

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(93)456 final

Brussels, 10 November 1993

COMMUNICATION FROM THE COMMISSION TO THE COUNCIL
AND THE EUROPEAN PARLIAMENT

**CONCERNING LANGUAGE USE
IN THE INFORMATION OF CONSUMERS IN THE COMMUNITY**

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COUNCIL AND THE PARLIAMENT CONCERNING
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1. Consumers have a right to information on the qualities and characteristics of products and services on the market. In practice this means that basic information must be readily available to consumers. The question as to the language chosen to disseminate the information is a crucial one.
2. It should be noted from the outset that the Commission considers that rules concerning languages naturally fall within the competence of the Member States, notably in application of the principle of subsidiarity. The purpose of this communication is by no means to advance Community initiatives which could encroach on this competence. On the contrary, the goal is to survey existing provisions and to consider what can be done to strengthen consumer information in the context of the large market, while preserving the full competence of the Member States as regards language use.
3. Both Community law and national laws contain provisions on language requirements for the marketing of products or services offered to consumers.
4. The wordings we are concerned with are those addressed to the final consumer of the product or service. Hence, this concerns not only labelling but also other mentions such as the manner of use, assembly instructions, precautions regarding employment or use and any warning intended for the final user of the product or service. Thus mentions which concern relations between professionals (persons acting by way of trade) are not covered by this document.
5. Like the other institutions, the Commission has encountered a certain number of cases in which the way language provisions are worded gives rise to difficulties in implementation, and may even have a tangible impact on the content of the information intended for the consumers. These situations are particularly worrying whenever the health or safety of consumers is jeopardised, which may occur when they are not able to understand the message intended for them.
6. At its 1644th session on 2 March 1993, the Council requested the Commission to scrutinise carefully the problem of language use, notably as regards the labelling of products intended for consumers.

7. The Commission has launched a study on this topic, with the following objectives:

- to survey all Community legislation relating to language requirements in the field of consumer information as well as national implementing measures in the shape of statutes, case law and actual practice;
- to identify the other texts in force in the Member States which also concern particulars provided to consumers and which mention requirements relating to language use;
- to prepare an inventory of outstanding language problems both from the point of view of the free movement of goods and the information of consumers in the internal market.

8. Such an analysis is necessary in order to assess the obstacles which may still persist and may adversely affect the good functioning of the internal market and consumer protection. There is a link between the growth in trade of products and services and the legitimate expectations of Community consumers, since the deepening of the large European market will bring concrete benefit to consumers in their daily life.

The second three-year action plan "Placing the single market at the service of consumers", recently adopted by the Commission¹ proposes in this connection greater integration of consumer policy within the other Community policies. Moreover, in the context of implementing the Treaty on European Union and notably Article 129a thereof, "the Community shall contribute to the attainment of a high level of consumer protection".

9. The purpose of this communication is to inform the institutions. It firstly presents an overview of Community and national legislation in force, then analyses the difficulties of the resulting situation and, finally, puts forward a number of ideas as to future measures.

I. EXISTING LEGAL INSTRUMENTS

The state of Community law

10. The provisions of Community law in force relating to the use of languages in relations with consumers are very diverse in their wording. A large number of texts already, directly or indirectly, concern language use in regard to consumers, since the Community legislator considered it necessary to lay down procedures as to how they should be informed. Depending on the subject matter in question and

¹ COM (93) 378 final of 28 July 1993

the objectives envisaged, language requirements were or were not introduced into the legislation.

An examination of these texts shows that the wordings are not standardised, as can be seen from the following examples.

11. The following wordings may be found in Community law:

- a wording explicitly specifying the use of languages, such as:
 - one or several official Community languages, so that the final consumer can easily understand the information, in the wine sector²
 - one of the languages of the country in which the product is placed on the market, in the case of medicinal products for human use³
 - the language or languages of the country of final marketing, in the case of tobacco product labelling⁴
- a wording that requires the Member States to lay down rules; this is the case for foodstuffs labelling⁵ and nutrition labelling⁶, which must be provided in a language "easily understood" by the buyers;
- a wording that simply gives Member States the option of laying down rules on language requirements, with very different variants, for example:
 - the national language of the Member State of consumption, in the case of textile names⁷ or toy safety⁸
 - the official language or languages of the Member State of consumption, in the case of dangerous preparations⁹
 - an official or national language of the Member State of consumption, in the case of cosmetic products¹⁰

² Regulation 2392/89, OJ L 232 of 9.8.1989

³ Directive 92/27, OJ L 113 of 30.4.1982

⁴ Directive 92/41, OJ L 158 of 11.6.1992

⁵ Directive 79/112, OJ L 33 of 8.2.1979

⁶ Directive 90/496, OJ L 276 of 6.19.1990

⁷ Directive 71/307, OJ L 185 of 16.10.1971

⁸ Directive 88/378, OJ L 187 of 16.7.1988

⁹ Directive 88/389, OJ L 187 of 16.7.1988

¹⁰ Directive 76/768, OJ L 262 of 27.9.1976

- a wording which does not explicitly mention the question of languages, as in the case of misleading advertising¹¹, liability for defective products¹², consumer credit¹³, package tours¹⁴, or unfair terms¹⁵.

12. Generally speaking, several conclusions can be drawn from the analysis of how the language problem is treated in Community legislation:

- from the point of view of the final consumer or user, there does not seem to have been a standardised or even systematic approach in evaluating the importance of the language criterion in disseminating information;
- the range of criteria applied in wording language provisions in the directives has often been too slack. However, there has been some standardisation in the approach to this subject in the "new approach" type technical harmonisation directives concerning certain industrial products;
- the concepts or criteria, when they are specified, are left undefined. This may lead to difficulties in interpretation, notably when references are made to a "language easily understood" by the consumer;

13. The Court of Justice of the European Communities has rarely had occasion to hand down specific rulings on language requirements for consumer information.

- In its judgement of 7 March 1990, *GB-INNO-BM v Confédération du Commerce Luxembourgeois*¹⁶, the Court ruled that consumer information was "one of the principal requirements" of Community law in the domain of consumer protection, after stressing the importance of product labelling in this connection.
- Three judgments of 26 February 1991, *Commission v France*, *Commission v Italy*, *Commission v Greece*¹⁷. The Court ruled that restrictions in access to the profession of tourist guide may inconvenience tourists by depriving them of a guide who is familiar with their language, interests and expectations.

While the Court has not yet been requested to rule on the compatibility of a system of language requirements with the rules set out in the Treaty concerning

¹¹ Directive 84/450, OJ L 250 of 10.9.1984

¹² Directive 85/374, OJ L 210 of 7.8.1985

¹³ Directive 87/102, OJ L 42 of 12.2.1987

¹⁴ Directive 90/134, OJ L 158 of 23.6.1990

¹⁵ Directive 93/113, OJ L 95 of 21.4.1993

¹⁶ Case C-362/88

¹⁷ Cases C.154/89, C.189/89, C.198/89

the free movement of services, it has however handed down rulings in the case of foodstuffs.

- In its judgment of 18 June 1991, *Piageme v Peeters*¹⁸, the Court interpreted the notion of "language easily understood by consumers" in foodstuffs labelling, ruling that the obligation to make exclusive use of the language of a linguistic region, while failing to acknowledge the possibility of ensuring that the consumer is informed by other means, goes beyond the requirements of the relevant Directive¹⁹ and Article 30 of the Treaty.

14. In the wake of the above-mentioned judgment, an interpretative communication was prepared by the Commission concerning the use of languages in the marketing of foodstuffs, recapitulating the legal principles that apply in this domain.

B. The approaches adopted by the Member States

15. In order to assess the scope of existing and envisaged measures, the Community legislator must be familiar with the viewpoints of the Member States in this domain, as dictated by the subsidiarity principle. Analysis reveals that, while national viewpoints differ, they are well established and expressed both in the form of general policies, in the implementation of Community law and in the definition of national policies in favour of consumers.

1) General policies

16. There are many provisions in the Member States governing language requirements. Both the comparison of national situations and analysis of the choices made and interest shown by the Member States in this area show that circumstances differ very much from one country to another. Language problems are not identical in all the Member States. This is firstly because of the general status of the language in each Member State, but also because of the importance attached to language in relations with consumers. Certain Member States have even enshrined the language status in their constitution, or have adopted general legislation in this area, whereas others treat the subject as a secondary issue.

¹⁸ Case C-369/89

¹⁹ Directive 79/112 (mentioned above, footnote 5) and in particular Article 14 thereof.

17. It should be noted that legislative initiatives relating to language, whatever their basis have had an impact on legislation and other rules concerning the economy, and in particular consumer policy. In practice, it cannot be denied that information is transmitted more precisely when it is provided to the consumer in his own language or languages.

2) Consumer protection

18. As regards language use in relations with consumers, several Member States have adopted general legislation providing for the use of a specific language, viz. Belgium, Spain, France, Greece, Italy and Portugal.

19. Spain is a particular case, because as a result of their powers in the field of consumer protection, certain autonomous communities have adopted provisions concerning language requirements - namely the Basque Country, Galicia and Catalonia.

20. It must be said that in all cases mentioned above national case law is scarce to non-existent. In Denmark, however, the ombudsman's rulings have imposed the national language in a certain number of cases, the reasoning being the need to provide information which is accessible to the consumer.

21. Hence, more than half of the Member States believe that it is necessary to inform the consumer in his own language. Quite apart from the requirements of Community law, consumer relations are already subject to rules of this kind.

3) Implementation of Community law

22. Transposition by the Member States of the Community provisions must be assessed in the light of the general policies of the Member States, since the national legislations respond to some of the requirements arising under Community law.

23. It is clear that the nature of transposition will differ depending on whether Community law lays down precise language requirements (national or official language, etc.) or has left a margin for manoeuvre (a language easily understood) or has merely given Member States the option of stipulating language requirements, if they consider it useful.

24. When the Community texts have laid down precise requirements, the matter is straightforward.

Member States are empowered to lay down language requirements in favour of consumers in the case of nine directives. Only in the case of the directive on cosmetic products have all the Member States taken up this option. Only Spain

has laid down language requirements in all cases. The other Member States have not used the option systematically.

25. It should also be noted that there seems to have been no systematic approach by subject or domain; if the Member States which have laid down language requirements for dangerous preparations have also done so for dangerous substances, they have not necessarily done so in the case of detergents. Similarly, language requirements relating to safety have not always been transposed in the same way in all countries.

II THE DIFFICULTIES

26. A certain number of practical cases show that consumers may encounter difficulties because of shortcomings as regards language requirements. This may have serious repercussions and even affect people's health or safety. In all cases concerned the information was difficult to understand or read.

In the case of foodstuffs, gaps in information may have severe consequences for consumers.

Hence, the presence of sugar in foodstuffs whose labelling the purchaser cannot understand could have health consequences in the case of persons on a diet or suffering from diabetes. The same applies to foodstuffs allergies, which are widespread among Community consumers. Again, failure to understand cooking instructions properly has led to cases of contamination.

Likewise, absence of a translation or an incomplete translation can lead to serious problems, for example when using microwave ovens, or as a result of incorrect electrical wirings. In these cases producers' obligations are affected.

All consumer categories are concerned, including children (a typical example being solvents or glues), who may not necessarily know foreign languages. Finally problems crop up whenever language versions differ, since this affects the content of the information.

At any rate, whenever the information is incomprehensible or contradictory, and even when there are no serious consequences, the consumer will naturally tend to avoid the product or service in question.

27. The way in which language questions have been treated in Community law and in national instruments shows how widely circumstances vary.

Doubtlessly, the absence of consistency is mainly due to the variety of the domains covered and the unique aspects of individual cases. However, it is also due to the limits laid down in the EEC Treaty as regards the Community's and national legislator's freedom in this domain. Hence, certain provisions concerning

language requirements may be considered as a barrier to the free movement of products or services, as enshrined in Articles 30 and 59 of the Treaty.

We need to assess, on a case by case basis, whether the balance between the various interests is respected, viz. the safeguarding of free movement as opposed to the protection of an imperative requirement such as health protection, consumer protection, and fair commercial practice.

There is a need to think about how to remedy the situation so as to make Community rules easier to understand and apply. However, the outcome should not adversely affect the Community achievement and the working of the internal market, in the shape of requirements which might go beyond what is needed to ensure that consumers are satisfactorily informed.

28. The multiplicity of clauses relating to language requirements in Community law suggests that simplification should be the first step.

In all the Member States, people seem to concur on one point concerning language requirements: the information must be transmitted to the consumer in his own language, because this is the one he best understands.

Indeed, this is the approach that has long been adopted by business, at least for everyday products or services. Hence economic logic means that only attractive products and services will sell, i.e. those that are accompanied by the necessary information, allowing consumers to make their choice in awareness of the consequences.

The study launched by the Commission confirms that the business community is fully aware of this situation.

However it is important to take into account the diversity of situations encountered.

29. In certain Member States, the use of languages in relations with consumers is little discussed, either by trade and industry or by consumer representatives. This applies to Germany, Ireland, Luxembourg and the United Kingdom.
30. In the other Member States, the language question is however a highly sensitive issue; hence in France and Portugal the authorities frequently receive complaints from private individuals or associations. In Belgium and the Netherlands the complaints are often filed by competitors or associations for promoting the national linguistic culture. In Denmark, the consumer ombudsman has adopted strict guidelines. Likewise, in Italy and Spain, consumer groups are aware of the problems facing consumers as regards the need for information in a language they understand. In Greece, in view of the particularities of the Greek language, many consumers have a favourable impression of foreign language information, but

would also like information in Greek. However, foreign producers rarely translate the information into Greek and so it is up to the distributors to do so.

31. The question of the costs of translation into the different languages, in the event of marketing in another country, is not reflected in the business community's views. Indeed producer groups consider that in order to sell a product in a country it is necessary to provide information in the local language. Respondents seem to agree in unison that these are normal costs. Distributors, however, are sometimes more reluctant to assume the costs of translation when the translation has not been done by the producer.

However, it is clear that the economic partners have expressed a real need for clear rules on labelling, notably rules concerning utilisation and warnings intended for consumers and the users of products or services.

Hence, while the obligation to provide a translation may be a potential barrier to trade because of the associated costs, these outgoings are not in general considered to be out of proportion to the new markets that are opened up.

32. It is up to the Member States to ensure observance of the language requirements in force. This depends mainly on the work of national authorities and the supervision exercised by the judiciary. A more stringent approach would be to construe failure to provide information in a language understood by the consumer as vitiating consent on the consumer's part. This path has up to now been little explored.
33. The natural conclusion is to contemplate a more consistent approach to the subject, since both the Community institutions, the Member States and their supervisory authorities and courts are all equally concerned to ensure the effectiveness of the law concerning language use, with an eye to optimum information of Community consumers.

III. THE PROPOSED GUIDELINES

34. The analysis of national attitudes and of the shared views of the business community, as well as the interest of consumers, shows the need for a new and balanced approach to the treatment of language questions at Community level. Here the Commission wishes to put forward a number of ideas.

A. A new balanced approach

35. Any initiative concerning language use in consumer information must take the following requirements into account:
- the competence of the Member States in defining national rules in this domain
 - the rules of the Treaty on European Union and the case law of the Court of Justice of the European Communities
 - the legitimate right of consumers to receive the most exhaustive possible information on the products and services offered to them.

Henceforward particular attention should be paid to the language rules applying in the field of consumption in each of the Member States. Moreover the Community could propose a certain number of measures to improve consumer information if it turns out that this information is insufficient and could adversely affect the working of the internal market.

36. These initiatives should respond to certain anxieties which have been expressed on this subject:
- consumers have a right to protection of health and safety, and information is essential in this respect
 - the smooth functioning of the internal market must take into account consumers' expectations concerning optimum information on the products and services offered, so as to enable them to make free and reasoned economic choices
 - consumers should be in a position to assess as accurately as possible the parameters that condition their choices.

37. Taking all these considerations into account, the Commission wishes to submit five discussion themes to the Council and the Parliament. Hence these are not programmatic guidelines but simply a number of ideas designed to trigger a debate on the subject.

B. The discussion themes

Theme 1: Encourage multilingual information

38. Multilingual information seems to be the best way to ensure the good working of the internal market. It guarantees both better information of consumers and enhances business opportunities for marketing products and services.

Likewise, bearing the interests of both consumers and business in mind, there are other supplementary ways of informing consumers, such as by using drawings, signs or pictograms (mainly in labelling).

The measures to be adopted should be non-regulatory. The idea is to promote concertation between the partners concerned. This approach would allow operators in the sectors involved to respond voluntarily to consumer expectations.

Theme 2: Preserve the freedom of Member States to require use of the language of the country of consumption

39. The development of multilingual information does not override the need for a reference to language use in certain texts that concern consumer information.

In order to encourage good consumer information, the legislation must ensure the use of the language or languages of the country of consumption. The Member States' responsibility is essential in this respect, in application of the principle of subsidiarity. It is also important to ensure that the rules of the Treaty and the case law of the Court of Justice be strictly complied with.

Hence, and as mentioned in the Commission's interpretative Communication concerning the marketing of foodstuffs (see section 14 above), the Member States may, in application of Article 14 of Directive 79/112/EEC, require the use of their official language or languages for information which must be provided on the labelling of foodstuffs, which are intended for sale in the state to the final consumer, provided this requirement does not exclude the use of other languages or recourse to other measures to inform the purchaser (cf. sections 33 and 31 of the above-mentioned interpretative communication).

Theme 3: Improve the consistency of the Community legal instruments in regard to the use of languages in the domain of consumption

40. With a view to consistency, all Community initiatives which contain particulars relating to consumer information could specify the obligation to define the language rules, in line with the suggestions contained in Themes 1 and 2 above, and bearing in mind the subsidiarity principle and the circumstances applying to the case in question.

If necessary, the Commission could proceed to analyse the existing instruments which give Member States the option of laying down language requirements. This analysis could be extended to instruments which do not relate directly to the question, so as to determine whether clarification is necessary.

Theme 4: Improve information of the Commission, the Member States and the operators on the applicable language rules

41. The Commission could encourage the exchange of information on the language rules applicable in the Member States, in the interests of operators.

In order to realise this exchange, Member States could inform the Commission about the main language rules applicable at national level (general framework, horizontal legislation applicable in relations with consumers, other sectoral rules).

Theme 5: Assign responsibility to the economic operators

42. The Community texts could specify the person responsible for consumer information. In principle, the producer should be held responsible for this information, but there might be cases where the obligation rests elsewhere in the distribution chain. Endeavours should be made to encourage industry to use multilingual information.

CONCLUSION

43. Encouraging multilingual information of the consumer, guaranteeing the freedom of the Member States in language matters, improving consistency of Community rules in force, better mutual information, assigning responsibility to the economic operators - these are the five discussion themes which the Commission is putting forward in the context of a new approach to the use of language in informing Community consumers.

The Commission submits this Communication to the Council and the Parliament.

DOCUMENTS

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Catalogue number : CB-CO-93-504-EN-C

ISBN 92-77-59580-9
