

ECONOMIC
AND SOCIAL COMMITTEE
OF THE EUROPEAN COMMUNITIES



**An Integrated
Consumer
protection policy
for the
European Union**





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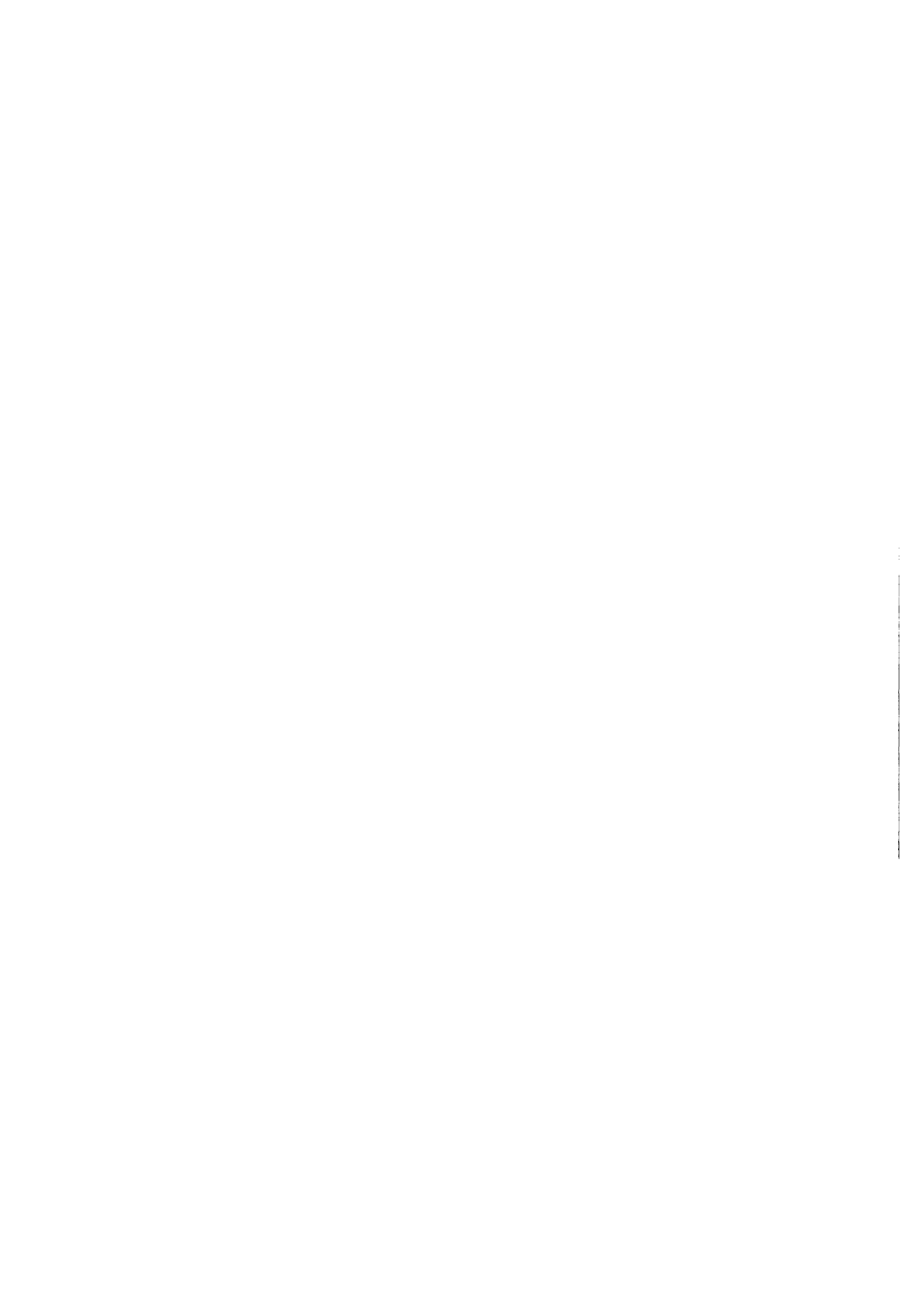


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PREFACE

This brochure sets out to provide a review of progress made in (a) enforcing the rights of consumers since 1 January 1993, the date on which the Single Market came into force, and (b) the implementation of Article 129a of the Treaty on European Union by virtue of which consumer policy becomes an integrated, concerted EU policy and the subject of specific EU action.

The Economic and Social Committee decided that it should update the views it expressed in earlier Opinions on the completion of the Single Market and consumer protection.

In its Opinion on the Single Market and consumer protection: opportunities and obstacles, the Committee analyzes all aspects of the new provision of the Treaty, in particular the fact that it enables consumer rights and interests systematically to be taken into account in the other EU policies and permits the close involvement of consumers in the formulation of these policies. The Committee also makes a provisional appraisal of the results which have been achieved and puts forward lines of approach to remedy shortcomings.

There then follows a detailed summary of the debate on the integration of consumer policy into the other EU policies. The debate was organized on 17 October 1995 by the Committee's Section for Protection of the Environment, Public Health and Consumer affairs, with the participation of a number of Commission Directorates-General.

The Committee's Opinion of December 1995 on the Commission's Proposal for a European Parliament and a Council Directive on consumer protection in the indication of the prices of products offered to consumers (COM(95) 276 final - 95/0148 COD) deals with one of the first EU instruments based on Article 129 a¹ of the Treaty on European Union. Attention is drawn in particular to the Committee's proposed solution to the thorny problem of the general obligation to indicate both the selling price and the unit price on foodstuffs. The proposed solution reflects the Committee's belief that the consumer, enterprises and commerce share a common interest in achieving transparency.

To round off the brochure - which is exemplary for a variety of reasons - there is a summary of the Committee's debate on the above-mentioned Opinion prior to its adoption at the Plenary Session held on 18 December 1995.

1 See Appendix.

OPINION

of the Economic and Social Committee
on the

**Single market and
consumer protection:
opportunities and obstacles**

(Own-initiative Opinion)

On 29 and 30 March 1995, the Economic and Social Committee, acting under the third paragraph of Rule 23 of its Rules of Procedure, decided to draw up an Opinion on the

Single market and consumer protection: opportunities and obstacles (Own-initiative Opinion).

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 17 October 1995. The Rapporteur was Mr CEBALLO HERRERO.

At its 330th Plenary Session, held on 22 and 23 November 1995 (meeting of 22 November), the Economic and Social Committee adopted the following Opinion by 76 votes to 34, with 19 abstentions:

1. Introduction: The Single market and the protection of consumers interests

1.1. General considerations

1.1.1. The completion and implementation of the single market has important consequences for the protection and defence of consumers. Their interests should have been taken more into account from the outset.

They have still not been taken sufficiently into account, either in the ideas at the heart of the single market or in its practical implementation - despite the progress made with the Single European Act and, more recently, the Maastricht Treaty.

Although Article 129a(1)(b) of the EC Treaty as expanded by the Maastricht Treaty explicitly established a new legal basis for consumer protection, it is symptomatic that at the time of writing only one decision - on the EHLASS¹ system - has been taken on this new basis. This is despite the many initiatives that have been taken in this area by both the Commission and the Council since the Maastricht Treaty was signed on 7 February 1992.

On the contrary, if the principle of subsidiarity is interpreted in a certain way, it could easily make the Commission increasingly apprehensive about, and the Council gradually less interested in, proposing and taking decisions on new Community-level action to protect and defend consumers². Timely mention of this was made in the Commission's 1994³ Report to the European Council on the application of the subsidiarity principle.

1.1.2. It is clear from the above that this Opinion is both important and pertinent. In it an attempt is made to study if - and to what extent - the Community has responded satisfactorily to the concerns and difficulties highlighted in past ESC Opinions that have addressed this question.

The main unresolved problems still need to be identified and an assessment carried out of the progress made in consumer protection following the inclusion of Article 129a in the EC Treaty. An investigation also has to be made into whether the consumer information and

consultation mechanisms match up to requirements, and what improvements can be suggested in the field of consumer protection in the run-up to the revision of the Treaties in 1996.

1.2. Summary of the positions taken by the ESC on the completion of the single market and the protection of consumer interests before the signing of the Maastricht Treaty

1.2.1. On various occasions the ESC has been asked to issue Opinions on specific aspects of the completion of the single market.

The ESC had the opportunity to consider the advantages and disadvantages that the completion of the single market would entail for consumers in two Own-initiative Opinions on Consumer Protection and Completion of the Internal Market, one issued in September 1991 and its "follow-up" (Additional Opinion) of November 1992⁴.

1.2.2. The first of the two Opinions assesses consumer policy up to the Single European Act (SEA). It also analyses the changes that the SEA introduced, particularly the advantages and constraints of Article 100a, and advocates the introduction of a chapter on "consumers" in the Treaty of Rome.

The main subjects discussed in the Opinion are consumer representation in Europe, and in the Community institutions in particular, the integration of consumer policy into other Community policies, and shortcomings in single market policy regarding consumer protection, with its advantages and disadvantages.

- The Committee Opinion ends with a series of recommendations including the following which are of particular topical interest:

1 OJ L 331 of 21.12.1994

2 On this subject cf. point 3.6. of Opinion CES 1320/92.

3 COM(94) 533 final of 25.11.1994

4 Opinion CES 1115/91 of 26.09.1991 (OJ C 339/08 of 31.12.1991) and Opinion CES 878/92 (OJ C 19 of 25.01.1993)

- the inclusion in the EU Treaty of a provision devoted specifically to the Community's consumer protection policy and containing a list of basic consumer rights;
- the adoption of a Community budget including a budget line set aside for the requirements of an effective consumer protection and information policy at Community level;
- the introduction of instruments to facilitate the uniform interpretation and direct applicability of Community legislation in the area of consumer rights;
- particular attention to be paid to the need for consumer protection and representation in dealings with public services and public-sector enterprises;
- work to be continued on the integration of consumer policy into other common policies, and the inclusion in all proposals of a statement assessing their impact on consumers;
- better consumer protection in cross-border disputes, and power of representation for consumer organizations in consumer disputes.

1.2.3. The Additional Opinion on the Consumer and the Internal Market welcomed the Maastricht Treaty's introduction of significant amendments to the EC Treaty, principally Article 3(s) and Article 129a.

The Committee Opinion did, however, conclude with a warning against the danger of scaling down consumer policy following the completion of the single market - when the right approach would be a Social and Citizens' Europe⁵ - and spelled out the risks of an excessively restrictive interpretation of the principle of subsidiarity. It also restated its hope that the Commission, after the ratification of the Maastricht Treaty, would initiate a more solid and more dynamic common consumer policy.

2. Since Maastricht

2.1. Changes in post-Maastricht Community consumer policy

2.1.1. Article 129a

2.1.1.1. Several amendments made by the Maastricht Treaty to the EC Treaty have been rightly interpreted as potential improvements with a view to an integrated Community consumer policy.

Indeed, a new letter (s) was added to the list of Community activities set out in Article 3. It established "a contribution to the strengthening of consumer protection" as a general Community policy objective.

A new co-decision procedure was also created, which gives reason to hope that the adoption of proposals might be made appreciably easier (**Article 189b**).

The rewording of **Article 75** (transport policy) and the new **Article 129** on public health are two further exam-

ples of amendments which could be used to the benefit of consumers.

Article K, and **Articles K.1 and K.9** in particular - with the clear new possibility of a "link" - have created a legitimate hope for fuller collaboration and cooperation between the Member States, with a view to more effective application of consumer justice and the defence of consumer rights.

2.1.1.2. It was, however, the introduction of the new **Title XI** on consumer protection, with its single **Article 129a**, that was welcomed by interest groups and others as a decisive step towards establishing the significance of an integrated common consumer policy in its own right.

In the above Opinion CES 878/92 fin, the Committee stated that the new Article 129a "authorizes the Community to take specific action in the field of consumer policy, thereby placing EC consumer policy on the same footing as the other common policies, in particular the single-market policy" (Point 1.3).

Indeed, Article 129a(1)(b) creates the possibility of "specific action" to be taken by the Community, to support and complement the policy pursued by the Member States to protect the health, safety and economic interests of consumers and to provide them with adequate information.

Article 129a(2) also states that this "specific action" is to be adopted under the new co-decision procedure set out in Article 189b.

2.1.2. Subsidiarity

2.1.2.1. The Maastricht Treaty also made first mention of another fundamental principle of general EU policy: the principle of subsidiarity.

The principle is not really new in essence; it is usually to be found in the constitutions of federal Member States. However - and regardless of what some consider to be a debateable, theoretical wording of this principle - if it is interpreted too narrowly when being applied to consumer policy it can be detrimental to the harmonization of binding Community legislation; this seems to have happened, for instance, with a number of conclusions adopted in the Molitor Group report on legislative and administrative simplification⁶. As the ESC Bureau has just decided, the subsidiarity principle cannot "merely be a token for identifying decisions or for fettering the autonomy of participants"⁷.

5 Cf. the ESC Own-initiative Opinion of 23.09.1992 on the Citizens' Europe (CES 1037/92 in OJ C 313 of 30.11.1992)

6 COM(95) 288 final.

7 ESC Bureau report of 26.04.95 (CES 273/95 fin) on the 1996 Intergovernmental Conference - the Role of the Economic and Social Committee.

2.1.2.2. Indeed, as a consequence of the introduction of the mandatory system to screen draft proposals, a variety of proposals on consumer protection were rejected following the Edinburgh Council Summit of 11 and 12 December 1992.

Later, in 1994, the draft Directive on the liability of persons providing services⁸ was also rejected, and as the 1994⁹ Report to the European Council on the application of the subsidiarity principle explains, the following draft Directives, among others, were amended:

- protection of personal data in the context of telecommunications (COM(94) 128 final);
- comparative advertising (COM(91) 147 final and COM(94) 151 final);
- labelling of footwear (Directive 94/11/EC in OJ L 100 of 19.4.1994);
- time-sharing (COM(92) 220 and COM(94) 363 final);
- internal market in gas and electricity (COM(91) 548 and COM(93) 643).

Furthermore, the Commission has produced a list of over 25 measures to adjust existing legislation, whether to reformulate or to simplify it, on account of subsidiarity. Among them are Directives on food products, pressure equipment and indication of prices.

2.1.2.3. If, as is believed¹⁰, the principles of subsidiarity and proportionality are to be kept in the Treaty, what will then be required is a clear definition of their content and interpretation, and in particular the Interinstitutional Agreement on Subsidiarity will need to be added to the Treaty. It must also be made clear that the possibility of asking the Court of Justice to make a definitive pronouncement on differences in interpretation is always open, perhaps even introducing a new, specific means of recourse where individuals, under specified conditions, have a legal right to go to court to query whether the subsidiarity principle has been properly applied in relation to any legislative measure adopted.

2.1.3. The Ombudsman

2.1.3.1. The Maastricht Treaty introduced the new post of Ombudsman, under the aegis of the European Parliament, with the power to receive complaints from any citizen of the Union concerning instances of maladministration in the activities of Community institutions or bodies. The Ombudsman is also empowered to conduct inquiries on his own initiative.

Only at its July 1995 session did the European Parliament elect the first European Ombudsman. The Committee does, however, consider that the effective entry into force of this new Community institution is extremely important to ensure that consumer rights are exercised properly.

2.2. Progress made in the follow-up to the completion of the single market

2.2.1. Adoption, transposition and practical application of measures to complete the single market

2.2.1.1. Two important working documents provide regular information on developments in the transposition and application of Community law: the annual Commission Reports to Parliament on monitoring the application of Community law¹¹, and the Commission Reports on the Community Internal Market. The second of these, covering 1994¹², was published in June 1995.

The Commission Report to Parliament includes an explicit reference to consumer policy and product safety, and it is clear from this study that many of the measures that have not been correctly applied or have not even been transposed are precisely those concerning the interests of consumers¹³.

2.2.1.2. Moreover, in its 1994 Report on the internal market, the Commission reiterates that the single market "will not function properly without the active and genuine participation of consumers" (point 319). However, the introduction of the same report acknowledges that "taken as a whole, the single market is working, but there are still problems in several areas" and consequently it should be improved so that it can fulfil its promises.

2.2.1.3. This also summarizes the conclusion that the ESC reached in the Opinion that was submitted following a public hearing on 30 June 1994¹⁴.

The Committee did, however, point out some of the most important aspects affecting the interests of consumers which have not been properly addressed by the single market. These include:

- differences in the application of VAT;

8 COM(90) 482 final (OJ C 12 of 18.01.91) and COM(94) 260 final. On this question, see also OJ C 269 of 14.10.91, in which the ESC opposes the Commission proposal.

9 COM(94) 533 final of 25.11.1994

10 Cf. the recent EP Resolution of May 1995 on the functioning of the Treaty on European Union with a view to the 1996 Intergovernmental Conference, para. 12, point (1) (BOURLANGES and MARTIN Report, PE 190.449)

11 The latest annual Commission Report is the eleventh (COM(94) 500 final) published in OJ C 154 of 06.07.1994

12 COM(95) 238 final of 15.06.1995.

13 e.g. Directive 90/314/EEC on package travel, package holidays and package tours;

- 2nd Directive on consumer credit (90/88/EEC), including 1st Directive (Spain and Ireland);

- Directive 85/577/EEC on contracts negotiated away from business premises;

- Directive 84/540/EEC on misleading advertising;

- Directive 76/768/EEC on cosmetics (cf. COM(94) 500 final, point 2.5.)

14 CES 999/94 of 14.09.1994 in OJ C 393 of 31.12.1994

- the absence of information on basic rights and how to assert them;
- unjustified differences and lack of transparency in cross-border payments;
- no uniform mortgage credit system;
- a number of difficulties in mutual recognition of professional qualifications.

2.2.2. Harmonization and mutual recognition

2.2.2.1. The continuing recourse to Article 100a, introduced by the Single European Act as the legal basis for the majority of measures adopted for consumer protection, has confirmed and even highlighted difficulties in mutual recognition and shortcomings in the harmonization process.

The study of the methods with which Community legislation is applied in practice in different countries has shown that there are enormous differences in interpretation and practical application, which are due to the lack of clear and precise definitions of the basic concepts and legal principles on which they are based.

It is important that Member States bear in mind the principle of minimum harmonization, which permits them, under certain conditions, to enact extra protection for consumers beyond that agreed in EU legislation. Thus subsidiarity should permit some Member States to go further, allowing for the more dynamic development of consumer policy.

2.2.2.2. Neither has the ESC's oft-repeated call for Community institutions generally to recognize the direct horizontal effect of Community consumer policy directives whenever they contain - as is desirable - precise, detailed rights and obligations, met with an adequate response.

2.2.2.3. Moreover, in practice, consumers are increasingly suffering the negative effects of a less-informed approach to applying the principle of mutual recognition, particularly in the area of financial services, where prudential supervision is the responsibility of different authorities working within very varied systems and limits, and where legal systems respond in very different ways.

2.2.2.4. Furthermore, the different national provisions in force in the Member States constitute - despite the principle of mutual recognition - a considerable practical obstacle to goods manufacturers and suppliers of services in the internal market. SMEs are particularly affected, as may be consumers' economic interests¹⁵.

2.2.3. The use of non-binding instruments

2.2.3.1. Since the beginning of 1993 there has been no noticeable change in the Commission's policy regarding the use of non-binding instruments - resolutions or recommendations - in areas in which it would be better to use legally binding methods.

The only known case of the announced transformation of a recommendation into a directive concerns Recom-

mendation 90/109/EEC on the transparency of banking services¹⁶.

2.2.4. Codes of conduct and industry-consumer dialogue

2.2.4.1. Progress has been noted in the drafting of codes of conduct in different areas which are recognized and respected by industry and consumers in various Member States.

At the same time, the theoretical and practical limits of this kind of regulation and coordination have been confirmed. The Committee referred to these limits in the Opinions which it issued in 1991 and 1992, recommending that the existence and use of codes of conduct, which are still considered extremely important, should not replace legally binding instruments, where deemed necessary, as the most appropriate method of harmonization.

2.2.4.2. Furthermore, the Committee continues to take the view that an institutional framework of reference is required at Community level, in which this dialogue can take place at regular intervals and in which codes of conduct generally applicable throughout the EU can also be discussed and formulated. This has been suggested on various occasions, in particular in the Opinion on access to justice¹⁷.

2.2.4.3. Particular mention should also be made of the Commission Recommendation of 7 April 1992 on codes of practice for the protection of consumers in respect of contracts negotiated at a distance (distance selling). This is a good example of how the Commission can define a set of parameters for the drafting of codes of conduct¹⁸.

2.3. Evaluation and future prospects from the consumers' point of view

2.3.1. The Commission's second three-year action plan (1993-95)

2.3.1.1. Since 1993, the Commission's activities in this area have been dictated by the second action plan (1993-95), which is now drawing to a close¹⁹.

This is not the right time to make a detailed assessment of the implementation of the second action plan; that

¹⁵ On the question of mutual recognition, see CES 869/95, para. 4.3., Draft Opinion on the Single Market in 1994.

¹⁶ Cf. the Community Internal Market - 1993 Report (COM(94) 55 final of 14.03.1994)

¹⁷ Cf. CES 742/94 (OJ C 295 of 22.10.1994). Despite the interest that it aroused, its success and number of participants, the first European Consumer Forum organized by Commissioner SCRIVENER on 05.10.1994 is not a valid platform from which to respond to requirements set out in the text.

¹⁸ 92/295/EEC in OJ L 156 of 10.06.1992, cf. also the proposed code of practice relating to labelling of photographic equipment (PT/SPC/95/12360000.POO).

¹⁹ COM(93) 378 final of 28.07.1993

is bound to be done by the Commission when it presents its next plan. Now is, however, a suitable time to carry out a general study of whether or not the Commission has attained its stated objectives; such a study cannot fail to conclude that it has not.

2.3.1.2. Indeed, in the area of consumer safety, the specific results of the implementation of Directive 92/59/EEC are still not known, but at the time of writing only a few countries had announced that it had been transposed²⁰.

Equally, the recent evaluation of the application of Directive 85/374/EEC on de facto liability for defective products, drawn up by the Consumer Law Centre of the Catholic University of Louvain-la-Neuve, also came to very negative conclusions²¹.

There is also discouraging news on the safety of childcare products, where no progress has been made.

2.3.1.3. An assessment of the relative priorities that the Commission had chosen for this period would also draw unfavourable conclusions.

2.3.1.3.1. Although cross-border information centres have been set up, some of which are operating adequately, there is still an appreciable shortage of information in this area, which is one of the barriers to completing a single market of benefit to consumers.

A systematic policy backed by media campaigns to alert consumers to their rights and how to assert them is still required.

2.3.1.3.2. Moreover, there has not been any marked progress towards significantly promoting the role of national and regional consumer organizations, guaranteeing them institutional representation at Community level and the means to exercise their responsibilities effectively.

2.3.1.3.3. The Commission has paid particular attention to access to justice and the settling of cross-border consumer disputes, and has published an important Green Paper on this subject²².

The Committee Opinion on this subject has already highlighted the relevant limits and shortcomings of the Green Paper²³. The Commission is currently examining a draft Directive based on the Green Paper, and with Article 129a as its legal basis.

2.3.1.3.4. In the area of financial services, none of the measures set out in the action plan has been adopted.

2.3.1.3.5. The Commission has also presented an excellent Green Paper on guarantees for consumer goods and after-sales services²⁴, on which the Committee expressed its views (cf. Opinion 743/94 of 1 June 1994²⁵).

It has been announced that the Commission has prepared a proposal for a draft directive in this area; more details are awaited with interest, especially to see to what extent the ESC's recommendations have been taken on board.

2.3.1.4. In the run-up to the drafting of the third action plan, it can be concluded that the actions set out in the second plan have still not been completed.

Rather than a list of piecemeal measures, what is needed is to define a genuine integrated and agreed consumer policy. If this is to happen, all the possibilities opened up by the new legal basis of Title XI of the Treaty need to be exploited. This includes suggesting amendments to the Treaty for the intergovernmental negotiations in 1996, so that this policy is developed and implemented harmoniously throughout the Union.

2.3.1.4.1. The Committee would refer in particular to the impact of the information society on consumer policy. It anticipates that the third action plan will propose specific measures in this area.

2.3.2. Lack of transparency

2.3.2.1. One of the questions that consumer organizations have repeatedly highlighted is the need for more transparency in the Community's decision-making processes. This is one of the greatest concerns in interinstitutional relations.

The ESC shares this concern, and considers that the legislative process should be made as transparent as possible, and decision-making procedures streamlined²⁶.

As far back as its Own-initiative Opinion of 23 September 1992 on the Citizens' Europe, the Committee laid particular emphasis on the need to make Council decision-making transparent²⁷.

2.3.2.2. On the other hand, Community law itself is unclear and lacks transparency, whether due to its excessively technical nature or the fragmentary and unsystematic way that it is conceived. On various occasions the Committee has stressed the need for Community law not only to be worded simply and clearly, but also to be based on uniform and coherent legal concepts and ideas. For instance, it is perfectly feasible to incorporate all consumers' rights in a single comprehensive, coherent, systematic text which draws together all the main existing directives on consumer affairs.

20 COM(94) 55 final, Annex 2

21 The conference took place on 23-24 March 1995 at the University of Louvain-la-Neuve. There were approximately 150 participants.

22 COM(93) 576 final of 11.11.1993

23 CES 742/94 of 01.06.1994 (OJ C 295 of 22.10.1994)

24 COM(93) 509 final

25 OJ C 295 of 22.10.1994

26 See CES 273/95 fin.

27 See OJ C 313 of 30.11.1992.

2.3.3. A Community budget for consumer protection

2.3.3.1. Some time ago, the ESC requested the Council to include resources in the Community budget earmarked for a consumer policy which took account of the inherent requirements of an effective consumer protection policy²⁸.

The increase in funding in 1994 to ECU 20.75 million was due to the position taken by the European Parliament. The opposing view had been taken by the Council, which had intended to reduce the previous package of ECU 16 million.

2.3.3.2. It is all the more essential, with the creation of the new DG XXIV, that consumer protection be given the place it deserves in the Community budget, with funding that will allow an effective, comprehensive and integrated Community consumer protection policy to be implemented. An important addition which should be highlighted is a specific budget line for supporting legal action by consumers' associations in test cases, e.g. in cancelling unfair clauses in contracts.

Consumer organizations face difficulties in complying with complex accounting requirements and in meeting the 50% co-financing rule. There is a growing need to redefine the basis of Community financing for consumer associations' activities and to streamline procedures.

2.3.4. The new DG XXIV

2.3.4.1. For some time the Committee has been recommending the creation of a "separate Directorate-General with responsibility for consumer problems"²⁹.

Consequently, the ESC welcomes the recent creation of the new DG XXIV. It is hoped that the results of this initiative will give a boost to the development of a Community policy for consumers. At the same time, the Committee points to the need for this new DG to be supplied with sufficient human and material resources to carry out its duties properly and assume its responsibilities, especially for monitoring various Community policies in areas such as agriculture, the environment, health and competition.

2.3.5. The Green Papers

2.3.5.1. The Commission has kept its promise to publish two important Green Papers; one on the access of consumers to justice³⁰, and the other on guarantees for consumer goods and after-sales services³¹.

The Committee made its views known on both Green Papers³² at the time. The content of the Opinions is therefore not repeated here.

2.3.5.2. It is, however, worth recalling that, although the Committee welcomed the Green Papers and highlighted the fine work carried out by the Commission, it also took the view that these initiatives could and should have been crowned with specific proposals and practical action at Community level.

2.3.6. Enlargement of the Union

2.3.6.1. Since the three new EU Member States are countries where consumer protection is known to be of a high standard, it is natural to hope that this will give a major boost to Community consumer protection policy.

2.3.6.2. Faced with the prospect of the Eastern European countries acceding to the EU, the Union can start right now, even in the pre-accession phase, to help implement a consumer protection policy aimed at gradually eliminating the differences that currently exist; this is essential for developing a market economy in those countries³³.

2.3.6.3. In order to facilitate both citizen participation and consumer policy in Central and Eastern Europe, the role of independent consumer organizations needs to be developed. However, the rules governing the current allocation of PHARE funds to consumer work make it difficult to support these organizations or to involve them more fully in the programmes of the European and international consumer movement. We would advise the Commission to consider amending these rules and, in future, to consult the Committee at an early stage on how best to use this important budget.

2.3.7. The single currency

2.3.7.1. The introduction of coins and notes in ecu will be for consumers the most visible sign of the European Union's existence - thus begins a DG XXIV document which contributes to preparations for the Green Paper on the introduction of the ecu³⁴.

This same document analyses the symbolic and cultural importance of a single currency and the highly important repercussions which its adoption will have on financial services in general and more specifically on the use of credit cards as means of payment and on interest rates on loans. The document also warns of various dangers which might ensue and speaks out against too long a period of dual circulation.

2.3.7.2. The ESC feels, notwithstanding the clear benefits for consumers in general which will flow from the introduction of a single currency, that an extensive information campaign must be carried out in advance to ensure that the single currency meets with popular support and so that

28 CES 1115/91 of 26.09.1991, point 6.1.2. (In OJ C 339 of 31.12.1991)

29 ESC Opinion (CES 1115/91) point 3.1.1.1.1. (In OJ C 339 of 31.12.1991)

30 COM(93) 576 final

31 COM(93) 509 final

32 CES 742/94 (OJ C 295 of 22.10.1994) and CES 743/94 (OJ C 295 of 22.10.1994)

33 In this connection, note the Commission's programme on the institutions and consumer policy established in 1994 and recently extended for another two years as part of the PHARE programme, for which eleven countries of Central and Eastern Europe are already eligible.

34 COM(95) 333 of 31.05.1995.

consumers and in particular the less fortunate groups in society (old, handicapped and less well-educated people and people living in isolated areas etc.) fully understand all the implications of the transition to the new system, be they economic, legal, social or even psychological.

Consumers' organizations should be consulted at national, regional and community level on the effects and costs of introducing the single currency and specialized study groups should be set up at EU level and in the various Member States with consumer-body participation, particularly to look at the question of setting prices in the two currencies and the actual design of the two faces of the ecu, in addition to setting a timetable for phasing-in and adopting the currency.

3. Horizontal nature of consumer policy

3.1. Concepts and mechanisms

3.1.1. Basic idea

3.1.1.1. The idea is not new that consumer policy is by its very nature horizontal, in that the demands of consumer protection and defence and consumer views must be taken into account when preparing and implementing decisions liable to affect their interests - whatever the political sector in which the decision is taken³⁵.

However, the two distinct constituent parts of this idea were first defined in the Communication from the Commission to the Council of 24 October 1989 on the integration of consumer policy in other common policies³⁶:

- firstly, consideration of the impact on consumer interests of decisions adopted in implementing specific common policies;
- and secondly, the opportunity for consumers to express their viewpoint, at the appropriate moment, when decisions affecting their interests are prepared and taken.

3.1.1.2. Although well received by the Community institutions³⁷, there has been insufficient follow-up on the means for putting the idea into practice; they are scarcely reflected in the second Commission three-year action plan 1993-1995³⁸.

The only measure contributing to horizontal approximation adopted to date has been the Directive on general product safety³⁹.

3.1.2. Institutional links

3.1.2.1. Between the Community institutions

3.1.2.1.1. Integration of consumer policy in other Community policies necessarily involves more efficient links between the various Community institutions, starting with

the Commission and its new DG XXIV, on which hopes are being pinned as a source of dynamism and action in institutional relations, both within and outside the Commission.

3.1.2.1.2. The structure and working methods of the CCC (Consumers' Consultative Council) were recently revised by a Commission Decision of 13 June 1995⁴⁰; it is still too early to assess the results of this reform, particularly as regards effective representation of consumers' interests and how the CCC operates as a privileged - although not an exclusive - consultative body of the Commission.

3.1.2.1.3. For its part, the ESC intends to do everything it can, whenever it considers it necessary, to ensure that consumers' interests are unfailingly taken into account in its Opinions on matters within its remit. At the same time, it reaffirms its intention to hold, when necessary, public hearings with all the organizations concerned, particularly those representing consumers.

In addition, in all those cases referred to in the first paragraph of 3.1.1.1., it is absolutely necessary that the Commission and the Council consult the Economic and Social Committee.

3.1.2.1.4. Finally, more radical changes are required to the way in which the Council of Ministers takes decisions affecting consumers, given the relatively scant importance accorded to consumer issues compared with other policy areas.

The continuing secrecy surrounding the Council's operations hinders consumer access to the information and know-how which they should be able to share. It is also harmful to inter-institutional relations in general, which should be based on greater openness and transparency as a guarantee for the integration of consumer policy in other Community policies.

³⁵ The idea appears in the 1975 preliminary programme of the European Economic Community for a consumer protection and information policy (OJ No C 92 of 25 April 1975, p.2) and in the second programme of the European Economic Community for a consumer protection and information policy (OJ No C 133 of 3 June 1981, p.1)

³⁶ COM(86) 540 final

³⁷ Cf. the March 1992 EP Resolution on the consumer protection and public health requirements to be taken into account in the completion of the internal market (PE 152.150), point 2, and the relevant Report, section VI, p.14; the Council Resolution of 26 June 1992 (1594 Council - Consumer protection and information) concerning the future priorities for the development of consumer protection policy, Annex, point 1 (7549/92 Presse 131-G); ESC Opinion CES 1115/91 of 26 September 1991 (OJ No C 339 of 31 December 1991, paragraph 3.1.)

³⁸ COM(93) 378 final of 28 July 1993

³⁹ COM(89) 162 of 7 June 1989, amended in 1990 (OJ No C 96/283 of 17 April 1990), now Directive 92/59/EEC (OJ No L 228 of 11 August 1992)

⁴⁰ Commission Decision on setting up a Consumer Committee of 13.06.1995 (95/260/EC), OJ L 162 of 13.07.95.

3.1.2.2. **Between consumer organizations, other associations and Community institutions**

3.1.2.2.1. Consumers' and users' organizations are the best qualified consumer representatives and are best placed to interpret and coordinate the interests of consumers and other occupational groups.

It therefore remains essential that Community institutions in general, and the relevant national authorities in particular, should acknowledge the important representative role of consumers' and users' organizations in defining and implementing the policies affecting them⁴¹.

3.1.2.2.2. The importance of such organizations is not, however, limited to representing consumers in Community institutions. In practice, they have a highly important part to play in discussing, negotiating and coordinating interests with other associations and organizations representing occupational interests. The Community institutions in particular should create the necessary conditions to facilitate and encourage this dialogue.

3.1.2.2.3. It is also increasingly important that international organizations responsible for sketching out political guidelines at world level - GATT, WTO, OECD, the Council of Europe etc. - should take account of consumer interests.

3.2. **Integrating consumer policy in other Community policies**

3.2.1. The consideration of consumer interests in other Community policies goes beyond simple institutional arrangements.

Consumers continue to be directly or indirectly affected by decisions on agricultural, trade, competition, health and safety, environmental, energy, telecommunications, social, external and other policies.

3.2.2. It is worth highlighting, in this connection, the importance accorded to consumer interests in defining all Community policy both in the Sutherland Report "The Internal Market After 1992: Meeting the Challenge" and the Commission Communication on this Report⁴², and in the Working Document of the Commission on a strategic programme on the internal market⁴³.

The ESC stated its own views on the subject⁴⁴ in the Opinions drawn up on these documents.

3.2.3. The suggestion made by the ESC in its Opinion of 26 September 1991⁴⁵, that Commission initiatives should always be accompanied by statements assessing the impact on consumers, was taken up in the Annex to the Council Resolution of 29 June 1992 on the future priorities for the development of consumer policy, but has not unfortunately been adopted as general, common practice by the Commission.

3.2.4. **In particular, the ESC:**

- recalls that following the conclusion of the GATT negotiations, both export refunds and the amounts of farm produce which can be exported to third country markets must be considerably reduced within five years of 1 July 1995;
- calls for the on-going liberalization of world trade in farm produce, so as to achieve the objective of maximum reductions in export subsidies.

It also considers that:

- consumer interests should be taken into account in all EU trade policy decisions, in accordance with objective and published criteria;
- the consultation of consumer organizations should be made mandatory under Treaty Articles 85 and 86 before exemptions are granted in respect of agreements between undertakings and before such agreements are authorized, above all in cases involving mergers, since both practices hinder the orderly operation of the market;
- directives should be adopted on unfair competition and unfair advertising and measures taken to avoid social and environmental dumping, also in the interests of consumers;
- the right to consumer safeguards against discriminatory or aggressive sales practices in this sector should be harmonized;
- cooperation policy should be strengthened in the field of safety standards approval and sanctions against dealing in products or services presenting health or safety hazards.

4. **Consumer information and education**

4.1. **Social communication and advertising**

4.1.1. One of the most important and effective ways of putting the internal market at the service of consumers is to inform them of the market instruments and how to use them.

This requires above all concerted action by the Community institutions, Member State administrations and

⁴¹ See point 5 of this document on consumer representation and participation

⁴² SEC(92) 2277 final of 2 December 1992

⁴³ COM(93) 256 final of 2 June 1993

⁴⁴ CES 602/93 of 27 May 1993 in OJ No C 201 of 26 July 1993 and CES 890/93 of 22 September 1993

⁴⁵ CES 1115/91 in OJ No. C 339 of 31 December 1991, paragraph

perhaps NGOs with a view to mobilizing all forms of social communication in order to inform public opinion.

4.1.2. It also involves effective and systematic application of the existing legal instruments on the veracity of advertising for goods and services and, in particular, advertising by cross-border suppliers of goods and services⁴⁶.

Fully and accurately informed consumers are in a position to take advantage of all the benefits provided by the creation of a single market.

4.1.3. Consumers are increasingly concerned about the conditions under which their purchases are produced, for example the human rights and the working conditions in third countries, environmental impact and animal welfare. The Committee would welcome labelling and other schemes to provide consumers with information on ethical/social issues.

4.2. Community means

4.2.1. Cross-border information centres

4.2.1.1. Consumers have specific rights covering information and training, and it should be acknowledged that they "are entitled to know about their legal rights and where they can find out about new regulations and laws"⁴⁷.

The creation of the cross-border information centres is therefore of great value, even though they are as yet few and far between and, as far as can be ascertained, do not act in a coordinated or uniform manner.

The way they have been set up and operate should therefore be reconsidered so as to ensure that they are a useful and efficient means of information.

4.2.2. The INTERNET

4.2.2.1. In a world where computers dominate communications, the ESC has learned with increasing interest about the possibility of using a) the Internet to inform consumers throughout the Union⁴⁸, and b) the "European Consumers' Guide" recently introduced on the Internet, compiled by the Commission.

The ESC feels that positive steps should be taken towards expanding the content of this means of information by introducing new applications, particularly those relating to national consumer legislation and court rulings on consumer issues; the ESC awaits the detailed report to be drawn up by the Commission on this IT application, examining the scope and opportunities it offers for consumers in general, and financial incentives for its broad dissemination.

4.2.3. The EHLASS programme

4.2.3.1. Although it is of limited scope, the EHLASS project on accidents involving consumer products is of major importance to consumers. The ESC welcomes the fact that this project has been turned into a permanent

programme and for the first time has been allocated Article 129a and not Article 235 of the Treaty⁴⁹ as its legal basis.

4.2.4. The REIS project

4.2.4.1. The new system for exchanging information on products presenting a consumer health or safety risk (RAPEX)⁵⁰ completed its experimental phase when Directive 92/95/EEC entered into force on 29 June 1994 and the notification system set up by Article 8 began to apply⁵¹.

The ESC feels that the full potential of this project should be explored and that the content of the notifications should be publicized extensively; one means of doing this could be to include it in the Internet.

4.2.5. The COLINE network

4.2.5.1. On 19 May 1994 the first phase of the COLINE project was inaugurated. This network currently provides information on consumer rights in just five centres - Barcelona, Lisbon, Düsseldorf, Lille and Luxembourg - but is to be extended to include Vienna, Dublin, Brussels, Athens and Rome.

The ESC feels that a major step has been taken in providing consumers with legal information, but considers that the system is not open enough in terms of user possibilities and recommends that the possibility be discussed of connecting the network to the Internet, so that the broad consumer public can have access to the information.

4.3. Transparency in the price structure of goods and services

4.3.1. One of the most important aspects of consumer information concerns the structure and indication of prices for goods and services. Consumers' concerns in this regard have been well known for some time now: it quite rightly constitutes one of their basic demands. Consequently, the ESC notes with interest the Commission's proposal for a directive on a simplified system of indicating prices for consumer products⁵², with Article 129a as the legal basis. The ESC is drawing up an Opinion on the draft Directive⁵³.

46 This is why as well as penalizing misleading advertising, there needs to be a directive on unfair advertising.

47 Cf. the Sutherland Report, "The Internal Market After 1992: Meeting the Challenge", p. 23

48 Cf. the Bangemann Report, Bulletin of the European Union, supplement 2/94

49 Decision 3092/94/EC of the European Parliament and the Council of 7.12.1994, OJ L 331 of 21.12.1994; cf. the Proposed Council Decision amending Decision 94/3092/EC (COM(95) 005 final of 13.01.1995).

50 Council Decision 95/80/EEC of 25.10.1993, OJ L 278 of 11.11.1993.

51 OJ L 228 of 11.08.1992.

52 Proposal for a Commission Directive to the Council and the European Parliament of 29.06.1995 (COM(95) 276 final).

53 See R/CES 1056/95.

4.3.2. Nevertheless, no tangible progress appears to have been made towards greater transparency in the price structure of certain services, particularly in the financial sector (banking, insurance, stock exchange, etc.) and the liberal professions.

The seriousness of this shortcoming in the Community system is highlighted by the fact that if a single market is to be achieved, cross-border transactions of goods and services must be readily available: this requires a full knowledge of prices and how they have been structured.

4.3.3. In general, the public service sector requires special attention in view of its usual monopoly or quasi-monopoly position, as in the cases of gas, water, electricity, transport and telecommunications. A quality universal service - accessible to all consumers throughout the EU - should be maintained.

4.4. Specific training programmes

4.4.1. Consumer protection in an open, wide-reaching market like the single market increasingly depends on basic education.

This should begin at the pre-school and primary level and accompany individuals throughout their school and university education.

4.4.2. The introduction of incentives and other measures aimed at preparing specific school training programmes on consumer rights and practices is a priority area on which the Commission should focus its attention.

However, since the schools consumer training pilot project launched in Denmark in 1978 (referred to in the second Commission programme) and completed in 1984, there have been no further integrated Community-level school training projects, although the final project report recommended that serious thought be given to repeating similar programmes⁵⁴.

4.4.3. Special mention should be made of the specific consumer law programmes for legal practitioners (judges, lawyers, university professors) or representatives of consumer organizations, information centres, social centres etc., to which the Commission has not yet given sufficient prominence.

These programmes should comprise on-going training courses, specific consumer law modules within university courses, specialist publications, data banks etc.

5. Consumer participation and representation

5.1. Defining fundamental consumer rights

5.1.1. First of all, it is essential that consumers' rights should be included as a category under the heading of fundamental social rights in the general definition of the

rights of citizens of the European Union - which should provide the basic principles for a European constitution.

The right to participation and representation should figure prominently among such social rights.

5.1.2. Although defence and protection of economic rights or rights covering health, information or access to law are essential, it is even more important that consumers should be considered in their own right in the dialogue with occupational organizations and with Community, national or regional institutions.

One of the most serious failings of the second Commission action plan is precisely the lack of emphasis on this fundamental aspect of any consumer policy. It is hoped that the next plan will take due account of this.

5.2. Institutional aspects

5.2.1. The ESC considers that consumer representation within the Community institutions should be intensified. To this end, it urges that:

- the revamped CCC must ensure more effective representation of consumers' interests, with the Commission being required to produce reports in response to its suggestions;
- the EP intergroup for consumer affairs continue to receive support;
- the agricultural advisory committees be restructured so as to ensure more active consumer participation;
- the food product committee be granted an adequate budget, allowing it real influence over the CAP;
- consumers be represented more equitably in the link group with means of payment users.

6. The Maastricht treaty review

6.1. Consumer policy beyond the single market

6.1.1. The contribution of single market policy to the protection of consumer interests

6.1.1.1. As the ESC has indicated on a number of occasions, the single market - even though not designed with consumers in mind - is undoubtedly capable of offering them a range of benefits.

With the single market, consumers should generally benefit from greater choice as a result of a wider supply of goods and services, the abolition of tax and other barriers and more advantageous prices.

⁵⁴ Cf. "L'éducation des consommateurs à l'école, Rapport établi sur la demande du service de la Protection de l'Environnement et des Consommateurs, Commission de la CEE, concernant les résultats d'un projet pilote d'éducation du consommateur à l'école" by Hans Rask Jensen, Institut for Markedsøkonomi, Århus, 1983

6.1.1.2. Nevertheless, 1 January 1993 did not usher in the rights which consumers quite legitimately expected.

Consumers cannot in fact buy freely in the single market with a reasonable margin of safety, quality, information, standardization and with machinery to provide protection and guarantees.

6.1.2. Shortcomings in consumer policy since Maastricht

6.1.2.1. As already indicated, the changes brought in by the Maastricht Treaty generated hopes for a new impetus in consumer policy, due principally to the new Article 129a.

This legal basis has not, however, in practice yet been used, constituting a major gap in the development of Community law.

6.1.2.2. Its use would have allowed the emergence of a consumer policy going beyond the completion of the single market, bearing in mind the limitations of this market where consumer affairs are concerned.

It was hoped that consumer protection legislation, applicable throughout the Union, would specify the highest possible level of protection and safety rather than "a high level", which is a relative and imprecise concept.

There were also hopes for positive developments on liability for damage and guarantees, as well as for significant progress in access to justice (special legal assistance services for consumers, a consumer ombudsman, streamlined procedures to resolve consumer disputes, mutual recognition of consumer organizations, general interest actions, etc.).

These hopes have not been borne out during the first phase of the application of the Maastricht Treaty.

6.2. Proposals and suggestions: a contribution to the Treaty review

6.2.1. The ESC will, at the appropriate time, have the opportunity to put forward its view as an institution on the forthcoming revision of the Maastricht Treaty.

At this stage, the ESC feels it should restrict itself to briefly considering a number of modifications and improvements to the Treaty in the area of consumer rights, focusing particularly on Article 129a.

6.2.2. The key position of consumers as social partners should be reflected in Treaty Article 3(s), by amending it to refer to "promotion of consumer interests" rather than "consumer protection".

Article 129(1) should be amended along the same lines.

6.2.3. Similarly, Article 129a as a whole should be revised so as (i) to clarify that the policy and measures to be adopted by the Community in this area fall within its own competence and not that of the Member States in accordance with the subsidiarity principle, and (ii) explicit-

ly to reaffirm its "horizontal" nature, by referring to its integration in other Community policies, as is currently the case with Article 129 on public health.

The ESC believes that Article 129a should specify the types of measures which should form part of a consumer policy.

6.2.4. Lastly, the ESC considers that Treaty Article 193 should also be revised so as to provide explicitly for representation of consumers. Explicit reference should also be made to the maintenance of a quality universal service accessible to all consumers in the text of the new EU Treaty to be signed at the forthcoming IGC⁵⁵.

7. Conclusions

7.1. The ESC has had various opportunities to voice its views on the consequences of pursuing a single market policy which does not take sufficient account of consumer interests.

7.2. Taking stock of the single market today, the consumer sees little positive progress; although some headway has been made, practical action still needs to be taken in several key areas of consumer protection and defence.

7.3. Among those areas where some positive progress has been made to the benefit of the consumer, the following may be noted:

- the creation of some cross-border information centres;
- the creation of the new DG XXIV;
- the revamping of the CCC;
- the adoption of some important directives, such as that on unfair terms in consumer contracts;
- the preparation of two Green Papers on (i) access to justice and the settlement of trans-frontier disputes and (ii) guarantees for consumer goods and after-sales services;
- the first steps towards computerized information (Internet) in limited sectors (EHLASS programme, REIS project, COLINE network);
- the interest shown by the Commission, in the context of the PHARE programme, in the protection of consumers in the countries of Central and Eastern Europe.

7.4. Nevertheless, tangible progress is still needed in certain areas of fundamental importance to consumers, such as:

- the delays, mistakes and shortcomings in the transposition of directives and the differences in the interpretation

⁵⁵ In this connection, DG XXIV should make a study of the working of the single market and its impact on consumers in 1998.

- and application of secondary legislation, and the failure to apply consumer protection legislation;
- the lack of effective information on basic consumer rights and how to exercise them in the internal market;
 - the lack of general recognition of the direct horizontal effect of directives on consumer matters;
 - the lack of integrated training programmes for consumers in general and for persons responsible for interpreting and applying consumer law in particular;
 - the lack of a genuine single market in insurance and financial services in general;
 - the lack of a uniform mortgage credit system;
 - inequalities in the application of VAT;
 - the difficulties in mutual recognition of professional qualifications;
 - the lack of concrete results in respect of general consumer safety, safety of services and defective products liability;
 - the lack of binding rules on unfair advertising;
 - the lack of rules for public services in general (postal services, telecommunications, energy, water, etc.).

7.5. Furthermore, the opportunities provided by the Maastricht Treaty to make the best possible use of Community consumer policy have not been followed up. These include:

- more extensive use of the new legal basis contained in Article 129a(1)(b);
- application of the subsidiarity principle in such a way that certain proposals for directives are not emasculated in the name of legislative simplification, however desirable, but without preventing the adoption of separate,

and perhaps even contradictory, policies in the Member States;

- greater transparency in the process of drawing up and interpreting Community law at Council and monitoring-committee level and greater simplicity in its drafting;
- greater openness in the interpretation and application of Articles K1 and K9 of the Maastricht Treaty as regards access to justice and greater protection in cross-border disputes;
- recognition of a general power of representation for consumer organizations in national or Community-level consumer legal disputes (group or class actions) before the Court of Justice;
- the Ombudsman to take up his duties sooner.

7.6. The forthcoming revision of the Maastricht Treaty should be used to incorporate in the Treaty some basic provisions to improve consumer protection and promote their participation and representation at all levels of decision-making. To this end:

- the wording of Article 129a should be revised to recognize an integrated common consumer policy and the promotion of all consumer interests;
- the rights of consumers should be clearly listed as basic economic and social rights of European citizenship;
- the horizontal nature of consumer policy should be defined in general terms;
- mutual recognition of consumer organizations as parties to consumer class actions should be firmly established;
- a special new appeal procedure should be introduced for the final decision on the adjustment of the practical application of the subsidiarity principle.

* * *

Done at Brussels, 22 November 1995.

The President
of the
Economic and Social Committee

Carlos FERRER

The Secretary-General
of the
Economic and Social Committee

Simon-Pierre NOTHOMB

APPENDIX

to the OPINION of the Economic and Social Committee

Amendments rejected

During the discussion, the following amendments, which received more than 25% of the votes cast, were rejected:

2.3.1.3.2.

Delete whole point.

Reason

This criticism does not seem to be justified: consumer organizations can already benefit from a forum of their own: the Consumers' Consultative Committee, plus an adequate representation in the ESC and a specific forum in the EP Intergroup for consumer affairs - a presence that no other interest group can equal.

Result of vote

For:	32
Against:	61
Abstentions:	10

3.1.2.2.2.

Amend second sentence so to read:

*"... highly important part to play within the CCC and in discussing, negotiating and coordinating interests, **within the Economic and Social Committee**, representing ...".*

Reason

Outside the normal and totally legitimate lobbying action, it is necessary to specify where consumers have a part to play.

Result of vote

For:	36
Against:	47
Abstentions:	23

Point 3.2.4.

Delete the second indent of this point.

Reasons

The money spent by the EU to promote exports to third countries goes essentially on food aid and export refunds. Food aid is an expression of international solidarity which has a negligible impact on production policies. Export refunds are now regulated and limited both quantitatively and qualitatively by the GATT agreement. Expenditure on food exports has been falling appreciably since the CAP reform. Moreover, this instrument is a pillar of the CAP which has kept food prices relatively stable in the post-war period.

It should also be noted that imports from third countries, many of which lack the means to carry out proper controls, pose a greater risk for the European consumer.

The CAP already takes account of health protection. However, there are specific horizontal regulations on this subject, and it is therefore pointless and inappropriate to include them as a structural part of the CAP.

Result of vote

For:	35
Against:	85
Abstentions:	12

Point 3.2.4.

Insert before the third indent:

"– The EU should adopt a prompt and firm stance in GATT on health issues which it considers potentially harmful to EU consumers (e.g. the use of hormones).

– It is also important, in order to protect the health and well-being of European consumers, the multilateral international trade agreements provide clarification of health regulations forthwith and also embrace environmental aspects."

Reasons

See above.

Result of vote

For:	41
Against:	58
Abstentions:	19

Point 7.4.

Add to third paragraph of 7.4.

"and the need to use the principle of minimum harmonization."

Reason

More use needs to be made of the kind of provision in Council Directive 84/450/EEC. *"This Directive shall not preclude Member States from retaining or adopting provisions with a view to ensuring more extensive protection for consumers, persons carrying on a trade, business, craft or profession, and the general public".*

Result of the vote

For:	42
Against:	61
Abstentions:	10

**DEBATE HELD AT
THE ECONOMIC AND SOCIAL COMMITTEE,
Brussels, on 17 October 1995**

"Integration of consumer policy in Community policies"

The Committee's aim was to review, in a very limited space of time, the essential aspects of consumer protection today. Together with the recent establishment of DG XXIV, which was an important innovation, consumer protection should be the subject of integration measures in all Community policies.

The Economic and Social Committee had therefore decided to draw up an Own-initiative Opinion on this subject as its importance had been enhanced by the Treaty on European Union.

I. Introduction by a representative of Mrs BONINO's Cabinet

Mrs MANFREDI, a member of Mrs BONINO's Cabinet and the Commissioner's representative, stressed the parallel nature of consumer protection and the central importance of the citizen in Community policy. The sensitivity with which the new Commission was treating this issue should lead to the preparation of an action plan towards the end of October which would be submitted to the Consumer Council on 9 November.

This plan, which outlined the main direction of future strategy, set out an objective and a methodology. To ensure continuity in the Single Market, it was necessary to update the legislation in place and then amend it. Moreover, it marked a break with the actual terms laid down in Article 129a: the establishment of a higher level of consumer protection meant reducing the serious differences that existed today between the various Member States.

This chosen strategy was intended to strengthen the implementation of the Union's considerable body of legislation on consumer matters instead of increasing the volume of regulations (about fifty Directives). This should be accompanied by a range of efforts in favour of consumer information and education, facilitating the emergence of a virtuous circle where legislation would be implemented and consumer rights respected.

Consultation would be encouraged on an institutional level (including the new Consumer Committee which should be set up by the end of the month) as well as informally, within the ad hoc forums on specific themes, where not only the consumer associations, but also distribution, industry and services, would be represented.

As regards the sectors concerned by the action plan, they were essentially products in general but they also included the provision of public and financial services. It seemed equally important to strengthen consumers' confidence in the area of safety, quality and labelling of food

products and to make them more accessible to the benefits of the information society.

The Commissioner hoped to promote a feasible policy of "sustainable consumption" and was interested in the external aspects of consumer policy given the future enlargement of the Union. The action plan had a political chapter covering the development of coordination with DG VIII.

Everything undertaken to further the integration of consumer protection would be carried out in agreement and in close coordination with the other Directorates-General.

II. Statements by the Commission

The DG XXIV representative recalled that the consumer policy department had been set up in 1989, and that the integration of this policy had been agreed from 1990 onwards and was included in the second three-year action plan 1993-1995. Integration should be understood as meaning aspects concerning the protection and promotion of consumers' interests within the context of Community policies. As integration now had its own structure (DG XXIV) and a strong legal basis and clear priorities in the new action plan, it could henceforth be put into practice.

In reality, DG XXIV had been closely linked to the work of a certain number of Directorates-General involving: international trade; the phasing-out of the Multifibre Agreement; the preparation of new anti-dumping legislation; DG II's work on the move to a single currency; the preparation of the Regulation on motor-vehicle distribution; the drafting of the Green Paper on food legislation (DG VI); major work on excessive debt and social exclusion (in conjunction with DG V). Consumer policy figured prominently in rules and regulations on hormones and additives (DG VI), with test results being published by consumer associations.

Finally, DG XXIV had been particularly active in the postal and telecommunications sector, collaborating closely on the two Green Papers on the liberalization of infrastructures and the inclusion of a chapter on "universal service".

The limits to DG XXIV's action had less to do with coordination with other Directorates-General, which is now automatic, than with the lack of experts and, sometimes, resources.

The DG I representative briefly presented the consumer section of the PHARE programme which had been allocated ECU 2 million. Its main objectives were to adapt the CEECs legislation, to improve consumer representation, to promote their rights in countries renowned for weak application of the law and almost non-existent standards concerning product and price information, safety and product liability.

The DG III spokesman underlined the close complementarity between the Single Market and consumer protection, and the implementation difficulties surrounding the rules of equivalence and mutual recognition of national standards which could justify intervention by the Community legislator in order to achieve a "high level of protection".

According to the DG VI representative, the consumer had benefitted significantly from the Common Agricultural Policy in terms of self-sufficiency in food production, controlled price rises, and medical and veterinary safety. The 1992 reform allowed reorientation of the CAP towards better quantity control and improvements in product quality. The agricultural sector was also aware that regular consultation among the 30 product-based committees, was a powerful instrument for the promotion of its image.

The DG VII representative referred to the advantages which the Single Market brought the consumer, particularly improved price competition and greater safety and comfort. The Green Paper now in preparation on public transport, proposed ways of including the costs of traffic jams, pollution, accidents and infrastructure, in the price of road use.

The DG XV representative, mentioned the difficulties currently encountered in implementing the law relating to the Single Market and cooperation with the Member States. Given the "high level of protection" laid down in Article 100a of the Treaty. This had led to the launch of a wide-ranging initiative to examine existing legislation and its impact, and to inform citizens of their rights (the "Citizens First" campaign should begin in 1996). For financial services, the immediate objective was to introduce minimum guarantees including data protection.

The DG XI (Ecolabel Unit) spokesman presented the Ecolabel Regulation introduced in 1992, saying that its initial aim was environmental in nature but that it also involved the consumer in two ways: within the framework

of consultations in various forums and the national Ecolabel Councils and in the context of obligatory information provided for by Article 15 of the Ecolabel Regulation. An extensive information campaign was planned in the Union in order to raise consumer awareness of ecological concerns and corresponding means of response.

The DG XIII representative recalled that the Green Paper on postal services introduced in 1992 analyzed "universal service" in terms of quality standards, pricing principles and the harmonization of technical standards. As part of ongoing work, a draft Directive on harmonization was being studied; this focused on such issues as: right of access, especially in rural and peripheral areas, Member-State responsibility for quality of service, recourse to strict intra-Community standards, laid down by agreement with the Consultative Committee and finally harmonization of standards under the aegis of the European Committee for Standardization.

The DG XVII representative pointed out that the three objectives of energy policy -global competitiveness, security of supply and respect for the environment - directly affected the consumer, as did the Directive on price transparency and programmes in favour of renewable and innovative energy sources. The liberalization of networks currently being planned would allow the producer a free choice throughout the Community, while at the same time maintaining public service obligations.

III. General discussion

The questions asked by Mr SCHMITZ, Mr KOOPMAN, Mr DECAILLON, Mr KALLIO, Mr GAFO-FERNANDEZ, Mr FOLIAS, Mr CONNELLAN, Mrs DAVISON and Mrs STRÖM (all ESC members), Mrs THOMSON (BEUC) and Mrs GOYENS (Centre for Consumer Rights, University of Louvain) focused on the CAP, the impact of the principle of subsidiarity on the Member States' responsibility for the completion of the Single Market, the considerable delays affecting the countries of Eastern Europe especially the former Soviet Union, consumer/user rights, the development of higher national standards in labelling and consumer information and common guidelines on public services.

In response to Mrs DAVISON's and Mr KALLIO's questions concerning the CAP, the DG VI representative remarked that consumer interests are better taken into account in Consultative Committees than in Management Committees on which consumers are not represented. Although the end of surpluses represented a problem for third countries, the control of supply through crop extensification and the promotion of higher quality standard were now on the agenda. There was a real awareness among farmers of the need for environmental protection and the reduction of supply to go hand in hand. As regards hormones, the essential problem remained that of monitoring and thus of the division of responsibilities between the Community and Member States.

In response to a question from Mr KOOPMAN, the DG I representative pointed out that the experience acquired in the PHARE programme would be of use for the countries of the former Soviet Union. It was necessary to count on the impetus given by the PHARE and TACIS programmes.

Replying to Mr GAFO's questions, the DG VII representative recalled that it was the Member States that decided on public service obligations, while the Commission only monitored the proportionality of State aid to public service obligations. Owing to the absence of a global approach to public services in the transport and energy sectors, one had to conclude that the consumer benefitted from the Single Market and improvements in competition. The DG XVII spokesman confirmed that there was no generally accepted definition of public service within the Union.

Referring to Mrs DAVISON's and Mr SCHMITZ's questions, the DG XXIV representative admitted that the principle of subsidiarity put the substance of Article 129a at risk. However, this was not incompatible with the need for consumer information and education, in so far as legislation had been introduced.

Consumer action continued to be valuable as long as the establishment of an inspection body remained a far-off prospect and as long as the Commission's systematic information scheme (mentioned by a Committee member) on Member-State resistance to free movement and mutual recognition was not yet operational.

Along the lines of Mrs STRÖM's concerns, he recalled that Article 85 of the Treaty restricted competition in the interests of the consumer and Article 100a(4) constituted a safeguard clause authorizing Member States to derogate from harmonization measures under certain circumstances.

Concerning the idea of the user brought up by Mr DECAILLON, it had to be borne in mind that the term "consumer" was the most generic term possible. As regards public services, it would be possible to establish a parallel initiative dealing with such topical issues as the universal service, the mobile telephone or the information society and proposing pricing equalization mechanisms at Community level in order to offset non-exportable EU social advantages.

OPINION

of the Economic and Social Committee

on the

**Proposal for a European Parliament
and Council
Directive on Consumer Protection
in the indication of the prices of products
offered to consumers**

(COM(95) 276 final - 95/0148 COD)



On 8 August 1995 the Council decided to consult the Economic and Social Committee, under Article 129a of the Treaty establishing the European Community, on the

Proposal for a European Parliament and Council Directive on Consumer Protection in the indication of the prices of products offered to consumers

(COM(95) 276 final - 95/0148 COD).

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 28 November 1995. The Rapporteur was Mr FOLIAS.

At its 331st Plenary Session (meeting of 20 December 1995), the Economic and Social Committee adopted the following Opinion by a unanimous vote.

1. Introduction

1.1. Consumer protection through the supply of accurate information on prices of goods offered to consumers at retail level is governed in the case of foodstuffs by Council Directive 79/581/EEC of 19 June 1979 on consumer protection in the indication of the prices of foodstuffs¹, as amended by Council Directive 88/315/EEC of 7 June 1988², and in the case of non-food products by Council Directive 88/314/EEC of 7 June 1988 on consumer protection in the indication of the prices of non-food products³. The European Parliament and Council Directive 95/58/EC of 29 November 1995⁴ amending the above-mentioned Directives is also relevant here. It basically extends the force of these Directives by two years.

1.2. The starting-point for this Opinion was the conviction that the interests of all those involved in the market place, i.e. producers, traders and consumers, are best served when transparency and good operating conditions prevail in the market. This approach provides guidance for establishing balanced solutions in promoting the justified, but conflicting, interests of the above-mentioned groups.

1.3. Furthermore, it is clear that market transparency and accurate information operate in favour of consumer protection and healthy competition between firms and between goods. It is also clear that producers and traders are themselves consumers. And the activities of consumers, traders and producers are always interdependent.

2. Present situation

2.1. There is a general obligation to indicate both selling and unit prices for products offered for retail sale. This aims at giving the consumers the information needed for comparing prices of similar products.

2.2. However, during the past seven years, it has emerged that the provisions of the directives regarding standardized ranges, as well as exceptions, were so complex that a number of countries did not transpose this legislation into national law.

2.3. These exceptions are as follows:

- when products are sold in standardized Community ranges;
- Member States may exempt certain categories;
- Member States may exempt categories of prepackaged products in pre-established quantities, which are not listed in the Annexes to the Directives;
- Member States may exempt categories when indication of unit prices would be meaningless;
- exemptions may be granted for small retail shops when the obligation would constitute an excessive burden or be impracticable.

2.4. Owing to the potential exemptions listed above, and to the less than unanimous acceptance of establishing ranges as an alternative to unit pricing, we have reached the point where a number of Member States had difficulties in implementing the regulations on price indication within the deadline of 6 June 1995.

2.5. It is comforting that the Commission evaluated the situation and realized that, firstly, the deadline should be extended and, secondly, some drastic changes to the current rules should be made in deference to the subsidiarity principle and the consumers' right to information on prices.

2.6. In order to find a common denominator to conflicting opinions and wishes of Member States without undermining consumers' rights, the Commission found a "Columbus egg" solution; that is, to propose to break the link between unit price and ranges.

1 OJ No. L 158 of 26.06.79, p. 19

2 OJ No. L 142 of 09.06.88, p. 23

3 OJ No. L 142 of 09.06.88, p. 19

4 OJ No. L 299 of 12.12.1995, p. 11

3. General comments

3.1. The proposed (simplified) Directive on the indication of the prices of products offered to consumers:

- establishes a general obligation to indicate the selling price and the unit price on foodstuffs and non-food products offered for retail sale (Articles 1 and 3 of the proposed Directive);
- allows for exemption of products where indication of the unit price would be pointless (Article 6(1)) and products sold by individual item or singly (Article 6(2));
- abolishes the existing relation of dependence between indication of the unit price and the existence of predetermined ranges of package size, making it compulsory to indicate the unit price in the case of products prepackaged in pre-established quantities ("ranges") too.

3.2. The Committee feels it is quite right to take Article 129a(2) of the Treaty as the legal basis for the proposed Directive.

3.3. There is clearly an immediate need to implement arrangements to provide accurate, transparent and unambiguous information about the prices of products offered for retail sale.

3.4. It should not be obligatory to indicate the selling price and unit price on the product itself; it should also be permissible to indicate both prices on the shelf. Particularly in the case of small retailers, who often have limited shelf space, it should be permissible to indicate the two prices of groups of similar products on a price list displayed in an easily visible place in the shop.

3.5. It is suggested that, after introduction of the single Community currency and during the proposed six-month transitional period when prices will have to be indicated temporarily in both the national and the Community currency, three prices should be indicated:

- the selling price in the national currency;
- the selling price in the single Community currency;
- the unit price in the single Community currency.

3.6. This system would be satisfactory because comparison of unit prices expressed in the same currency is always possible regardless of what that currency is.

It would also help citizens to adapt more quickly and effectively to the introduction of the single Community currency.

3.7. Although the link between unit prices and ranges is to be abolished, producers and distributors who have already established package sizes based on ranges can continue to use these, provided of course they conform to the rules on the indication of unit price contained in the proposed Directive.

The Commission is also urged to continue its efforts to encourage those sectors of business or firms which have already made a start in establishing the proposed European ranges and wish to see them developed further.

3.8. As regards Article 6(3) of the proposed Directive, the ESC would suggest that, in the case of non-food products, the Member States should be obliged, rather than just entitled, to establish a positive list of products to which the obligation to indicate the unit price shall apply. A practical way of going about this would be to list each item according to its Common Customs Tariff number (NIMEXE). This would provide a common point of reference for all Member States, and any new product produced or imported would immediately be given a number and automatically included in or excluded from the list.

There is the danger that Member States will include different products in this table, that is, making use of the option given in Article 6(3) in such a way that, ultimately, the level of consumer protection will differ markedly from one country to another, which would not be in keeping with the spirit of the proposed Directive. The ESC, therefore, invites the Commission and the Council to examine the problem and to find legal or other means of persuading Member States to maintain the minimum common level of protection presupposed by the Directive. In so doing, they will of course be able to take as a basis the exemption criteria established by Article 6(1) and (2) of the draft Directive (products for which indication of the unit price would be meaningless, products for which such indication would not provide the consumer with adequate information or would be liable to create confusion, etc.).

3.9. The extra four-year period allowed for small businesses to conform (Article 7 of the proposed Directive) is acceptable and justified. Nevertheless, the following points should be emphasized:

Since the objections raised by small businesses are due to an exaggerated "fear of the unknown", the ESC suggests that the Commission

- 1) fund a programme to educate small retailers which will be managed and implemented in each Member State by the relevant national trade confederation or confederations. The Commission will collaborate with the relevant confederation or confederations, supervising and checking their implementation of such programmes;
- 2) at its own liability and expense, but in collaboration with the relevant trade confederation or confederations in each Member State, publish information leaflets addressed to small retailers explaining things in simple, practical and comprehensible terms and suggesting solutions to the problems they face.

3.10. It must be made clear that the transitional period allowed for Member States to conform to the Directive (Article 10(1)), which ends on 6 June 1997, is not two years, as the Commission claims, since the time-lapse between publication of the new Directive and 6 June 1997 will be about one year. The ESC asks the Commission to find an appropriate legal means of ensuring that the two-year period will actually be two years, and at the same time to include a provision in the Directive calling on Member States to incorporate said Directive into their national legislation within six months of its publication.

3.11. As regards Article 11 of the draft, it is suggested that the Commission should draw up three reports on implementation of the provisions of the Directive. In addition to the two already provided for, a third report should be submitted one year after the Directive comes into force. This will be of considerable help in the timely and correct implementation of the Directive across the whole range of commercial businesses (large, medium-sized and small).

3.12. The ESC hopes to be closely involved in the drawing-up of these three reports.

4. Specific comments

4.1. Article 11 of the proposed Directive should be amended to read as follows:

1. *One year after the date referred to in Article 10(1), the Commission shall submit to the European Parliament, the Council and the ESC an initial report on the application of the provisions of this Directive.*
2. *Two years after the date referred to in Article 10(1), the Commission shall submit to the European Parliament, the Council and the ESC a second report on the application of the provisions of this Directive.*
3. *Four years after the date referred to in Article 10(1), the Commission shall submit to the European Parliament, the Council and the ESC a third report on the application of the provisions of this Directive."*

5. Summary of the Opinion

5.1. Consumer protection through the supply of accurate information on prices of goods offered for retail sale to consumers is governed by Directive 79/581/EEC, as amended by Directive 88/315/EEC, Directive 88/314/EEC and Directive 95/58/EC amending the above-mentioned Directives.

5.2. The ESC's point of departure in drawing up this Opinion was the conviction that the interests of all those involved in the market are better served when conditions of transparency and proper operation prevail. Moreover, such conditions provide equal protection for both the consumer and healthy competition.

5.3. The ESC accepts the breaking of the link between the obligation to indicate the unit price and the existence of "ranges".

5.4. The ESC calls for it to be permissible to indicate the selling price and the unit price not only on the product or on the shelf, but also on a centralized price list displayed in an easily visible place in the shop, in the case of small retailers.

5.5. For the transitional period when the single Community currency is being introduced, the ESC proposes that three prices be indicated for each product:

- a) the selling price in the national currency;
- b) the selling price in the single currency;
- c) the unit price in the single currency.

5.6. The ESC proposes that those who have already established package sizes based on ranges should be allowed to go on using them, indicating the unit price for them as well.

5.7. The ESC wishes to see an obligation on the Member States to draw up a positive list of products for which indication of the unit price is obligatory, as soon as the Commission has provided for "safety valves" to avoid excessive disparities between such national lists.

The ESC proposes as a practical, uniform approach the listing of each item according to its Common Customs Tariff number (NIMEXE).

5.8. To help small retailers overcome any difficulties in conforming, the ESC suggests that the Commission fund:

- a) programmes to inform small retailers;
- b) the production and publication of information leaflets for them.

5.9. The ESC calls upon the Commission to ensure that the two-year period of adaptation to the new Directive runs from the date of its publication and not as from 7 June 1995.

It also asks the Commission to take measures to oblige the Member States to transpose the Directive into their national laws within six months of the date of its publication.

5.10. The ESC proposes that three reports (instead of two) be drawn up on the implementation of the Directive, with the active participation of the ESC itself: the first one year, the second two years and the third four years after the date of publication of the Directive.

Done at Brussels, 20 December 1995.

The President
of the
Economic and Social Committee

Carlos FERRER

The Secretary-General
of the
Economic and Social Committee

Simon-Pierre NOTHOMB

RECORD OF THE PROCEEDINGS

of the Economic and Social Committee
on the

Proposal for a European Parliament and Council Directive on Consumer Protection in the indication of the prices of products offered to consumers

(COM(95) 276 final - 95/0148 COD)

331st Plenary Session
held at the Albert Borschette Conference Centre in Brussels
on 20-21 December 1995

The PRESIDENT moved that the Committee turn to agenda item 9 - its Opinion on the

Proposal for a European Parliament and Council Directive on Consumer Protection in the indication of the prices of products offered to consumers

(COM(95) 276 final - 95/0148 COD).

The President of the Environment Section, Mr ATAÍDE FERREIRA, gave an account of previous Committee work on the subject, emphasizing that the debate seemed now to have reached its culminating point. He then gave the floor to the RAPPORTEUR.

The Rapporteur, Mr FOLIAS, summarized the Section Opinion. He mentioned the spirit of understanding which had reigned at the study group meetings, and the excellent agreement reached on the need for consumers and traders to be complementary. He pointed out that there had been a conflict since 1988, but this was now over and the simplified proposal took account of the difficulties encountered and abolished the link with the existing system of ranges. It applied to the retail selling price for food and non-food products and made provision for exemptions where products were sold by individual item or singly or where the indication of unit prices would be meaningless.

In its Opinion the Section urged that small traders should be given the opportunity to indicate the unit price either on the product or on the shelf. It recommended that prices be indicated in three different ways during the transitional six-month period following the introduction of the single currency in order to familiarize citizens and make comparisons easier.

Ranges would not be affected by the simplified proposal but the new price indication would have to be added. Exempted products would be listed by the Member

States in accordance with a single nomenclature, the Commission ensuring the uniformity of the operation.

For the sake of small traders, the Commission was called on to launch an information programme which would be coordinated with national confederations and chambers of commerce, and to circulate explanatory brochures.

The time-limit for adapting to the new provisions was two years, and the Committee recommended that this period commence on the date of the Directive's publication in the Official Journal and that the deadline for national transposition be six months after the same date. It also asked the Commission to make provision for the drafting of three reports on the Directive's application one, three and four years after its publication.

The general discussion was opened by the President. Mr KOOPMAN emphasized the impact of the proposal, which would affect hundreds of millions of daily transactions. The current legislation was often incomprehensible and therefore poorly received, but this time a consensus had been found within the Committee's ranks thanks to two factors: the quality of the Commission's proposal, which fully tallied with the recommendations of the Sutherland and Molitor groups, and the excellent work performed by the RAPPORTEUR.

Mrs DAVISON also congratulated the RAPPORTEUR and referred to a report on twenty years of unit pricing in Sweden: three-quarters of consumers acknowledged that they used unit pricing when making their purchases, three-quarters of traders thought unit pricing had no effect on their prices and profits and two-thirds of them thought that they would continue to apply unit pricing even if it was not compulsory.

The RAPPORTEUR thanked the speakers. He also thanked the members for Cooperating so well.

The Opinion was examined point by point. Mr CHRISTIE proposed an amendment to point 5.6. calling for a stylistic change and asking that unit pricing not be obligatory for wines and spirits since it was misleading.

Mr MERCÉ JUSTE thought that discussing specific products would be tantamount to opening Pandora's box.

The first part of the amendment was accepted by the RAPPORTEUR. After Mr CHRISTIE had withdrawn the second part, the Opinion as a whole was voted on.

The Opinion was adopted unanimously.

APPENDIX

ARTICLE 129a

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

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