

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(77) 404 final.

Brussels, 29 July 1977

**Proposal for a Directive
on the protection of participants
in home study courses**

(submitted to the Council by the Commission)

COM(77) 404 final.

Explanatory Memorandum

I. Introduction and General Comments on the Directive

Home study courses are a type of instruction which, in a particular way, meets the needs of persons wishing to undertake a course of instruction or vocational training.

This type of education is not confined to a particular place; furthermore, the student can organize his studies to suit his circumstances and his individual capabilities, and use the time at his disposal as profitably as possible.

The student or adult who wishes to follow a correspondence course offered by a private organizer is generally in need of special protection, since the distance between student and teacher makes it extremely difficult to check the teaching material and the professional and teaching qualifications of the teaching staff.

Because teaching material is usually sent to the students in instalments, the student is unable to make an overall appraisal of the course; hence he cannot assess his chances of successfully completing the course before concluding the contract. In many cases the student is persuaded by advertising, by oral statements, by the supply of some teaching material or by other means to conclude a contract for a correspondence course which does not match his level of knowledge or his capabilities. As a result the student wastes his time, money and energies which may discourage him from taking a course or from undertaking a form of training.

The large number of people who have expressed reservations about correspondence courses would be less critical of them if organizers of home study courses were approved by a public authority, and the contracts drafted in such a way as to ensure adequate protection for students. These two conditions are particularly important when the organizer of a correspondence course and the participant live in different Member States.

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The Preliminary programme of the European Economic Community for a consumer protection and information policy adopted by the Council of Ministers on 14 April 1975 provides for measures to inform and educate consumers and to protect their legal and economic interests. In its Resolution of 17 February 1975 Parliament requested that a Directive be drawn up on home study courses on the basis of the following principles:

1. official inspection of all courses which must receive a State certificate of quality;
2. appropriate training and qualifications for teaching staff;
3. prohibition of the use of sales representatives;
4. protection of students (especially as regards contractual conditions).

II. Legislation in the Member States and the legal basis of the Directive

Home study courses are subject to special laws in five Member States. The aim of these laws is to ensure that home study courses are so organized as to ensure that the courses offered are of a high quality and to determine the features of the contractual relationship between organizer and participant to ensure adequate protection for the latter. It is hoped in this way to prevent abuses and to encourage people to take part in home study courses without having to fear that the organizers might not be genuine or qualified or might even be dishonest. All correspondence courses are monitored in France (declarations have to be made by private organizations wishing to provide home study courses and the teaching content of courses are checked); in the Federal Republic of Germany (courses must be approved).

Home study courses provided by private organizers are of some economic significance in the Member States. Differing national laws and in particular the various methods used to check organizers of home study

courses may impede free competition between the various organizers of home study courses.

The degree of consumer protection also differs from one Member State to another. These differences are becoming even more marked as an increasing number of participants in correspondence courses come from Member States different from those in which the organizers are based. The different laws hence have a direct effect on the functioning of the common market and should be harmonized pursuant to Article 100 of the Treaty.

Since this Directive would involve the amendment of legislation in several Member States, Parliament and the Economic and Social Committee must be consulted (second paragraph of Article 100 of the Treaty).

III. Comments on the Articles

Article 1 defines the scope of the Directive. The first paragraph states that only home study courses for which a legal contract has been concluded are covered by the Directive. There is no reason to exclude from the scope of the Directive instruction provided by the State or regional or local authorities if such instruction is given on the basis of a contract concluded between the organizer and student. However, only home study courses against payment are envisaged here. A student following a correspondence course for which he has not paid may of course waste his time and energies if the quality of the course does not match his requirements. It was not, however, considered necessary to include "free" courses in the scope of this Directive. The Member States may, pursuant to Article 16, make these courses subject to the provisions of the Directive if they so wish.

The definitions given in the second paragraph have been made extremely broad in an attempt to cover all types of home study course as far as possible.

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Article 2 introduces the principle of a system of accreditation for organizers of correspondence courses. A system of prior approval would appear in principle necessary if an effective check is to be made on the organizers. However, in order to take into account the legal situation in some Member States, which forbids any restriction of freedom in education, Member States shall retain the possibility of introducing only an optional system of accreditation. To avoid an organizer, who has not been accredited, offering home study courses in a country with a compulsory system of accreditation, Article 3(2) allows Member States to forbid or to restrict within their territory any activity of a non-accredited organizer. The conditions for accreditation will be decided by the Member States. The information which must be provided is intended to enable the responsible bodies to make a check on the organizer and his staff and to assess the quality of the courses.

Articles 3 and 4 contain provisions concerning the granting and withdrawal of accreditation. Since accreditation must be renewed after three years, the responsible body is automatically obliged to check whether the conditions of accreditation are still being fulfilled.

Articles 5 and 6 are concerned with protecting students against various commercial practices which, in the past, have often led to abuse. Visits to the home of students have not been totally forbidden because it is extremely difficult to make a distinction between a visit by an educational adviser and by a salesman. However, the Article does impose a total ban on any unsolicited visits, stating that a written request must be made by the student for such a visit.

The penalties for non-compliance with the provisions of this Article are set forth in Article 8(4).

Article 6 is intended to put a stop to certain practices of promising financial rewards for advertising purposes.

Article 7 contains provisions on advertising. Since contacts between student and organizer are mainly by correspondence, it is vital that the student should receive detailed information about the organizer and about the courses which are proposed to him. This is why it is laid down that advertising material must contain the specific information listed.

Incidentally, the Commission intends to present shortly to the Council a proposal for a Directive on misleading advertising.

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Article 8 lays down the principle that the contract between the organizer and student must be drawn up in writing. This is justified in view of the fact that the contract is often the only written document committing the organizer to the contract and returned to the student; he can find details of his rights and obligations vis-à-vis the organizer in this document (advertising does not have to be sent to the student). The written contract must therefore fix the main features of the relationship between student and organizer.

Article 8(4) describes the consequences of concluding a contract without observing the provisions of Article 5, without drawing it up in writing or signing it. The consequences of non-compliance with these provisions must be severe to prevent any attempt to get round them. The most effective way of ensuring that these obligations are fulfilled will be to render the contract invalid if they are not met.

The provision prohibiting prior payment of the total contractual price contained in Article 9 is intended to prevent the student being faced with a fait accompli when he wishes, for instance, to exercise his right to terminate the contract, since it is often extremely difficult to obtain reimbursement.

Article 10 gives the student the right to terminate the contract within seven days from the date of receipt of the first teaching materials. It is only when the student has received some useful information that he can objectively decide whether the correspondence course matches his level of knowledge or his capabilities. The Member States may, pursuant to Article 16, extend this period if they wish.

Article 11 contains rules governing the termination of the contract. It seems essential to grant the student the right to terminate the contract in special circumstances in addition to similar rights which the student may enjoy under national legislation. Proper reasons must be adduced as proof of such circumstances to prevent any abuse.

However, no notice need be served in order to terminate the contract.

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Article 12 is concerned with removing certain contractual clauses which might be particularly unfair to the student, especially those requiring him to pay any amount to the organizer as damages.

Article 13 is intended to safeguard the rights of the student where a third party requires him to pay outstanding debts under the contract he concluded with the organizer.

Article 14 is intended to limit the freedom of contract of the parties in respect of the provisions of this Directive. Students will only be afforded effective protection if the provisions of the Directive are of a mandatory nature.

The aim of Article 15 is to exclude contracts for home study courses from the scope of the provisions of the Directive on contracts negotiated away from business premises.

The two main objectives of this latter Directive (contract to be in writing and granting of a period of reflection to the consumer) are contained in Articles 8 and 10 of this Directive.

Legislation on consumer credit, however, often contains more detailed articles to protect the consumer. It is therefore essential that these provisions are not affected by those adopted pursuant to this Directive.

Article 16 states that the Member States may adopt or maintain other provisions which afford greater protection to students.

COMMISSION
OF THE
EUROPEAN COMMUNITIES

Directive
on the protection of participants
in home study courses

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THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,
and in particular Article 100 thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament,

Having regard to the Opinion of the Economic and Social Committee,

Whereas home study courses are a widely used method of instruction in the
Member States and are already the subject of national legislation;

Whereas this method of instruction is required to play an important role
in instruction and vocational training; whereas it is a particularly
suitable form of contact between instructors and students located in
different Member States;

Whereas any disparity between the legislation in the different Member
States may have a direct effect on the functioning of the common market;
whereas it is therefore necessary to harmonize legislation in this field;

Whereas the Preliminary programme of the European Economic Community for
a consumer protection and information policy¹ provides for measures to
promote the education and information of consumers and to protect their
legal and economic interests;

Whereas the prime aim of this Directive is to afford the student adequate
protection in his dealings with the person offering home study courses;

Whereas effective protection of students may be facilitated by a system of
compulsory accreditation of persons wishing to offer home study courses;
whereas Member States must however retain the possibility of providing for
a system of optional accreditation;

¹OJ No C 92, 25.4.1975.

Whereas it is essential that certain commercial practices such as unsolicited canvassing, the promotion of courses and advertising should be subject to specific rules;

Whereas students are afforded greater protection if contracts in respect of participation in a home study course are drawn up in writing and contain certain essential provisions;

Whereas the student should have the right to withdraw from his commitment to follow a course within seven days from the date of receipt of the first teaching materials; whereas the student should be given other opportunities to terminate a contract into which he has entered;

Whereas it appears necessary to introduce other provisions such as those prohibiting certain clauses in contracts or derogation from the provisions adopted under this Directive;

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. This Directive shall apply to home study courses against payment for which a contract has been concluded.

2. For the purposes of this Directive:

- (a) "home study courses" means a form of instruction or training where the organizer and student are usually located in separate places and where the contracts between students and organizers are entirely or primarily maintained through a regular exchange of printed, written, audio, visual or audiovisual material or other means of communication;
- (b) "course" means home study course pursued by correspondence and consisting of a series of lessons presented collectively, including lessons consisting of several parts which are coordinated, arranged or packaged to form a curriculum or programme of instruction or training and which may be issued separately;
- (c) "organizer" means an establishment or natural or legal person offering instruction or training in the form of home study courses;
- (d) "student" means any person who follows or wishes to follow a course.

Article 2

1. Each Member State shall ensure that an organizer who wishes to offer home study courses : a) must be accredited for this purpose or b) has the option of being accredited for this purpose.

2. Each Member State shall designate a body to grant such accreditation and shall lay down the conditions for accreditation.

Applications for accreditation shall include the following information :

- (a) the name, address, financial standing and legal position of the applicant;

- (b) the entry requirements, curriculum, content and purpose of the courses;
- (c) full details of the professional and teaching qualifications of the director of studies, the course directors, the other teaching staff, the course writers and the teaching methods used or to be used.

Article 3

1. Each Member State shall take steps to ensure that :
 - (a) the responsible body referred to in Article 2(2) grants accreditation to any applicant who fulfils the conditions laid down;
 - (b) accreditation is granted for a period of three years and shall be renewable;
 - (c) each accredited organizer shall receive from the responsible body referred to Article 2(2), a distinctive mark or a symbol certifying the accreditation of which he may make mention in his correspondence, publications and advertising.
2. Member States may forbid or restrict, within their territory, any activity of an organizer who has not received the accreditation under Article 2.

Article 4

1. Each Member State shall empower the responsible body referred to in Article 2(2) to withdraw the accreditation when the conditions laid down for accreditation are either not fulfilled or are so no longer.
2. The organizer shall be required to inform the responsible body of any change in the details listed in Article 2(2) during the period of validity of the accreditation which might influence the decision in respect of accreditation.

Article 5

The Member States shall adopt provisions forbidding any visit the purpose of which is to advertise, give advice or even conclude a contract in respect of participation in a course, unless the person visited has previously been sent publicity on home study courses offered by the organizer, has received teaching material relating to a course or an actual course, or has requested such a visit in writing.

Article 6

1. The Member States shall forbid organizers to offer or promise financial rewards as an inducement to recruitment to a course.
2. A free demonstration lesson shall not be considered as a financial reward within the meaning of the preceding paragraph.
3. The organizer may award a scholarship or special prize in recognition of a meritorious performance by a student in an organized examination.

Article 7

The Member States shall take the requisite measures to ensure that

1. the advertisements, notices and publicity material relating to the activities of the organizer or the courses do not contain any misleading information or statements;
2. the publicity material contains full details of:
 - (a) the enrolment system, the initial standard required, the nature and average length of the courses and the principal openings to which they lead;
 - (b) any accreditation awarded by the body referred to in Article 2(2);
 - (c) the course(s) proposed with information on the most recent updating;
 - (d) the nature of the diplomas or certificates of instruction or training awarded and the recognition they may have received;
 - (e) the size and location of the establishment and the number and teaching qualifications of its staff.

Article 8

1. The Member States shall take steps to ensure that contracts in respect of participation in a course concluded between the organizer and student are drawn up in writing.
2. The contract shall contain such terms as are essential to the agreement, including the following specific information:
 - (a) the names and addresses of the contracting parties;
 - (b) the name, purpose and description of the course;
 - (c) the normal length of the course;
 - (d) the total cost of the course, the costs of books, equipment or material being shown separately.

Where the contractual price is paid in instalments, by a method of payment chosen by the organizer or arranged by him, the total cost of the course must be shown, together with all interest and incidental costs;
- (e) a statement specifying whether the teaching material sent to the student becomes his property or is merely loaned to him;
- (f) the substance of the provisions of Articles 10 and 11 of this Directive;
- (g) the information listed in paragraphs (b), (c) and (d) of Article 7(2).
3. Each contracting party shall date and sign the contract and shall receive a copy signed and dated by the other party.
4. The Member States shall take steps to ensure that a contract in respect of participation in a course which has been concluded without observing the provisions of Article 5 and 8(1) or which has not been signed by the contracting parties shall be invalid.

Article 9

The organizer may not require the student to pay in advance a sum greater than the fees corresponding to three months of the course, which sum shall, however, not exceed 25% of the total cost of the course.

Article 10

1. The Member States shall introduce rules providing that the student is entitled to terminate the contract within seven days from the date of receipt of the first teaching materials after the contract has been signed and returned.
2. In case of dispute about the receipt and date of the first materials sent the burden of proof shall lie with the organizer.
3. If the student terminates the contract before the expiry of the date laid down in the first paragraph, he shall be obliged to return the materials received. The organizer must reimburse all payments made.

Article 11

1. The Member States shall take steps to ensure that the student may terminate the contract - provided that he supplies proof - if special circumstances, such as serious illness or unemployment, prevent him from participating in the course. In such a case no payment shall be required beyond those which had already fallen due.
2. After the expiration of six months the student may terminate the contract at any time, without giving any reason, provided that notice is given. The period of notice shall be laid down by the Member States and shall not exceed three months. The mutual rights and obligations deriving from the contract shall cease on the expiry of the period of notice. The sums paid by the student for any period following the termination of the contract shall be reimbursed.
3. The student shall not be required to provide security or to cover his obligations by taking out a bank loan, insurance policy or any similar contract.

Article 12

The Member States shall forbid the following clauses in a contract in respect of participation in a course:

- (a) penalty clauses;

- (b) the payment of lump-sum damages;
- (c) exclusion or limitation of claims for damages.

Article 13

The Member States shall take steps to ensure that where the organizer assigns all or some of his rights to a third person, the student shall have the same rights and remedies against this third party as he had against the organizer.

Article 14

The Member States shall forbid any derogation by mutual agreement between student and organizer from the provisions adopted in implementation of this Directive.

Article 15

1. The provisions of the Council Directive of _____ to protect the consumer in respect of contracts which have been negotiated away from business premises shall not apply to contracts concluded between the organizer and student.
2. The provisions of this Directive shall not preclude the application of provisions concerning hire purchase or consumer credit.

Article 16

The Member States may adopt more favourable provisions than those provided in this Directive to ensure better protection of students, in particular by extending the period laid down in Article 10.

Article 17

1. The Member States shall take the measures necessary to comply with this Directive within a period of eighteen months from the date of its notification and shall forthwith inform the Commission thereof.
2. The Member States shall send to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 18

This Directive is addressed to the Member States.