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A NEW IMPETUS FOR CONSUMER PROTECTION POLICY

(Communication from the Commission to the Council)

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CONSUMER POLICY

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PART ONE

THE NEED FOR A NEW IMPETUS FOR CONSUMER PROTECTION POLICY

I Principles of Community Consumer Policy

1. The tenth anniversary of the adoption of Community policy for the protection and promotion of consumer interests is an appropriate occasion for a review of its development. Ten years is long enough to give the necessary depth of perspective to its successes and shortcomings. A commemorative brochure to be published by the Commission to mark this tenth anniversary relates the detailed history of the Community's consumer policy and it need not, therefore, be repeated here. The following paragraphs delineate the economic and political background against which the policy was translated into practice, examine the results obtained and propose how consumer protection should be viewed as an integral and indispensable element of the structure of Community policy.

2. The first impetus for consumer protection policy was given by Heads of State and Government in October 1972. Meeting in Paris, on the eve of the Community's first Enlargement, they called on the Community to adopt a programme to augment and coordinate national measures in favour of the protection of consumers. This policy was formally inaugurated in April 1975 with the adoption of the first programme for consumer protection. This set out to guarantee five basic consumer rights:

- protection of the consumer against health and safety risks;
- protection of consumers' economic interests;
- improvement of the consumers' legal position (help, advice, the right to seek legal remedy);
- improvement of consumer education and information;
- appropriate consultation and representation of consumers in the taking of decisions affecting their interests.

These rights were reaffirmed six years later with the adoption of the second programme in May 1981. Both programmes set out the considerations which should be a guide to actions intended to ensure that these rights become a reality in the lives of Community citizens. These actions included a number of specific proposals from the Commission for legislation, for pilot projects and research, for consultation procedures and for the support of actions taken on the initiative of the consumer movement itself.

II Achievements

3. What has been achieved falls far short of the intentions of the consumer action programmes.
 - The Council has decided only four main proposals arising directly out of the two consumer programmes. Three others which await decision

were sent to Council by the Commission from six to eight years ago.

A number of technical implementing measures have been adopted by the Council or the Commission concerning products such as cosmetics, textiles, foodstuffs, cars and substances dangerous to health, for which framework legislation already existed. These have benefited consumers and have contributed to the achievement of the internal market.

III Why achievements have fallen short of expectations

4. Why have the achievements of Community policy lagged so much behind the expectations that were held out for it in 1972? Four principal reasons can be identified.

5. The first adverse influence has been the deep economic recession of the past decade. The first consumer programme was inaugurated when economic growth, following the 1973 oil crisis, was slowing from the high levels of the 1960s; the appearance of the second programme coincided with the after-effects of the oil shock of 1978. Governments and industry were both reserved about the two programmes, pleading that the cost of regulation was an extra financial burden to them when they were already feeling the effects of recession. Implicit in this argument is the "paternalist" attitude that the promotion and protection of consumer interests is an activity to be pursued only when times are good, something to be set aside in periods of economic recession. In short a "fair weather" phenomenon. This attitude overlooks the fact that recession affects consumers at least as much as other agents in the economy. Consumers most

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Council of Ministers. A good example is the Commission proposal for the control of doorstep selling: a Community agreement has been blocked by one Member State for over a year. When the complexity of the interinstitutional consultation procedures and the necessity to consult producer and consumer lobbies is added to the requirement of unanimity, it becomes evident that Community methods of decision-making can be too easily delayed by Member States, preventing programmes of action being put into practice.

9. The fourth limiting factor on the achievement of the desired results has been the practice of proposals prescribing rules for a restricted range of goods or ingredients (vertical harmonisation). An alternative strategy is to concentrate effort on the negotiation of fewer proposals each having a more general coverage, as is envisaged in the new approach to technical harmonisation and standards approved by Council Resolution of 7th May 1985.

IV Actions taken by the Commission

10. Conscious of these adverse influences on the realisation of Community objectives both for the establishment of the common market and for the protection of consumers, the Commission has sought means to counteract their effects. The Community now operates a system under which new standards and technical regulations intended for adoption by Member States individually must first be notified to the Commission, which in its turn notifies all other Member States (Council directive of 28th March 1983). The Commission may request a stay of adoption of the measures in order to avoid the creation of new barriers to trade.

This notification system came into operation in 1984 and will help curb further divergences between Member States in technical specifications for goods, including consumer products.

11. Moreover, as already indicated, in May 1985 the Community adopted a new approach to technical harmonisation. This will allow products for which essential safety or other mandatory requirements can be specified in common to be grouped together in Council Directives. Detailed specifications of product characteristics will be left to the European standardisation bodies CEN and CENELEC, which will be mandated by the Commission to prepare common standards to satisfy the mandatory requirements. Pending the completion of common European standards, existing national standards which satisfied the mandatory requirements will be accorded Community-wide recognition so that the products to which they relate can circulate freely in the Community.

This new approach has been developed on the basis of the "Cassis de Dijon" judgement of 1978. In this judgement, the Court identified the criterion of "mandatory requirements" for, among other things, consumer protection as being the basis for deciding whether a national law should be permitted to stand even if it was causing a barrier to trade. Where a national law fails to meet this criterion, its elimination constitutes a "negative" harmonisation at

Community level in contrast to the "positive" kind brought about by new Community legislation. The Court has, however, been cautious in applying this criterion in subsequent cases. It has preferred, in particular, to uphold national rules concerning health or safety standards wherever reasonable doubt exists as to the need to protect users of products whose characteristics are the subject of the rules concerned.

12. This new approach to technical harmonisation is valid for categories of goods for which consideration of health and safety are important. It will, in those sectors in which it is utilised, make entitlement to free circulation dependent on a product meeting legislated Community-wide health and safety levels.

13. Important though legislation may be, however, in the development of a Community policy of consumer protection, it depends for its effect on proper enforcement by Member States. It is unrealistic to expect that legal prescriptions at Community level will suffice to achieve policy objectives. It will therefore become increasingly important, as the body of consumer protection legislation becomes larger, to develop closer consultation and cooperation between national authorities responsible for enforcement. The Commission has taken an initiative in this respect regarding consumer health and safety administration and will pursue and enlarge this approach in other areas of concern for consumer welfare (see para. 24)

V Justification for a new impetus

14. The essential objective of the Community is, according to the Preamble to the Treaty, the constant improvement of the living and working conditions of its peoples. The promotion of consumer protection policy must therefore be seen as an integral part of Community policy for citizens' welfare. The establishment of the large internal market is the means and not the end of the creation of the European Economic Community. The "four freedoms" of movement of people, of goods, of services and of capital taken with the rules on competition are intended to serve the needs of the citizen in his economic and other activities.
15. Consumer protection has another primary function in the establishment and operation of the Common Market. Goods which fail to give the consumer a reasonable return for his money are a bad investment.
16. By contrast, goods which satisfy a well-informed consumer and give value for money inspire confidence in the consumer. Goods with a reputation for safety and reliability capture markets both within and outside the Community, thereby maintaining the Community's share of trade against competing external producers. These goods therefore help to sustain economic growth and the creation of jobs.
17. Seen from this twin standpoint of citizens' welfare and efficiency of production, consumer protection assumes its proper dimensions as an indispensable part of the fabric of Community policy. It is this twin

perspective that must motivate and energise a new impetus for realising the Community's policy for consumer protection and for placing it amongst the highest priorities for Community action.

PART TWO

WHAT THE NEW IMPETUS IS INTENDED TO ACHIEVE

18. The principal lines of action for the promotion and protection of consumers' interests are already well established in the first and second programmes. They may be stated succinctly in the following terms. Consumers want to be sure that before products are put on the market they conform to acceptable health and safety standards. Once this is ensured, they want them to move freely and to be sold on fair terms throughout the Community. They also want to see their interests taken more into account when other Community policies are being formulated. The future initiatives should aim at three main objectives:

- Products traded in the Community should conform to acceptable safety and health standards.
- Consumers must be able to benefit from the common market.

- Consumer interests should be taken more into account in other Community policies.

The following sections deal with the actions to be taken in pursuance of these three objectives.

I Products traded in the Community should conform to acceptable safety and health standards

19. It is a consumer right that goods circulating without restriction in the Community should be safe. Product safety is, therefore, a basic requirement and condition for the achievement of the internal market.

The Community objective should be to establish a comprehensive product safety policy. The essential components would be :

- a programme of LEGISLATION which would set out clearly for manufacturers and suppliers the health and safety levels which their products must meet in order to ensure the protection of the consumer.
- a programme of COOPERATIVE ACTIONS between national authorities responsible for the safety of consumer products designed to facilitate proper enforcement of safety laws;
- the creation of COMMUNITY FACILITIES FOR SURVEILLANCE AND CONTROL of health and safety risks posed by the use of consumer products;

- campaigns for the INFORMATION AND EDUCATION of consumers concerning the safe use of products in the home and in leisure activities.

Legislation

20. Most Community legislation on the safety of consumer products dates from the 60s and 70s. It has mainly specified those characteristics of particular goods which are regarded as necessary to avoid health and safety risks. Experience has shown that the technique of specific legislation limited to particular goods has been insufficient to bring about a comprehensive Community policy for product safety. The case-law approach has succeeded in eliminating some trade barriers masquerading as consumer protection. As already indicated, however, the Court has acted with caution whenever reasons of health and safety justify a restriction on the import of goods. In such cases, barriers to trade can only be eliminated by Community legislation.
21. Thus the need to press on with legislation setting out safety requirements for consumer products at Community level remains. Future legislative action in this area will include both the improvement and updating of existing legislation and the coverage of products not yet the subject of Community rules. The "new approach" to technical harmonisation and standards facilitates this.
22. Extension and updating of existing laws will require a number of actions, as listed in Part Two of the Timetable annexed to the White Paper on Completing the Internal Market (COM(85)310 final of 14th June 1985). In the context of consumer protection, the products

concerned include, in particular, motor vehicles, food, pharmaceuticals, household chemical preparations, toys, cosmetics and textiles.

23. New product safety laws will require a number of Community actions:

- The new approach to technical harmonisation will be steadily implemented by the Commission.
- The Commission, conscious of the importance of the definition of safety and of enforcement of existing and new product safety legislation, will consider the need for action at Community level to facilitate and/or improve procedures, as already exist in some Member States, for imposing temporarily or permanently restrictions or prohibitions on the marketing of particular goods. This consideration will also assess the need for the imposition at Community level of a general obligation on manufacturers to produce and market products which are safe. General or horizontal action at Community level in relation to product safety will be greatly strengthened by the adoption of the directive concerning liability for defective products.
- The Commission will mandate European standardisation bodies to examine equipment for children, baby carriages, cots, playpens, writing, drawing and colouring materials and handicrafts equipment used by children for play and in schools, where tests and specific cases reported by consumer organisations have revealed avoidable safety hazards (for example, baby carriages of unstable design). Proposals will also be prepared to prohibit the manufacture of toys or similar products which have properties such as smell or shape which may cause them to be confused with foodstuffs.

- About 25% of all consumer accidents are concerned with the use of sports equipment. An examination will be carried out to decide whether Community action would be appropriate.

- Counterfeit products may pose dangers for consumer health and safety, as well as economic loss to reputable manufacturers. Initiatives will be taken to counteract the adverse effects on consumer safety of goods counterfeited in the Community to complement those already proposed for goods imported from third countries (COM(84)705 final).

- Following the withdrawal in 1980 of the proposal for a directive on the advertising of proprietary medicines and the adoption of the Misleading Advertising Directive in 1984, there will be a reassessment of the situation with a view possibly to presenting new proposals.

Cooperative action between Member State authorities

24. In May 1984, the Commission organised, at Montpellier in France, the first conference of representatives of Member State authorities responsible for the enforcement and surveillance of regulations and administrative provisions intended to ensure that consumer products, in their normal or reasonably foreseeable use, did not significantly endanger health or safety. The conference reviewed existing national and Community provisions for enforcement and surveillance and, in particular, considered the implications of the Community directives on the convergence of standards and technical regulations and the surveillance of accidents due to consumer products in the home environment.

The Montpellier conference created an enlarged awareness of the need for inter-administrative cooperation in the interests of increased product safety across the Community. The Commission intends to organise a follow-up conference and to establish this form of consultation as an annual event. It envisages as a valuable outcome from such consultation, cooperation in the following fields:

- training of staff for enforcement duties, including staff exchanges for experience;
- development of common methodologies for product safety surveillance;
- improved notification procedures and mutual reporting of actions taken in specific instances of safety hazards.

Community facilities for surveillance and control of health and safety risks

25. The early warning system for rapid exchange of information on dangerous products agreed in June 1984 involves setting up a monitoring network of correspondents in Member States. This network might also be used to complement existing mechanisms for the dissemination of information on research findings and specific actions relating to health and safety risks. The Commission will propose that the early warning system be extended to give information to third countries to help prevent the export of dangerous products or substances forbidden in the Community. The European Parliament has suggested that this should be done in the case of pesticides.

26. The adoption and setting up of the system for the collection of data on accidents due to consumer products will lead to the creation of databanks in all EEC countries, linked up by the Commission's central data processing facility. This is an essential means of detecting priority areas for legislation. It also serves as an indicator of where to intervene in the shorter term to prevent accidents involving specific products.

Campaigns for consumer information and education

27. Accidents due to consumer products have multiple origins. The three most important are:
- insufficient skill on the part of the consumer;
 - deficient product information, including instructions for use;
 - inherent defects in materials or in product design.

Much can be achieved by increasing consumer awareness of dangers through information campaigns on the part of public authorities and of the producers and distributors of products and services. The Commission will therefore direct its energies towards the creation of cooperation in this sphere, notably through the organisation of a number of coordinated actions in 1988. This will aim to evoke public awareness to the magnitude of the problem. Every year, there are more accidental deaths and injuries due to home and leisure accidents than due to traffic and work accidents. It is estimated that such accidents cause more than 30.000 deaths and around 40 million injuries in the European Community every year.

28. Child safety is a core responsibility of modern society. More consideration has been given in the past to the problem of traffic accidents and children than to areas such as falls, burns, drowning, suffocation and accidental poisoning. The Commission will give special attention to child safety through a number of actions. A European Conference in November, jointly organised by the Commission and the European Product Safety Association, will place special emphasis on the prevention of child poisoning. The Commission will also organise a Community-wide campaign on child safety and on the prevention of childhood accidents, will publish a guide to child safety and will study the need for tougher standards, for example for safety closures and warnings on dangerous chemicals and medicines.

II Consumers must be able to benefit from the common market

29. If the common market is to be fully effective, it must be made easier for consumers to buy goods in other countries, to use them at home, to get them repaired like domestically purchased products, and to see complaints handled effectively. Consumers generally are unaware of their existing rights or the advantages to be obtained by exploiting differences in prices prevailing between Member States and on the operation of customs controls for Community citizens at Member States' frontiers within the common market. Better information for consumers is a prerequisite for the improved operation of competition. In this framework, certain measures are necessary to protect the economic interests of consumers.

30. Consumers going from one Member State to another, for example to buy a car, will have to deal with standard form contracts, often in a foreign language. They require protection against unfair contract terms. The Commission has recently published a consultative document on this subject and, after receiving the reactions of interested parties, will make appropriate proposals.
31. The removal of all obstacles which stand in the way of consumers being able to buy goods in other Member States on credit will be an important step forward for the common market. The proposed consumer credit directive is designed to facilitate the creation of a common market in credit. A new proposal will be made to enable consumers to compare competing offers of credit, by standardising the way in which the charge for credit is expressed.
32. Information on the goods on offer elsewhere in the common market may be brought to the attention of consumers in a variety of ways. Advertising via television satellites has already been the subject of a Commission green paper, proposing a number of measures, for example, on the advertising of tobacco and alcohol, and on advertising to children. The Commission is also considering a proposal dealing with unfair and comparative advertising, which was foreseen in the Misleading Advertising Directive.
33. New information technology is being increasingly used for communicating information to consumers, for example, videotex links computer databanks via telephone cables to television sets in the home. These are systems which will permit orders to be passed from the consumers home to the supplier. A

number of problems for consumers are inherent in videotex. There is, for example, the question of whether the information stored and conveyed is a form of advertising and how its accuracy is to be assured. The Commission will study these problems and make appropriate proposals.

34. The technology is now available whereby consumers' bank accounts can be directly debited at the point of sale by means of electronic fund transfer. Legislation may be necessary in order to protect the consumer in cases of incorrect charges, non-delivery of goods ordered electronically, delivery of defective goods, or unauthorised access to the consumer's bank account.

35. While the importance to the consumer of the freedom to acquire goods in other Member States cannot be over-emphasised, the services sector is also important. This is obvious where the service is linked to a product. For example, guarantees and warranties for consumer durables should be honoured in the consumer's country of residence even if the goods are purchased elsewhere. The Commission is currently studying the experience of consumers with regard to the operation of guarantees and after-sales service and will come forward with appropriate proposals. In order to enable consumers to compare the merits of competing services in the same way as for goods, greater price transparency is needed - for example, in the provision of articles for maintenance or repair of motor vehicles or household electrical appliances. The Commission will therefore make appropriate proposals regarding the requirements for indicating the prices of services.

36. Parallel imports generate competition which can, in turn, lead to pressure for reducing excessive price differences for the same products, subject to differences in VAT, excise duty, etc. This "grass roots" approach to consumer policy is in the interest of the Community itself. However, few people are actually aware of their rights to buy in other countries or of the procedures for importing goods and paying VAT. To remedy this situation, the Commission intends to publish guides on the consumer's right to buy goods in other Community countries, whether on holiday or travelling for other reasons. These guides will be accompanied by regular information on prices, together with up-to-date practical advice on what to buy and where, including a comparison of national price averages. Publication of information on price differences is also useful to the Commission and other authorities in order to investigate any differences which appear excessive and may reflect abuse of competition rules or barriers to trade.
37. As part of its Action Programme on Tourism, the Commission envisages a number of measures specifically concerned with the protection of the consumer: harmonisation of legislation on package tours, standardisation of information on hotels and a charter of tourist rights in the Community. The Commission has already proposed a recommendation on fire safety in hotels which is now being discussed in the Council. Tourists and other travellers in the Community will also benefit from continuing efforts by the Commission for a staggering of holidays and for a more equitable structure of air fares.

38. If consumers' rights are to be protected, there must exist adequate means of advice and redress. Traditional legal procedures are slow and often very expensive in relation to the amounts at issue in consumer cases. Rights can hardly be said to exist unless they can be exercised or defended. The Commission has therefore recently published a green paper on consumer advice and redress with the aim of establishing a fuller and more coherent policy which is commensurate with consumers' needs. It will continue to support, and if possible will extend, its association with Member States' pilot projects on simplified access to justice.
39. The quality and efficiency of public services are fundamental to the well-being of the consumer, in view of the high proportion of gross national product which is absorbed by such services. The Commission has studied the efficiency of performance of public services in the Community and the extent to which consumers' interests are represented. A report on these matters will be prepared shortly in order to stimulate examination of the issues involved, both by the other Community institutions and by the several interests concerned at the Community level.
40. The Commission has recommended that all Member States ratify the Council of Europe Convention of 1981 on privacy and data protection. The Commission will maintain surveillance over this domain and will consider what further action may be required to ensure a sufficient degree of protection of consumers against unauthorised exploitation of such data for commercial purposes.

41. The Commission has also sought to promote dialogue between consumer representatives and those of other economic agents in the market, notably manufacturers, distributors and the advertising professions. The Consumer Programme of 1981 expressed the hope that this dialogue might lead to voluntary agreements in the form of European codes of conduct, for marketing practices. This hope has not yet been translated into reality. Indeed, it has become clear that such codes could be largely deprived of effect if they were not associated with appropriate Community legislation. Backed up by Community law, however, codes of business practice have an analogous position to product safety standards. The Commission will consider what scope there may be for pursuing this approach and will make appropriate proposals.

42. If consumers are to make the most of opportunities for consultation with other economic agents, they need to keep fully abreast of developments in marketing practice, including the applications of information technology. In this, as well as in the domain of product safety, the Commission will assist consumer education through the organisation of conferences of national consumer representatives, the preparation of appropriate publications, cooperation with the media in their coverage of consumer affairs, and by aiding the educational initiatives of the European consumer organisations themselves.

III Consumer interests should be taken more into account in other Community policies

43. Community efforts to increase awareness of consumer protection issues depend for their success not only on the pursuit of specific actions, but also upon the extent to which consumer interests are taken into

account when formulating and executing other Community policies. To ensure the necessary degree of interpenetration of consumer protection and other policies, consumer representatives must be consulted on Community measures that significantly affect their interests. Only in that way can their viewpoint be taken adequately into account.

44. To meet this objective, the Commission established the Consumers' Consultative Committee (CCC) in 1973. The Committee has been consulted on all significant proposals of the Commission made in the framework of the Community consumer policy. In more recent years, it has become the practice to consult the CCC also on some proposals arising from other Community policies, such as the fixing of agricultural prices, chemical technology for agriculture (pesticides, antibiotics and growth stimulants), selective distribution agreements concerning consumer goods or air passenger services. Regular high-level contacts are also maintained with the BEUC (Bureau européen des unions des consommateurs) on general issues in the competition field. However, there is still scope for expansion in this respect and the Commission will take steps to ensure that these consultation procedures are extended and reinforced, particularly in the fields of transport and the environment.

CONCLUSION

As a first step in its plan to give a new impetus to consumer policy, the Commission is transmitting to the Council a number of proposals - for the amendment of existing legislation on foodstuffs labelling, for the classification packaging and labelling of dangerous preparations used in the household, for the regulation of package tour contracts, and for the introduction of consumer education in primary and secondary schools.

Taken as a whole, the actions set out in this communication will constitute the effort of the Commission during its present mandate to realise the essential objectives of the Community programme on consumer protection and information. They will complement the actions of the Commission within the larger programme for the completion of the internal market. In transmitting this present document, the Commission affirms its commitment to pursuing the welfare of Community citizens in their role as consumers, and as essential agents in the everyday operation of the Common Market. The Commission is convinced that, from the twin standpoints of citizen's welfare and of efficiency of production, there is a need for a new impetus for consumer policy at the Community level. It believes that by giving such an impetus it will help to sustain economic growth, as well as contributing to the realisation of a true "People's Europe".

ANNEX

"A NEW IMPETUS FOR CONSUMER PROTECTION POLICY"

Timetable for the execution of actions proposed

	<u>Proposal/ action</u>	<u>Adoption by the Council</u>
<u>PRODUCT SAFETY</u>		
1. Report on general obligation to market safe products	1986	
2. Directive on counterfeit products	1987	1989
3. See Part Two of the Timetable annexed to the White Paper on Completing the Internal Market		
<u>Information campaigns</u>		
4. Campaign for child safety	1986/87	-
5. Campaign for product safety	1987/88	-
<u>PROTECTION OF ECONOMIC INTERESTS</u>		
6. Directive on unfair contract terms	1987	1989
7. Directive on calculating the rate of charge for consumer credit	1986	1988
8. Directive on unfair and comparative advertising	1987	1989
9. Proposal on new information technology affecting consumers	1988	1990
10. Proposal on electronic funds transfer	1987	1989

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	<u>Proposal/ action</u>	<u>Adoption by the Council</u>
11. Proposals on guarantees and after-sales service	1986	1988
12. Directive on package tours	1985	1987
13. Report on public services	1985	-

INFORMATION

14. Trans-border price surveys	ongoing from 1985	-
15. Publication of guide on consumer rights to buy goods in other countries	1986	-
16. Directive on price indications for services	1986	1988

EDUCATION

17. Resolution on consumer education	1985	1986
18. Publication of teaching manual on consumer education (in collaboration with national authorities)	1986	
19. Report on pilot experiences in teacher training for consumer education	1988	