Codes

As already stated, the Office of Fair Trading has the obligation to promote voluntary codes of practice. At present 20 such codes exist covering the following subjects (several subjects mentioned have more than one code) :

- Domestic electrical appliances.
- The Travel Trade codes negotiated with ABTA (Association of British Travel Agents).
- Codes of practice for the motor industry.
- Motor-vehicle repairs.
- Footwear and shoe repairs.
- Laundry and cleaning services.
- Mail order.
- Furniture.
- Funerals.
- Photographic equipment.
- Postal services.
- Telecommunications.
- Direct sales and service.
- Glass and glazing.

The OFT backed codes have considerable moral authority, but are not strictly speaking legally enforceable, although proposals to make them legally binding have recently been suggested.

In some cases, other codes of practice such as self-regulatory codes have been introduced by a particular trade or industry without any consultations with consumer interests and hence without dialogue although consumer organizations play an indirect part in their operation.

Probably the best known is the British Code of Advertising Practice which is promoted by the independent Advertising Standards Authority. Individuals associated with consumer organizations are members of the Authority. The OFT did not negotiate this code, but supports it.

TV and radio advertising are subject to a statutory broadcasting control/code of practice.

Other codes have been introduced without official OFT backing, such codes may or not involve dialogue with consumers. The most notable recent example, being in the insurance industry.

The Insurance Ombudsman Bureau (IOB) has been set up by a number of leading insurance companies, and consumer organizations were closely involved at the planning stage. The Ombudsman is appointed by, and reports to, an independent Council on which representatives of the insurance industry are in a minority. Several members of this Council are closely associated with consumer organizations.

3. Enforcement and redress

The Office of Fair Trading, apart from supervising the negotiations of voluntary codes, pursues traders who persistently commit offences and break their obligations to consumers.

Individual consumer complaints taken up through the Trading Standards Officers of local authorities, and the voluntary Citizens Advice Bureaus (CAB). There are over 900 local CABs, mostly funded by local authorities.

In addition, some local authorities operate Consumer Advice Centres, and there are approximately 40 local voluntary consumer groups which can advise.

The Consumers' Association also handles individual complaints, through its Personal Service to which members subscribe.

Finally, the consumer can have recourse to the normal legal procedures, and since 1973 this has been simplified by the introduction of an informal procedure for small claims under which a County Court acts as arbitrator.

European Communities - Economic and Social Committee

"Producer-Consumer Dialogue"

Own-initiative Opinion of the Economic and Social Committee

Brussels : General Secretariat of the Economic and Social Committee

1984 - 55 pages

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The Opinion situates the position of the consumer in the market economy by reference to the changing relationship between producers and consumers in recent years, which has led to an imbalance in the market to the detriment of the consumer.

While this imbalance could be redressed by traditional means such as action by consumer pressure groups, government intervention or judicial remedies, the Committee considered these insufficient and proposed a producer-consumer dialogue leading to voluntary agreements or codes of practice.

In order to develop and coordinate the dialogue at Community level, the Committee proposed that a framework Directive be drawn-up to embrace the various forms of dialogue, agreements and codes, as well as the means of enforcement and redress.

The Opinion details the points which should be covered in the proposed Directive, with which the voluntary codes and agreements would have to comply in order to get an EEC "Certificate of Conformity".

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