



# INFO-C

INFORMATION FROM THE CONSUMER POLICY SERVICE OF THE EUROPEAN COMMISSION - VOL. V, No 2-1995

No, unfortunately we won't be moving production of **INFO-C** to some little paradise on earth. The point we want to make is that our bulletin's circulation is making very fine progress indeed. We now have well over 6 000 subscribers - a very respectable figure for a magazine targeted at a specialist readership that uses word of mouth as its only advertising technique. All the more reason for us to take pride in the fact that these 6 000 readers are spread over **78 countries** including the Fiji Islands, Botswana, Ecuador, Bangladesh and Zimbabwe, not to mention Belgium and Luxembourg!

For consumer advocates, the highlight of the coming weeks is the Consumer Affairs Council of 30 March. **INFO-C** will have gone to the printers before that date, and therefore this issue contains only the Council's agenda - for the results, you will have to wait for the next issue.

Topics featured in this issue include the Commission's latest study on car prices in the European Union, pyramid sales, false claims concerning «biological» products, the birth of consumer protection organisations in Albania and Poland,

shortcomings in consumer education in English and Welsh schools - and a lot more besides. Our «Publications» section focuses on some particularly interesting basic works, concerning both Community consumer law in general,

## INFO-C on the Fiji islands!

product safety legislation in particular, the shared legal culture of the countries of Europe, the possible appointment of a European consumer ombudsman, and the impact of

the GATT agreements on consumers throughout the world.

Finally, a word on the long-awaited *European Consumer Guide to the Single Market*. The Guide has been (or is being) distributed to **INFO-C**'s subscribers as listed at the beginning of March. We hope that this treasure trove of information will be just what you need. Remember that if you want additional copies you should contact the Commission's office or delegation in your home country, not the Consumer Policy Service or the Office for Official Publications of the European Communities. But if you have any reactions or comments, please write and let us know!

Thanks in advance - and have a good read!

### INFO-C

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#### Date :

Texts finalised 17.03.95  
ISSN N°1018 - 5755

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April 95

Bureau de dépôt : Antwerpen X  
Imprimé à taxe réduite



# Appeal to all organisations involved in consumer information and advice

As reported in **INFO-C**, the Consumer Policy Service has recently published the *Consumer Guide to the Single Market*, which provides practical advice and tips for consumers about the frontier-free Europe. It also encourages consumers to inform themselves, and to take an active role in the decision-making process. The *Guide* also makes reference to information centres and contact points where consumers can find more details, particularly about the national or local legal position. For reasons of space however, only a limited number of these contacts could be provided in the *Guide* itself. As a result, the Consumer Policy Service wishes to publish a **companion directory** which lists **all the consumer information organisations in the EU**, in order that consumers can be certain where to address themselves in specific cases.

To complete this exercise, it is essential to have the co-operation and support of all the organisations concerned, since we are reliant on these to give us information about their activities and functions. A questionnaire has been

drafted, which it is intended will be sent to all consumer bodies. However, it is possible that all such organisations are not known to the Commission.

Therefore, **if you have not received a copy of this questionnaire, please request one from:**

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Similarly, if you are aware of another body which may not have received a copy of this questionnaire, please notify the Consumer Policy Service (or send a copy of the questionnaire which you received to that organization).

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## Provisional draft agenda<sup>1</sup> of the Consumer Affairs Council of 30 March 1995

1. Proposal for a European Parliament and Council Directive amending Council Directive 79/581/EEC on consumer protection in the indication of the prices of foodstuffs, as amended by Council Directive 88/315/EEC and Council Directive 314/EEC on consumer protection in the indication of the prices of non-food products (so-called «carry over» directive).  
**(State of play)**
2. Amended proposal for a Council Directive on the protection of consumers in respect of contracts negotiated at a distance (legal basis proposed by the Commission: Article 100a of the EC Treaty)<sup>2</sup>.  
**(Adoption of a common position)**
3. Future developments of consumer policy:
  - follow-up to the Commission's Green Papers on access to justice and guarantees and after-sales services;
  - memorandum from the Presidency: «For an active consumer policy».  
**(Exploratory debate)**
4. Proposal for a European Parliament Council Directive on cross-border transfers.  
**(State of play)**
5. Possibly: amended proposal for a European Parliament and Council Directive amending Directive 79/112/EEC on the approximation of the laws of the Member States relating to labelling, presentation and advertising of foodstuffs.

<sup>1</sup> At 8 March 1995, date on which the document was distributed by the Council's press office.

<sup>2</sup> A vote may be required for inclusion of this item on the agenda.



6. Proposal for a European Parliament and Council Directive on the approximation of the laws, regulations and administrative provisions of the Member States on articles of precious metal (legal basis proposed by the Commission: Article 100a of the EC Treaty)<sup>3</sup>.

**(Adoption of a common position)**

<sup>3</sup> A vote may be required for inclusion of this item on the agenda.

## How much say has each Member State?

Since the enlargement of the European Union to include Austria, Finland and Sweden, the total number of Member State votes in the **Council** has risen to 87 and the qualified majority, the one required for the adoption of consumer protection legislation, is now 62. Below the number of votes held by each Member State:

Germany:	10
France:	10
Italy:	10
United Kingdom:	10

Spain:	8
Belgium:	5
Greece:	5
Netherlands:	5
Portugal:	5
Austria:	4
Sweden:	4
Denmark:	3
Finland:	3
Ireland:	3
Luxembourg:	2

## Car prices

This January the Commission published the results of its regular six-monthly survey on differentials in new car prices in the Member States (status: 1 November 1994). Below, **INFO-C** provides a summary of the spokesman's service's press release concerning the results of the study. Additional information may be had from the Commission's offices, from the European consumer infocentres, or by consulting the «Rapid» database.

The survey methodology was the same as in the past: 23 European and Japanese car-makers supplied the prices of 76 popular models on 1 November 1994 (Renault and Subaru each have one model more than in May). The prices were adjusted to account for differences in equipment, and were indicated in the national currency, before and after tax. The ECU conversion rate used was that published in the Official Journal of 4 November 1994. Prices of main options were also provided. Finally, Denmark and Greece again remained outside the study because of their specific fiscal policies.

First point to note: between May and November 1994 the currencies were relatively stable (with variations in the region of +/- 1%) and so could not affect price variances between Member States<sup>1</sup>.

Spain is the cheapest country for most low-price cars, whereas Italy is cheapest for those at the top of the range. Average car prices are highest in France and Germany.

The trend towards a gradual reduction in price differentials of European cars continues. Price differentials exceed 20% for 19.1% of the models (as opposed to 23.8% in November 1993 and 22.5% in May 1994). However, among Japanese car-makers, the proportion of models with a price differential of

over 20% rose from 8% in November 1993 to 9.2% in May 1994 and 18.7% at present!

As a general rule, the smaller the car, the greater the price gaps. Hence, 100% of the «high range» models (such as the Renault Safrane) and 93% of the «luxury» models (such as the BMW 730i) have differentials of less than 20%, but the figure is 85% for «average» cars (such as the Renault 19) and «large» cars (such as the Renault Laguna), 78% for sports or multi-purpose cars (such as the Renault Espace), 68% for «small» cars (such as the Renault Clio) and only 55% for the «minis» (such as the Renault Twingo).

With the exception of Mercedes, Audi and Daihatsu, all car-makers have at least one model where the price differential exceeds 20%. Price differentials are greatest for the following models: Peugeot 106 XR, with 33.1% between Germany and Spain; Toyota Carina E with 31% between Germany and Italy; Citroen ZX Aura with 30.1% between France and Italy.

To sum up, a genuine European car market is still a long way away. And it is precisely by tightening the rules against restrictive practices designed to limit parallel imports in the new draft regulation on motor vehicle distribution that Competition Commissioner Karel Van Miert hopes to improve the operation of the internal market in this sector and to help further reduce the differentials in prices between Member States.

<sup>1</sup> The currency market has been turbulent since then, with the lira and the peseta coming under particular pressure. Hence intending car buyers should be aware that the Italian and Spanish prices may need to be adjusted.

## BEUC reacts on spare parts for cars

On Wednesday 1 February **BEUC** reiterated before the European Parliament its objections to the current Commission proposal for rules governing design protection of spare parts for motor vehicles<sup>1</sup>. This proposal includes a three-year «repair clause», during which period car-makers would have a monopoly on the manufacture of spare parts. This clause has come under fire from Acea (the European car-makers association), which has argued that the manufacturers should have an indefinite monopoly, or at least one that lasts far longer, so as to recoup their investments in research, technical progress and safety. But it has also aroused the wrath of consumer associations, who have been lobbying for the freedom to reproduce spare parts the moment a model is commercialised. Consumer associations consider that a provision which would afford

car-makers design protection for spare parts **over and above existing rights pertaining to the entire product** would spell disaster for consumers who, now in each Member State, would face a limited choice and higher prices.

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<sup>1</sup> See «New rules on design protection will affect car owners» in the «Euro-Infos» section of **INFO-C**, December 1994.

## The «hormone mafia» kills - EURO C fights back

On 20 February, near Anvers in Belgium, veterinary surgeon Karl Van Noppen was assassinated in front of his own home. He was one of the most respected members of the «hormone unit», a special team made up of about 20 veterinary surgeons whose job is to track down the illegal use of hormones in livestock-keeping.

This appalling crime is the latest in a series of eight violent attempts since 1990 to intimidate the investigation teams, which in recent months have stepped up their controls.

Sadly, Belgium is not the only country in which the illegal use of hormones has assumed horrifying dimensions and constitutes a serious threat both to consumer health and to producers of quality meat.

**EURO C**, the European Trade Union Confederation's Consumers' Unit, has called on the Council of Ministers of the European Union to take urgent measures against the illegal use of hormones and has urged it to discuss as soon as possible the Commission's September 1993 proposal on stricter controls and the prohibition of clenbuterol<sup>1</sup>.

Notably, EURO C considers that the following measures are absolutely essential at national and European levels:

1. Imposition of swingeing penalties on persons who illegally use or sell hormones. Once detected, hormone-containing livestock should be slaughtered and the owner's remaining animals inspected at his expense.

**But above all the offenders should be barred from all public subsidies and this fact made public.**

2. Organisation of controls in such a way that the inspectors cannot themselves become personal targets.
3. Coordinated, European-level inspection of commercialised veterinary medicines in order to strike the illegal trade at its source.
4. Reform of the bovine sector to ensure that farmers can get a decent income from producing quality meat and to combat all forms of intensified production.

In conclusion, EURO C calls on the Council of Ministers to create a European framework designed to outlaw once and for all the use of hormones and to track down and prosecute systematically **at international level** those involved in the production, trade and illegal use of these hormones.

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<sup>1</sup> COM(93)441 final.

## Animal transport: Parliament urges the Council and Commission to take action

Following disclosure in all the mass media of the scandalous transport conditions of animals for slaughter, the **European Parliament** adopted resolutions on 15 February (B4-0166, 0167 and 0205/95):

- the Council is urged to adopt immediately uniform rules governing the transport of animals in the European Union and to make approval of all subsidies (export refunds on livestock) conditional on strict compliance with these rules;
- the Commission is urged to:
  - submit to Parliament and Council proposals designed to reduce or indeed prevent the export of live animals for slaughter, including measures designed to give preferential treatment to the transport of meat rather than transport of live animals;
  - limit to eight hours the duration of animal transport;

- lay down precise standards for these trips and provide for regular veterinary controls;
- ensure strict policing of the conditions governing the transport of animals from non-Member States;
- provide financial aid to rural areas affected by the changes to the existing rules;
- propose, **in the context of its consumer protection policy**, a Community label guaranteeing the quality of meat products and good livestock rearing, transport and slaughtering conditions.

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## More false claims concerning «bio» products

In our two previous issues we reported two studies, one by the Fédération de l'Oise des AFP Syndicales in France (**INFO-C**, December 1994) and the other by the Osservatorio della Pubblicità e della Comunicazione di Massa in Italy (**INFO-C**, February 1995), denouncing so-called «environmentally friendly» petrol. Now, in its test magazine **Konsument**, the **Verein für Konsumenten-Information** (VKI - Austrian Consumer Information Association) has taken a stance against false assertions by certain textiles manufacturers, who claim to be offering «bio» products to their customers.

In its February 1995 issue, *Konsument* concluded from a toxicity test on clothing that advertising claims about environmental friendliness should be taken with a grain of salt.

A total of 32 black cotton T-shirts and sweatshirts were tested for dangerous substances. With an eye to the European internal market, the samples were purchased not only in Austria but also in Germany. Result: all garments tested - including those manufactured conventionally - were found to be free of pesticide residue. The dyestuffs were also safe, with one exception which had too much chromium.

However, *Konsument's* chemists detected formaldehyde in quite a few of the samples. Free formaldehyde was identified in eight samples, and in some cases the level was way above the detection limit. One particular shirt, whose manufacturer is affiliated to the *Arbeitskreis Naturtextil*, a natural textiles group which allegedly shuns formaldehyde altogether, had a particularly high level of formaldehyde (150 ppm)!

This was not the only occasion on which biological claims were disproven by this test. Generally, ecological labelling - without independent control - tells us very little. In the absence of a standardised and verifiable symbol, such labels are often awarded by the manufacturer to himself.

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## Eco-labelling and TV quotas: CEG expresses its opinion

In its Winter 1994 newsletter *Consumers and Europe*, **Consumers in Europe Group (CEG)** expressed its opinion on two of the hottest topics currently debated at European level: eco-labelling and television programme quotas.

Concerning the former, CEG's position is that the Europe-wide eco-labelling scheme<sup>1</sup> should not be abandoned but continue to be managed at a European level. Indeed, the extension of the scheme beyond its current scope, with washing machines as the main item covered, would help consumers by lifting the confusion originating from the multiplicity of the existing national environmental labels.

Concerning the latter, CEG thinks that television programme scheduling should be a matter for broadcasters, not Brussels. A Directive<sup>2</sup> currently provides that over half of non-news programmes must be of EU origin, «where practicable». But the Commission, under intense lobbying from France, may propose that this qualification be deleted. CEG deems the move protectionist and fears that companies might be forced to broadcast programmes made within the EU regardless of quality or demand.

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<sup>1</sup> See article on DG XI's brochure entitled *European Union Eco-label Award Scheme* in the «Publications» section of the October 1994 issue of **INFO-C**.

<sup>2</sup> Directive 89/552/CEE of 3.10.1989, OJ L 298/1989 (the so-called «Television without Frontiers Directive»). This Directive has been under fire from the United States and its movie industry for years and was, with the Common Agricultural Policy, one of the biggest bones of contention between the EU and the US in the GATT negotiations. Since no agreement could be found, a brave decision was made to simply sweep the elephant under the carpet and exclude the audio-visual services from the final agreement. For more details on this, read *Unpacking the GATT - A Step by Step Guide to the Uruguay Round*, reviewed in the «Publications» section of this issue of **INFO-C**.

## Insurance: freedom of movement put to the test

On 1 July 1994 the latest Directives<sup>1</sup> establishing freedom of movement in the field of insurance entered into force, thus constituting another step along the road to the Single Market. Since then it has been possible for the European consumer to take out insurance in any Member State of the European Union by contacting directly a company or broker in another Member State, without the need for the foreign insurance company providing the cover to be established in his country<sup>2</sup>. This is the theory that **Euroconsument**, the cross-border consumer information centre in Courtrai (Belgium), put to the test in a survey, the results of which were published in its bulletin in January 1995 under the title *Verzekeringen in Europa* (Insurance in Europe).

### 1. THE OBSTACLES

Firstly, the consumer must remember that «freedom of movement» does not mean «harmonisation». This means that insurance taken out in another country will not necessarily cover the same risks as the «same» insurance which could

have been taken out in one's own country. One must therefore be well-informed before signing, and keep in mind the following three principles:

- if the policyholder resides in the country in which the risk is insured, the law of that country applies;
- if the policyholder resides in a country other than that in which the risk is insured, he may choose between the legislative systems of these two countries;
- if the policyholder makes no choice known, the contract is subject to the law of the country with which the said contract has the closest links. This is generally accepted to be the country in which the risk is situated.

As can be seen, this legal confusion is a considerable initial obstacle to freedom of movement for insurance services. One may conclude from the above that, in the vast majority of cases, the foreign insurer will have to conform to the legislation of the country in which the risk is situated, involving

the need for him to respect the legal requirements of public interest (a poorly-defined concept) in force in that country.

To this may be added the administrative obstacles. While a foreign insurer is now free to sell his products in other Member States of the Union, he remains subject to certain very binding obligations. In Belgium, for example, the foreign insurer must have a tax representative and a representative to administer claims, must be a member of and pay contributions to the common guarantee fund and the Belgian vehicle insurers association and must comply with most of the clauses in the standard vehicle insurance civil liability contract.

Then again, there are the tax obstacles: a consumer taking out life assurance in another country cannot offset his premiums against tax, for example.

Last but not least, the language of the contract and the distance between the insurer and the insured do little to encourage the crossing of frontiers.

## 2. THE ACTUAL RESULTS

In the light of the preceding paragraph it will be no surprise that, on the whole, these are discouraging.

Euroconsument asked a number of insurance companies in various Member States whether they would be prepared to insure a Belgian. Two out of three British companies said no and one said yes (but not car insurance), three out of four Luxembourgish companies said no and one yes (but not car insurance), four out of six Dutch companies said no and two yes (but not car insurance), two out of three German companies said no and one yes (but not car insurance) and five French companies said no. Only two of the companies which gave a positive reply were prepared to offer their Belgian clients contracts governed by Belgian law.

The reasons put forward by these companies to justify their refusal included: poor knowledge of the market, little interest in the market, excessive cost, poor understanding of legal differences, and above all «the presence in Belgium of a subsidiary of our company to which Belgian policyholders could turn». This final point calls for comment, as it runs contrary to the interests of consumers. Applying to a national subsidiary of a foreign company does not give free rein to competition, as the rates between one company and another in the same country generally vary considerably less than from one country to another. True competition would consist of comparing rates between companies established in different countries in order to highlight their (frequent) distortions and then buy the policy in the cheapest country. This is rather like what some brave consumers try to do when buying new cars. However, Euroconsument shows that the dream is far from becoming reality.

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<sup>1</sup> Insurance other than life assurance, Directive 92/49, OJ L 228, 11.08.1992. Life assurance, Directive 92/96, OJ L 360, 09.12.1992.

<sup>2</sup> Except in Greece, Portugal and Spain, where not all the Directives have yet been transposed. On the other hand, Switzerland is integrated into the single market for insurance under the terms of a special agreement between that country and the EU.

## Is competition for mail possible?

In the «Euro-Infos» section of the October 1994 issue of **INFO-C**<sup>1</sup>, we wrote about a BEUC study denouncing the derelict quality of cross-border postal services in the European Union. Here we would like to continue contributing to this debate by summarising the arguments for more competition for mail in the UK that Philip Cullum and Colin Meek of **Consumers' Association (CA)** presented in the Jan./Feb. issue of CA's *Consumer Policy Review*.

The British Government recently gave up on its plan to privatise Royal Mail, which had enraged the general public. However, CA argues, the relative esteem with which Royal Mail is held by consumers (42% consumer satisfaction - only second to British Gas - according to a CA survey conducted in 1994), should be no justification for maintaining the status quo. CA considers that it is future consumer needs which are the crucial determinant of how postal services should be structured in the years ahead. And here lies a big case for change.

*Question:* barring privatisation, where can change come from? *Answer:* **increased competition**, the establishment of a powerful independent **regulator** and **consumer representation**. Indeed, although the proportion fell by a few points from 1992, a majority of respondents (56%) to a CA survey conducted in 1994 thought that it was acceptable for companies other than Royal Mail to be allowed to deliver mail. However, the fears that the general public has concerning the possible risk of a deterioration of basic services (universal service, door to door delivery, etc.) due to increased competition, must not be underestimated but, rather, alleviated. And the only way to do this is to create a strong independent regulator covering the entire postal services market and ensure that the consumers' voice can be heard.

A good example of what can be done to **increase competition** while maintaining basic services, is provided by what has happened in the UK telecommunications market over the past ten years, with competition increasing but British Telecom still being required to provide universal service; or by the situation in Sweden, where the letter monopoly was abolished on 1 January 1993, while the state-owned postal service retained a universal service obligation<sup>2</sup>. In fact, Cullum and Meek argue that privatised companies tend to have such great incumbency advantages that these more than offset the disadvantages of facing a universal service requirement which is not applied to new entrants.

They also explain why everybody, i.e. customers, new entrants, the Government and Royal Mail itself, would benefit from more competition. Opponents to competition in public services usually base their case on the flawed assumption that customers all want the same service, and that competition will mean lots of firms competing to deliver it, thus reducing existing economies of scale and imposing extra costs on consumers. But that assumption is flawed as, in reality, new entrants usually choose to segment the market according to very specific needs and offer innovative new services to fulfill them. In the case of the postal service, it could be weekend deliveries, late evening deliveries, deliveries within hours or even minutes for urgent mail, slow deliveries for non urgent mail such as postcards...you name it. Clearly customers and new entrants would be winners here. But even the Government and Royal Mail could win too. Here is how. There is a trend for UK companies to have their mail posted from foreign countries where mailing costs are lower, even when the recipient is in the UK, which entails a dire loss of revenue for both Royal Mail and the Government. That occurs simply because the postal services become more competitive, and therefore cheaper, in certain countries. Only by being forced to compete domestically, the authors argue, can Royal Mail retain its ability to compete internationally. And it would certainly be less painful for Royal Mail to adapt to change under the pressure of regulated domestic competition now, than under the pressure of savage international competition later.

Concerning the **regulator**, CA considers that its central functions should comprise: defining quality targets, setting compensation levels for failure to meet those, controlling prices, and monitoring the use of the name «Royal Mail».

As for **consumer representation**, CA thinks that its role should be distinct from that of regulation. The regulator's position should be a neutral one, weighing up various interests, not just those of consumers, whereas the role of a consumer representative should be that of a partisan consumer advocate. And only an entity clearly separate from the Post Office, with a properly resourced secretariat, an ability to carry out independent research, and a clear system of accountability including performance indicators for handling complaints, can be effective in fulfilling that mission. CA argues that all those criteria rule out retaining the Post Office Users National Council (POUNC) in its current form.

Although it is obvious that no European country exactly replicates another, surely the case made in this article can broadly apply to the situation in other countries.

**Reference:**

*Consumer Policy Review*  
Jan./Feb. 1995 - Volume 5 - Number 1  
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<sup>1</sup> Article entitled 'Public Services: The Consumer as 'Client King' or 'User Hostage'?

<sup>2</sup> **We invite our Swedish readers to contribute to this debate by sending us reports on the evolution of the situation in their country in the past two years.**

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## Phone chargecards may cost you the earth

An interesting story concerning a treacherous aspect of telephone chargecards appeared in the January 1995 issue of **Which?** Ads for those little pieces of plastic of course only stress their convenience: you can use virtually any phone in the galaxy and by entering your PIN (personal identification number), put the cost of your call on your domestic bill. But what those ads do not say, is that if you use your card to make calls within a foreign country, you could be in for a massive bill. For example, when *Which?* reader Barbie Wilde rang Los Angeles from New York for 73 minutes using her British Telecom chargecard, she was charged £116.49 for a call that would have cost her £22.19 on a local phone! That is because, rather than pay for a national call, she had to pay

for two international calls - the cost of routing the call from New York to the UK and then back to LA! Users should also be warned that even when calling their own country from abroad, or when calling within their own country, there are also in for heavy surcharges. Please spread the word!

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## Little control over fraudulent use of cash cards - cardholders have little chance of proving fraud<sup>1</sup>

There is precious little that holders of cash cards can do in the event of abuse. This is because banks prefer to dispense with additional safety arrangements - which are technically possible - and let the clients shoulder the risk. This point is made by the **Verein für Konsumenteninformation** (VKI - Austrian Consumer Information Association) in the February 1995 issue of its periodical *Konsument*.

If an unauthorised person manages to find out somebody's PIN code and uses a forged card to withdraw cash, the cardholder is at the mercy of his credit institution (or Europay-Austria). Indeed, the first thing the bank usually does is to take away the holder's original card, hence depriving him of an essential item of evidence. And the agency that investigates the magnetic strip to determine whether a forged card has been used is not an independent body, but a subsidiary of the banks (Europay - Austria, Zahlungsverkehrssysteme GmbH).

The client has no way of verifying this examination. The data flows between the cash dispenser and the central processor are not properly logged or documented. As experts point out, Europay's safety system is anything but transparent and consumer-friendly.

The banking community has been making reassuring noises about a new technology, the chip card, which is said to be safer than magnetic cards and is due to be phased in from 1996 onwards. However, the transition will take years and in the meantime magnetic cards will remain indispensable. Hence the VKI has been calling for clarification and for a transparent, documented safety system supervised by an independent arbitration board. In this connection the VKI also proposes that cash dispensers be equipped with voucher printers and fitted with screens in order to make it more difficult to spy on other users' PIN codes.

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<sup>1</sup> Of course, cardholders can always sue the bank...See article on this in the «Case Law» section.

## Air transport in Europe: the scandal of late flights

The **Association of European Airlines (AEA)** has noted a significant deterioration in the punctuality of flights within Europe in 1994, after four years of improvement. On average, 13.3% of these flights were more than 15 minutes late, and while this might not be much worse than in 1993 (12.6%), the AEA is nevertheless concerned that punctuality (or rather the lack of it) fluctuates so much with the seasons. Although the first four months of 1994 were good, the July-September period was a disaster, with 30% more late flights than in the same quarter of 1993 even though the number of flights was no different. It was the same story in the final quarter of 1994, with only 2.2% more traffic than in 1993 but 11.4% more delays! Hence the AEA's talk of a significant deterioration. Most of the delays (54%) are due to infrastructure problems, i.e. to cluttered air traffic control systems<sup>1</sup> and congested airports. Karl-Heinz Neumeister, Secretary-General of the AEA, has

therefore appealed to Neil Kinnock, the new Transport Commissioner, to show determination towards those who have not already understood that the single market needs a single sky.

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<sup>1</sup> There is a multiplicity of air traffic control systems in Europe. Air traffic could be managed much more efficiently if these were harmonised. Most other delays are ground-related (check-in, baggage handling, etc.). Here too, there is plenty of scope for improvement. Only a very small minority of delays are due to factors outside human control, i.e. bad atmospheric conditions.

## Three cheers for fresh southern fruit!

In a public statement of 6 February 1995, **Eurocoop** (the European Community of Consumer Cooperatives) sings the praises of fresh, vitamin-rich apples and pears from the southern hemisphere. According to Eurocoop, fruits harvested in the Community are being kept for longer and longer periods in cold storage - it can be eight to ten months before they reach the market. In contrast, imported fruits from the southern hemisphere are in our shops very soon after harvesting, and thanks to their superior quality and taste imports have been rising.

But that may change this year, because COPA/COGECA (Committee of Agricultural Organisations in the EEC/General Committee for Agricultural Cooperation in the EEC) claims that EU stocks of apples and pears are up on last year by 5% and 10% respectively, and that we must therefore stop importing them.

Eurocoop has of course objected strongly to this *diktat*, stating that consumers should be able to decide for themselves what fruit they want to eat.

Eurocoop believes it would be more profitable, and in everyone's best interest, for the parties concerned to be brought together as soon as possible to discuss the quality problems caused by storing fruit for too long.

**Contact:**

Eurocoop  
Secrétariat Général  
rue Archimède 17  
B - 1040 Bruxelles  
Tel: +32 2 285 00 70  
Fax: +32 2 231 07 57

## Hard discounts: good among the bad

In the last **INFO-C** we reported on the nasty surprises which can sometimes await purchasers of ultra-low-price products on sale in discount stores as well as in theoretically more «respectable» supermarkets in the Nord - Pas-de-Calais region (France). Now comes news of a survey by **ALTROCONSUMO**, the magazine of the Italian consumer organisation **Comitato Difesa Consumatori**, on the relationship between price and quality. **ALTROCONSUMO** wanted to find out whether the high quality demanded for all products, and especially for foodstuffs, was maintained when prices were so low. The two products examined were washing-up liquids and, much more important for our Italian friends, spaghetti.

Eleven samples of low-price spaghetti were analysed and compared with the leading brand, «Barilla»<sup>1</sup>. Similarly, eleven unbranded washing-up liquids were compared with the brand leader «Svelto».

The tests showed that some of the cheap spaghettis were every bit as good as the brand leader, but none of the cheap washing-up liquids were remotely as good as the brand leader.

It would be wrong, therefore, to warn shoppers against *all* cheap products. Shoppers must simply try to be as discerning as possible, assessing each offer on its merits.

**Contact:**

Liliana Cantone  
Comitato Difesa Consumatori  
Viale della Liberazione 18  
I - 20124 Milan  
Tel: +39 2 667 203 86  
Fax: +39 2 670 63 80

<sup>1</sup> Gérard Depardieu's favourite brand, as all French speaking TV viewers know.

## The shorter the better! - IOCU becomes CI

The International Organisation of Consumers Unions (IOCU), the only umbrella association for consumers organisations worldwide, has changed its name to **Consumers International (CI)**.

Under its new name, which is easier to say and easier to remember, CI will carry on the work it began in 1960 - to support and strengthen the consumer movement worldwide and represent the interests of consumers at the United Nations, the World Health Organisation, and other international and regional bodies.

CI's membership has increased by 20 percent in the last three years, which is the greatest growth in its 35-year history. CI now includes 203 members in more than 80 countries; half of its membership is in the developing world, where the struggle is for some of the simplest and most basic consumer rights.

Much of CI's expansion can be attributed to the growth of democracy in regions such as Central America and Africa, or to fundamental economic changes in areas such as Eastern and Central Europe<sup>1</sup>.

CI serves its members through its London-based Head Office and its five Regional Offices, which assist existing consumer organisations and help expand the consumer movement in their respective regions: Latin America and the Caribbean; Asia and the Pacific; Africa; Central and Eastern Europe; and the developing countries.

CI publishes books, issues briefing papers and organises campaigns on a wide variety of consumer concerns, from sustainable consumption to international food standards to trade and foreign direct investment to tobacco and pesticides.

### Contact:

Consumers International  
24 Highbury Crescent  
UK - London N5 1RX  
Tel: +44 171 226 66 63  
Fax: +44 171 354 06 07  
E-mail: consint@dircon.co.uk

<sup>1</sup> See article on CI's help to the Albanian Consumers Association in the 'Countries' section of this issue of **INFO-C**.

## Corrigendum

In the last issue of **INFO-C** we got the addresses of the CRC Nord - Pas-de-Calais and the IEIC mixed up. Hence the following clarification.

The **CRC** (Centre Régional de la Consommation Nord - Pas-de-Calais) is an organisation attached to the Conseil Régional Nord - Pas-de-Calais. It is a technical body at the service of consumers and their regional associations. Its address is:

CRC Nord - Pas-de-Calais  
47 bis rue Barthélémy Delespaul  
F - 59000 Lille  
Tel.: +33 20 60 69 12  
Fax: +33 20 42 09 31

The **IEIC** (Institut Interrégional de la Consommation - English title: EIICA/European Interregional Institute for Consumer Affairs) is an umbrella body representing 18 regional organisations from seven countries (including the CRC Nord - Pas-de-Calais) whose purpose is to oversee and coordinate cooperation activities at European level. Its address is:

IEIC  
79 rue Gantois  
F - 59000 Lille  
Tel: +33 20 21 92 50  
Fax: +33 20 54 18 45

## ALBANIA • CONSUMERS INTERNATIONAL TO HELP ESTABLISH ALBANIAN CONSUMER ADVICE CENTRE

The **Albanian Consumers Association (ACA)** is run from a small unheated room with no paid staff and virtually no funding. It has just one telephone/fax, two ancient typewriters and a core of dedicated volunteers.

Nonetheless, over the past four years, it has managed to attract 12 600 members and become the largest non-governmental organisation in Albania.

Faced with an overwhelming task, ACA asked **Consumers International** (formerly IOCU), a London-based umbrella organisation of 203 consumers groups in more than 80 countries, to step in.

In early March, Consumers International's Programme for Economies in Transition (PROECT) began the first phase of establishing a professional consumer advice centre in Tirana, with the goal of having it up and running by mid-1996. It is the first time ACA has requested outside assistance and marks the culmination of two years of consultative work with Consumers International.

Albanian consumers are faced daily with contaminated drinking water, sporadic electricity and poor - if not non-existent - telephone communication and public transport. On top of this, Albanians are wrestling with the tremendous task of adapting to a market economy after decades of communist isolation.

Funded with money from the UK Foreign and Commonwealth Office Know-How Fund, PROECT will help ACA shift from an ad hoc voluntary advice centre to a more fully developed service.

«ACA has been providing consumer information for four years already under extremely adverse conditions», said Christine Knights, PROECT's Programme Officer for Central and Eastern Europe. «Consumers International is optimistic that it can help build on ACA's foundation and strengthen its efforts to defend consumers rights in Albania.»

As underfunded and understaffed as it is, ACA has managed to inform and protect consumers. It issued 50 000 leaflets containing advice on how to minimize the dangers from the water supply. In addition, it has helped more than 60 consumers receive compensation for costs of repairs to faulty electrical appliances.

### Contact:

Albanian Consumers Association  
RR Sitki Cico, Pallaci 4/1  
Shkalla 5, A109  
Tirana  
Albania  
Tel/Fax: +355 422 91 97

or

Christine Knights  
Consumers International  
24 Highbury Crescent  
UK - London N5 1RX  
Tel: +44 171 226 66 63  
Fax: +44 171 354 06 07  
E-mail: consint@dircon.co.uk

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## POLAND • BIRTH OF NEW CONSUMER ORGANIZATION

With the Consumer Federation set up in 1981 and the Polish Home Economics Association which came into being in 1990, Poland was the first country in Eastern Europe to have independent consumer organisations.

But now, a number of new groups are waiting for registration. One of them is **Stowarzyszenie Konsumentów Polskich** (Association of Polish Consumers), which was set up in December 1994 by 20 individuals (journalists, lawyers and economists) with written support of more than one thousand *Test-Magazyn Konsumenta* (Test-Consumer Magazine) readers. All of the 20 original members previously cooperated with the existing consumer movements and were familiar with basic consumer problems in the country.

The charter of the Association states that its aim is to develop consumers' awareness of their rights to safety and health; information, education and representation; as well as the protection of their economic and legal interests.

An urgent need is consumer education and information. Significant developments in this area should enable ordinary consumers to take advantage of their rights and influence the market by making more conscious purchasing decisions.

The Association was offered to supplement the popular family magazine *Success* with its *Test-Consumer Magazine*. That operation was started in the middle of last year. *Test-Consumer Magazine* provides information to consumers, such as results of comparative products tests, legal advice, etc.

In addition, the Association is going to apply for funds from different sources such as government bodies, foundations, international institutions, etc.

It has planned several information campaigns for this year:

- against misleading and deceitful advertising;
- against free advertising of tobacco products (under the law on unfair competition);
- on the terms of contracts offered by banks to consumers. First, it will publish the results of a study on the subject, and second it will start negotiating with banks to make these terms more consumer-friendly.

Good luck to Stowarzyszenie Konsumentow Polskich!

**Contact:**

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PL - 02 564 Warszawa  
Tel: +48 22 48 81 85  
+48 22 48 84 03  
Fax: +48 22 48 62 73

## ITALY • PACKAGE HOLIDAYS DIRECTIVE: THE COMITATO DIFESA CONSUMATORI REPORTS ITALY'S NON-COMPLIANCE TO THE EUROPEAN COMMISSION<sup>1</sup>

Where does Italy stand with the implementation of Directive 90/314/EEC on package travel, package holidays and package tours?

Nowhere!

Even though two years late, the Italian legislation implementing this Directive should now be going through. But nothing of the sort has happened<sup>2</sup>. **Thus, the tourist is deprived of the guarantees and protection provided for by the European Union.**

For this reason, the **Comitato Difesa Consumatori** (CDC - Consumer Protection Committee) has reported Italy to the European Commission for its failure to transpose the Directive.

Italy's slowness in implementing the Directive not only goes against the consumers' interests but is also extremely damaging to the operators in this sector, jeopardising the Italian tourist market's integration into Europe.

The CDC deplors the fact that, for reasons to do with elections or referenda or the vicissitudes of the domestic political situation, Italy continues to drag its feet in meeting its European Union obligations.

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I - 20124 Milano  
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<sup>1</sup> See article 'Transposition of the Directives: let's try harder!' in the 'Consumer Protection' section of the February 1995 issue of **INFO-C**.

<sup>2</sup> Status: 21 February 1995.

**ENGLAND AND WALES • CONSUMER EDUCATION IN SCHOOLS - A MISSED OPPORTUNITY?**

A report entitled *The Learning Gap - Consumer education in schools*, published in January 1995 by the **National Consumer Council** and based on research by Steve Hodgkinson and Margaret Atherton of the Economic Awareness Teacher Training Programme at the School of Education of the University of Manchester, shows that a growing number of young people are leaving school without the basic consumer skills they need for adult life.

Only 1 in 20 of the primary schools and one in 10 of the secondary schools surveyed believed they equipped pupils with a basic knowledge of consumer rights. The causes are manifold: schools do not receive sufficient advice or in-service training from the local education authorities on consumer education; teachers do not know how to relate consumer education to the subjects they teach; the national curriculum puts the emphasis on economic and industrial understanding, i.e. producer rather than consumer education; and, most importantly, schools already lack staff and other resources to cover both the national curriculum subjects and the cross-curricular themes, so how could they be expected to be effective in teaching consumer education, which has not even been designated as a cross-curricular theme by the 1988 Education Reform Act?

A series of recommendations are then made in order for the situation to be improved:

**Recommendation 1:**

Schools should take full advantage of the extra time and increased flexibility allowed by the curriculum changes to occur in September 1995 to ensure that all pupils receive consumer education throughout their school career and leave school with an understanding of their rights and responsibilities as consumers, and with the skills to take effective action on consumer issues.

In primary and middle schools (key stages 1 and 2) these targets can be achieved by choosing a theme related to consumer issues and making it a topic for class-work throughout the term. Secondary schools can achieve this by working on the consumer objectives in each subject as laid out in the School Curriculum and Assessment Authority's (SCAA) Subject Orders. They can ensure that consumer issues become an important part of their work in personal and social education. Secondary schools can also consider using the extra time to reinstate subjects like home economics.

**Recommendation 2:**

Schools should include consumer education in school policy or guidelines and in school development plans.

**Recommendation 3:**

Schools should give responsibility for developing consumer education in the curriculum to one member of staff.

**Recommendation 4:**

The School Curriculum and Assessment Authority (SCAA) should reassess its policy and guidance on the whole curriculum and on cross-curricular themes. It should provide schools with clear guidance on how to cover essential skills and experience, particularly those relevant to consumer education, within national curriculum and other subjects, and give practical ideas for following this through in the classroom as well as giving teachers suggestions for different approaches they can take to the topic.

**Recommendation 5:**

The SCAA should set a timetable for reviewing its policy and guidance. This should allow new guidance to be ready in time for teachers and curriculum managers to introduce consumer education at the same time as they implement the new National Curriculum Orders from September 1995.

**Recommendation 6:**

The SCAA should ensure that its revised guidance on the whole curriculum and on cross-curricular themes is compatible with guidance on national curriculum and other subjects and to in-service training on those subjects. The relationship between these different areas should be made clear and easy for schools to interpret.

**Recommendation 7:**

Local Education Authorities (LEAs) should review their advisory and in-service training support for consumer education.

**Recommendation 8:**

The SCAA should target LEAs in its review of guidance to stimulate and guide the LEA's own review and future planning.

**Recommendation 9:**

LEAs and trading standards authorities should co-ordinate their activities to support the development of consumer education in schools.



For more information on that very detailed 86-page report, please contact:

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20 Grosvenor Gardens  
UK - London SW1W 0DH  
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Fax: +44 71 730 58 51

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## **FRANCE • PYRAMID SELLING: STRENGTHENING THE LAW**

On 1 February 1995 the French Parliament adopted an amendment to Article L.122-6 of the Consumer Code aimed at stamping out abuses in pyramid selling systems<sup>1</sup>. Firstly, it is henceforth forbidden to charge a new member of a network an entrance fee of whatever kind, including purchase of «training material», to the benefit of one or more existing members. Secondly, it is also forbidden to compel the new member to buy a stock of merchandise for resale without a guarantee of being able to return the goods at the purchase price - subject to a possible deduction of 10 percent and a limitation of the guarantee to one year following purchase.

The effect of this law is not, therefore, to prohibit multi-level selling but to compel those belonging to such a system to

derive their profits from the actual sale of products to third parties and not from the recruitment of new sales agents or the purchase by them of products which they will never be able to resell.

On this subject, the attention of readers is drawn to the report under the section «Case law» of a hearing involving Herbalife. It should be noted that this case predates the passing of this law.

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<sup>1</sup> Title V, Article 13 of Law No 95-96 of 1 February 1995 concerning unfair terms and presentation of contracts and governing various economic and commercial activities (Official Journal of the French Republic, 2 February 1995).

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## **IRELAND • LAUNCH OF A GREEN HOTLINE**

The **Irish Productivity Centre's** Environment Unit has set up a Green Consumer Information Telephone Line which is available to all household consumers who feel they need information on how they can be more environmentally friendly at home and while shopping in the supermarket.

The Centre has remarked that marketing departments of firms producing consumer products naturally do not go out of their way to point out the environmental damage that their produce or its packaging are causing or if there is a more environmentally friendly alternative to their product. Moreover, although there is a gradual expansion of products directed at the Green Consumer who will go out of his way to look for green products, the average consumer lacks the information required to make the environmentally friendly

purchasing decision. Therefore, this service should give the consumer the opportunity to find out the damage that household products can cause and if there are alternatives available.

**The hotline can be called on: +353 1 668 67 25.**

### **Contact:**

Irish Productivity Centre  
IPC House  
35-39 Shelbourne Road  
Dublin 4  
Ireland  
Tel: +353 1 668 62 44  
Fax: +353 1 668 65 25



### SWEDEN

Our relations with Sweden's consumer policy agency **Konsumentverket** (KV) have been developing apace since Sweden joined the Union on 1 January this year. Here are two examples:

- In test findings published in this year's first issue of KV's magazine **Råd och rön** consumers are informed that toy-phones may damage their children's hearing. Of a sample of 40 toy-phones tested, 14 had a sound-level between 92 dB(A) and 105 dB(A). Health and safety rules for the workplace mandate the use of hearing protectors at 85 dB(A) - and remember that the dB(A) scale is so construed that an increase of 10 dB(A) equals a doubling of the sound level! The threshold is 92 dB(A), this being the level fixed (for a transitional period of three years) in a draft international standard for toys held close to the ears and making a constant sound (afterwards the level will be reduced to 80 dB(A)).

Konsumentverket has entered into negotiations with manufacturers and importers to have the controversial toy-phones withdrawn from the market.

- Today's youth is subject to enormous pressure to consume. Young people are prime targets of advertising in all media. In 1991 the Swedish consumer policy authorities decided to allocate 6 million kroner (app. 640 000 ECU) to local initiative projects targeted at the young and implemented preferably by youth organisations, with an eye to increasing young people's awareness about their role as consumers.

The results of this campaign have been very encouraging. More than 50 projects have been implemented, many of them based on the idea that «youth must inform youth».

*Råd och rön* and a brochure on the campaign «Ung Konsument» (Young consumer) may be obtained from:

Konsumentverket  
Box 503  
S - 162 15 Vällingby  
Tel: +46 8 759 83 00 (switchboard)  
+46 8 759 83 88 (information secretary)  
Fax: +46 8 38 22 15



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— France —

## Pyramid selling in the dock

Most of us have heard of Herbalife, whose allegedly dietary<sup>1</sup> products are now on sale in dozens of countries. But one small reminder: Herbalife employs a chain selling system in which each seller proposes to his customers that they become sellers in turn, on a commission basis. These new sellers must then recruit other customers/sellers, who recruit others, and so on. This is a pyramid sales scheme as old as the hills.

On 20 September 1994 the Brest Appeal Court (France) turned down an appeal lodged by two local staff of the Herbalife distribution network against a conviction for the felony of «snowball» selling, in contravention of Articles 122-6 and 122-7 of the French Consumer Code<sup>2</sup>. Criminal proceedings had been brought by the Public Prosecutor and the DGCCRF (Departmental Directorate of Competition, Consumer Affairs and the Prevention of Fraud), while the Brest branch of the UFC (Federal Union of Consumers) brought an action for damages. The accused challenged the case on its merits and appealed that the ruling be struck off. The court, however, turned its guns on Herbalife's selling method. The court found that, contrary to what the

appellants claimed, the sponsoring scheme was not just a source of income supplementary to the sale of the merchandise, but accounted for the lion's share of the revenue and so constituted the offence of financial enrichment through geometric progression of adhesions to a pyramid sales scheme.

Consequently, the accused were given a two-month suspended sentence and ordered to pay damages to the civil party.

To reinforce consumer protection in this domain, the French Parliament has recently amended the law, making it even stricter than before<sup>3</sup>.

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<sup>1</sup> Products which, as one enraptured seller told the author of these lines, are supposed to have the power to «make fat people thin and thin people fat» at the same time.

<sup>2</sup> Case No 2177/94.

<sup>3</sup> See the article on this subject in the «Countries» section.

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— United Kingdom —

## Customer wins «guarantees and after-sales services» suit<sup>1, 2</sup>

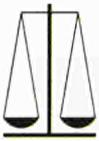
Mr Alexander, a UK citizen, bought a telephone answering machine which came with two guarantees. The first, from the manufacturer, promised that the retailer would exchange any faulty product returned within one year of purchase. The second, from the retailer, stated that «all goods purchased at Comet are fully guaranteed for one year» and offered servicing in the event of a fault.

Just less than one year later, the machine broke down. Mr Alexander went back to Comet to have it replaced under the first guarantee, only to discover that the model was no longer available and had been replaced by a much more expensive one. Comet declined to repair the original free of charge and refused to replace it with the new model. However, it did

offer to refund the cost of the original under the Sale of Goods Act 1979 so that Mr Alexander could put this toward buying the more expensive machine. It insisted that in such a case the price difference must be met by the customer.

Mr Alexander took Comet to court, arguing that he had bought the machine at that particular retailer precisely because of their pricing and the two guarantees. Before the hearing, the manufacturer substituted his faulty machine with the more expensive free of charge. However, Mr Alexander continued his claim against the retailer for the costs of travelling to the shop and other expenses arising from the fault.

Judging that the wording of both guarantees were express terms and formed part of the original contract of sale with the



retailer, the court awarded him £100 towards his losses and a proportion of his court costs. It held that the wording of the retailer's guarantee implied that the offer of «service» meant a free repair was available within the initial period of twelve months, and that the wording of the manufacturer's guarantee implied that the customer was entitled to receive free an identical machine if his original purchase proved defective. It also held that Mr Alexander was entitled to rely in law on the retailer, to act as the manufacturer's agent in carrying out that replacement. And, most importantly, it held that Mr Alexander was free to choose whichever course of action best suited him. He could choose to accept a refund offered by the retailer under the Sale of Goods Act 1979, or a free repair under the retailer's guarantee, or a **free** replacement with the same or nearest equivalent machine from the retailer acting as the manufacturer's agent, **even if that was more expensive than the original.**

The court added that if retailers wished to escape from the conditions attached to any guarantee given either by themselves in-house or as agents of a manufacturer, forming part of the express terms of a contract of sale, they should say so and make it quite clear that any rights a customer would have would be those only afforded him by state.

**Reference:**

*Consumer Policy Review*  
2 Marylebone Road  
UK - London NW1 4DF  
Tel: +44 71 830 60 00  
Fax: +44 71 830 62 20

<sup>1</sup> This is a summary of the report *Consumer Policy Review*, a Consumers' Association publication, made of this case in its Jan/Feb 1995 issue. It is particularly relevant in light of the current debate on guarantees and after-sales services initiated by the European Commission.

<sup>2</sup> *Alexander v Comet Group PLC*, Trowbridge County Court, 3 June 1994.

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— Austria —

## Bank liable in cash card fraud case<sup>1</sup>

A client who notified the loss of his cash card to his bank was assured by one of the bank's employees that provided the PIN code had not been stolen or surreptitiously read while the number was being entered there was «virtually no way anything could go wrong» (even without freezing the account). The client therefore decided not to block the account, hence saving the fee of 500 schillings otherwise payable. Subsequently, however, unknown offenders managed to withdraw 80 000 schillings with the aid of the stolen cash card and the PIN code which somehow or other they had got wind of. The bank debited the sum from the client's account. With the help of **VKI** (Verein für Konsumenteninformation - Austrian Consumer Information Association), the client sued for damages.

In court the bank argued that cash card PIN codes could not be determined unless they were stolen together with the card or surreptitiously read while the number was being entered; hence no damage could have occurred. However, the court assumed that there were indeed several ways of surreptitiously identifying PIN codes. The very fact that GABE (now Europay) provided for «special rules for abuse», with a reserve fund for damages arising from cash card fraud showed that such eventualities were always to be reckoned

with. Hence the advice provided by the bank was objectively wrong and at any rate negligent to some degree.

Still, the defendant's fallback was to invoke point 33 (2) of the Standard Terms for Credit Institutions, which excludes the bank's liability for minor acts of negligence. But the court did not agree, arguing that the client guidelines for the use of automatic teller machines provided that the bank was liable - with no strings attached - in the event of proven negligence. Pursuant to Section 915 of the General Civil Code (ABGB) this contradiction between the Standard Terms and the client guidelines had to be construed in the client's favour and hence the bank was also liable for minor acts of negligence. The bank appealed the judgment. The appellate court of Vienna summarily dismissed the appeal and the judgment is now binding.

**Contact:**

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A - 1060 Vienna  
Tel: +43 1 586 15 32  
Fax: +43 1 587 93 00

<sup>1</sup> Oberlandesgericht (OLG) Wien, 15.09.1994, 1 R 151/94.



— United States —

## Company sued on burglar's testimony!

In one of those cases that demonstrate how much further product liability litigation can go in America than in Europe, a federal appeals court in South Carolina had to decide whether a jeweller's safe could be ruled defective on a burglar's testimony, provided by an affidavit solicited in jail, that it opened easily when it fell off his truck. The case was brought against the manufacturer of the safe by the jeweller seeking to recover the value of the jewellery stolen from it.

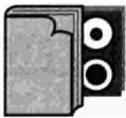
Much to the surprise of those used to the extravagance of American courts' rulings in the field of product liability, the court reasoned that the proximate cause of the plaintiff's injury was the theft of the safe and *not* any alleged defect. It found that the plaintiff would have to show that the burglar could not have reached the contents of the safe but for the alleged defect in its locking system. Therefore, it ruled that the safe manufacturer could not be held liable for the jeweller's loss.

*Butler v Mutual Safe Co.*

This story is taken from the November 1994 issue of *Product Liability International*, a monthly magazine published by Lloyd's of London Press Ltd, which provides briefing for insurers, lawyers and professional advisers on cases of product liability and safety all over the world. We strongly recommend our readers dealing with this aspect of the law to subscribe to it. They will, of course, have understood that this extract is not representative of the overall serious tone and contents of this publication...

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**IOCU** (International Organisation of Consumers Unions), which has been working for over thirty years to protect the interests of consumers in the area of international trade, recently published *Unpacking the GATT - A Step by Step Guide to the Uruguay Round*, written by Philip Evans, its Economic Affairs Officer. The 108-page book aims to explain the complexity of the most ambitious trade pact ever signed which is bound to affect every consumer from Lagos to Los Angeles.

Chapter 1 discusses the establishment and operation of the World Trade Organisation (WTO), as it is the single thing that unites all other agreements negotiated during the Uruguay Round. That discussion also contains those parts of the Round most closely associated with the functioning of the WTO: the dispute settlement procedures and the trade policy review mechanism.

Chapter 2, on the reduction of industrial tariffs, looks at the specific commitments on industrial goods made by member countries in the run-up to the ending of the Uruguay Round in December 1993, nonetheless highlighting the fact that these commitments are not complete and only really cover those offers made by the largest developed countries.

Chapter 3, the most substantive section, deals with the legal agreements of the Uruguay Round, breaking them down into their constituent parts and placing them in five broad groups:

1. The New Areas, i.e. services, Trade-Related Investment Measures (TRIMS), Trade-Related Aspects of Intellectual Property Rights (TRIPS), textiles and clothing, and agriculture;
2. Rules and Regulations, including sanitary and phytosanitary standards, technical barriers to trade, rules of origin, understandings and interpretations of existing GATT law;
3. Domestic Protection, with anti-dumping, safeguards, subsidies and countervailing duties;
4. Decisions and Declarations (probably not as binding as the specific agreements) concerning least-developed countries, least-developed and net food-importing countries, global economic policymaking, and the relationship between services trade and the environment;
5. Plurilateral Agreements which, contrary to multilateral agreements, do not apply to all GATT members but only a small number of them.

Chapter 4 reviews 'The Ones That Got Away', i.e. old areas which have been on the table for ages such as civil aircraft,

bovine meat and dairy produce, and new ones such as the audio-visual trade, financial services, professional services (e.g. computer programming), maritime services, the movement of natural persons<sup>1</sup> (nationals of a country crossing a border to work) and basic telecommunications.

Chapter 5 focuses on the consumer dimension of the main issues related to the future work programme of the WTO, most notably trade and the environment, labour standards, immigration, competition policy, investment policy, regionalism, financial and monetary matters, erosion of preferences, poverty alleviation and unilateral or extra-territorial trade measures.

Chapter 6 examines who wins and loses from the GATT 1994.

Finally, Appendix 1 helps visualise the Uruguay Round battle lines via an interesting table which shows who were the promoters and the targets of each agreement, and Appendix 2 describes the changes in the world economy since the 1940s.

This Guide is all the more interesting as it presents **each of the issues** from the consumer's perspective, carefully demonstrating why, while in theory consumers everywhere stand to gain from freer trade, in reality, the picture is neither as clear nor as glossy. For instance, knowing where to strike the balance between the degree of food or product safety and price is difficult enough at the national level, so what to say about striking the balance between countries with widely different levels of development! On the one hand, consumers rightly demand that imports meet minimum national and international standards to protect them from faulty or dangerous products, but on the other, they certainly do not want those standards to freeze out foreign competition which drives prices down... Reading the *Guide* will provide you with the full picture of the balance-sheet for consumers. For information on how to order, please contact:

IOCU  
24 Highbury Crescent  
UK - London N5 1RX  
Tel: +44 71 226 66 63  
Fax: +44 71 354 06 07  
Internet: iocu@dircon.co.uk

<sup>1</sup> And, naturally, no agreement on the movement of unnatural persons either!



522-page **EC Consumer Law**, by Vivienne Kendall, PhD, published by Wiley Chancery, a division of John Wiley & Sons Ltd, provides essential and accessible reading for practitioners and students of European consumer law, leaders and militants of consumer organizations, and any citizens of Europe interested in knowing more about the making and implementation of their consumer rights. It offers insight into the EC institutions which formulate EC consumer policy and examines regulation sector by sector in the light of that policy - a vital key to understanding the measures already adopted and the future regulatory direction. *EC Consumer Law* is remarkable in that it both reviews consumer legislation to date *and* presents proposals for future legislation, in the following areas of concern to European citizens: product safety and personal safety; liability; contracts and personal rights; advertising and promotion; foods; medicines and cosmetics; road transport; communication, broadcasting and media; energy and environmental protection. It also includes a state by state survey of implementation of EC consumer measures into national law in each Union and EFTA state, and extensive reproduction of the main legal texts.

**Contact:**

Publicity Department  
John Wiley & Sons Ltd  
Baffins Lane  
Chichester  
UK - West Sussex PO19 1UD  
Tel: +44 243 779 777  
Fax: +44 243 775 878

**EC Consumer Safety** by Tony Askham and Anne Stoneham, both solicitors, published by Butterworths in 1994, is a real gold mine. Indeed, it encompasses the latest developments in all the issues relating to consumer safety in the EC as at 1 September 1994, with a view to providing readily accessible and clear commentary on both the general framework of EC consumer law and the individual directives and regulations. To do this, the authors have surveyed the implementation of European consumer measures into national law in all the Member States and examined the contribution of the European Court of Justice.

The book is divided into six parts.

Part I provides a commentary by Monique Goyens, Project leader for European Affairs at the Centre de Droit de la Consommation (Consumer Law Research Centre) at the

Faculté de Droit (Law School) of the Université Catholique de Louvain in Belgium, on the general framework of consumer law within the European Community. It examines the constitutional framework forming the legal basis for Community measures and initiatives, the internal market policy and its consumer policy, the special status of cross-border consumer complaints, the consumer protection programmes and, lastly, the contribution of the European Court of Justice to EC consumer policy.

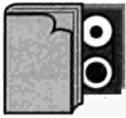
Parts II and III examine Community measures relating to product safety. Part II is concerned with general product safety, covering subjects such as conformity to standards, information exchange, emergency situation and action at EC level, etc; while Part III deals with specific product safety measures, covering agricultural products and foodstuffs, water, cosmetics, dangerous substances, toys, electrical equipment, tobacco products, and other miscellaneous manufactured products. Here, the aim has been to comment on each relevant measure as amended (whether by way of resolution, decision, regulation or directive), either in substance or by adaptation to technical progress. Each commentary includes a consideration of implementing legislation within the United Kingdom, where appropriate and known, as well as information as to whether the measures have been implemented elsewhere in the EC.

Part IV focuses on how the EC has piloted projects and subsequently set up systems for the gathering and rapid exchange of information on accidents involving consumer products (in consumers' own homes, and not at work or on the road). The gathering of this information provides essential feedback on the effectiveness of consumer safety measures already taken, but also indicates areas where new initiatives may be contemplated and adopted to improve the health and safety of European consumers.

Part V looks more specifically at the contribution made by the European Court of Justice to the area of consumer safety. Broad principles are examined and detailed commentaries are provided on the relevant case law covering topics already discussed: agricultural products, water, cosmetic products, dangerous substances and tobacco products.

This book should be of interest to all those working in the area or concerned with EC consumer law, not just lawyers but also trading standards officers and militants of consumer organizations.

The price of *EC Consumer Safety* is £90 and requests for orders should be directed to:



Sandra Dutczac  
Information and Publications Manager  
Butterworths European Information Services  
Halsbury House  
35 Chancery Lane  
UK - London WC2A 1EL  
Tel: +44 171 400 25 56  
Fax: +44 171 400 25 59

In *Europäische Rechtskultur – Versuch einer Annäherung in zwölf Schritten* (European legal culture, an attempt to achieve approximation in twelve stages), Peter Häberle has put together several lectures which he gave in 1992 and 1993 at various European universities. The main thread of his ideas, which are based on an examination of the texts serving as a basis for European integration, from the Treaty of Rome to the Maastricht Treaty, is that the national law of every country in Europe shares a common cultural heritage. Furthermore, he believes that Europe should be regarded as a community of law and culture rather than of economic interests. The major features of Häberle's work are his attempts to define the concepts of Europe, legal culture and European legal culture, his argument that the growing Europeanisation of law represents a relativisation of the nation state (law thus being a much more powerful driving force than politics) despite the continuing existence of national law pluralism, which he welcomes as an essential aspect of the identity of European legal culture, and finally his idea that European law can be presented in the form of a «proposal» to third countries (taking care to avoid any «colonialist» temptations).

(Nomos Verlag, Postfach 610, D-76484 Baden-Baden, 1994, 407 p., DM 138).

The European Institute of Public Administration has published a collection of contributions in English and French on the topic of the European Ombudsman in the form of a 146-page book edited by Epaminondas A. Marias and entitled *The European Ombudsman*. It contains the papers presented at a colloquium in Luxemburg, organized by the European Institute of Public Administration's Antenna Luxemburg in October 1993, whose purpose was to provide the opportunity to assess the importance of the establishment of the European Ombudsman and to analyze

the experience of the functioning of national Ombudsmen in the Member States of the European Union. Among the contributors are the Ombudsmen of Sweden, Spain, Ireland, Portugal and of Belgium's Flemish Community. All the essays tackle the concept of Ombudsman both at national and European level, analyzing the functioning and experiences of the national Ombudsmen and trying to draw conclusions which can be of value for the office of the European Ombudsman. Two of the contributions focus specifically on the competences, privileges and immunities of the European Ombudsman, as well as his relations with the Committee on Petitions of the European Parliament. Here are more details about the contents of the book:

Chapter 1 examines the Continental model of the Ombudsman making particular reference to the experience of the French *Médiateur de la République*.

Chapter 2 focuses on the Scandinavian model and concentrates mainly on the Swedish experience.

Chapter 3 deals with an important new model in the field of Ombudsmen. It examines the establishment of Ombudsmen for multinational companies.

Chapter 4 reviews the experience of the Ombudsman of the Flemish community.

Chapter 5 focuses on the experience of the Danish Ombudsman.

Chapter 6 analyzes the functioning of the Committee on Petitions of the *Deutscher Bundestag*.

Chapter 7 reviews the powers of the Spanish Ombudsman.

Chapter 8 examines the jurisdiction of the Irish Ombudsman.

Chapter 9 examines the workings of the Committee on Petitions of the *Chambre des Députés* of the Grand-Duchy of Luxemburg.

Chapter 10 deals with the functioning of the Portuguese Ombudsman.

Chapter 11 analyzes the competences and relations of the European Ombudsman with the other Community institutions and bodies.

Chapter 12 examines the independence and the privileges of the European Ombudsman.

Chapter 13 concentrates on the issue of establishing the boundaries between the European Ombudsman, the Committee on Petitions of the European Parliament and the temporary Committees of Inquiry of the European Parliament.

The European Ombudsman is indeed one of the most important innovations introduced by the Maastricht Treaty



(Article 138 e). His function is to examine instances of maladministration in the activities of the Community institutions or bodies with the exception of the Court of Justice and the Court of First Instance acting in their judicial role. Thus, together with the Committee on Petitions of the European Parliament, he safeguards citizens' political, civil and social rights vis-à-vis the Community institutions. He should be chosen by the European Parliament in the coming months.

We wish to remind our readers that a report written by French Senator Pierre Fauchon prior to the French Presidency recommended the establishment of an Ombudsman-type body for consumer affairs<sup>1</sup>. Whether that will result in appointing yet another European Ombudsman or in extending the powers of this one (or in doing nothing at all...) is still unclear.

For information on how to order *The European Ombudsman*, please contact:

European Institute of Public Administration  
O. L. Vrouweplein 22  
NL - Maastricht 6201 BE  
Tel: +31 43 29 62 04  
Fax: +31 43 29 62 04

<sup>1</sup> See article entitled 'The French Presidency's Agenda' in the 'Consumer Protection' section of the December 1994 issue of **INFO-C**.

**CEG** (Consumers in Europe Group), with support from the European Commission's Consumer Policy Service, has produced material providing UK consumers with useful information about the Single Market.

First, there is a brochure entitled **Consumers in Europe - Your Rights in the Single European Market**, which unveils the pitfalls of buying abroad and tells you what to do if you want to sort out a problem in another EU country. It starts by giving numerous details on when the UK law or the other country's law will apply to a dispute, also dealing with the subtle cases where there are ways to make the UK law, instead of the foreign country's, apply - and telling you how. Then, it answers the questions you will inevitably ask yourself if things have gone wrong: 'Who can I turn to for advice?', 'What will it cost to go to court?' and 'Can I get legal aid?'. Finally, it lists useful contacts in the UK and abroad (European Commission offices, legal advice centres, etc.).

Second, there is a series of nine leaflets with the following titles: **Safe Products in the Single Market**, **Banking in the Single Market**, **Buying Insurance in the Single Market**, **Buying on Credit in the Single Market**, **Cosmetics in the Single Market**, **Food Labels in the Single Market**, **Medicines in the Single Market**, **Package Holidays in the Single Market** and **Advertising in the Single Market**. Each of them tells you if there is EU, or only national, legislation on the subject, what pitfalls to avoid, and what to do if things go wrong.

**Contact:**

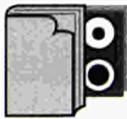
CEG  
24 Tufton Street  
UK - London SW1P 3RB  
Tel: +44 71 222 26 62  
Fax: +44 71 222 85 86

The **Belgian Ministry of Public Health** and the **Centre Coopératif de la Consommation** have just published the two final instalments of the 'Medication Guide for Consumers' series. These two volumes, entitled **La fatigue - Quels médicaments?** and **Maladies cardio-vasculaires - Quels médicaments?** (drugs for fatigue, and cardiovascular diseases, respectively), follow an introductory volume, two brochures on pregnancy and breast feeding, and one on sunbathing. The idea is not that patients should start writing their own prescriptions, but that they should have the information they need to enter into a constructive dialogue with their doctor or pharmacist. To this end, the brochures list the drugs available and provide particulars on their composition as well as indications, contra-indications, side effects and interactions. But they also provide useful lifestyle advice so as to avoid having to rely on such drugs in the first place. For example, when eating out it is wiser to nibble a salad than to gulp down steak and chips with mayonnaise<sup>1</sup>.

To order these brochures, **write** to:

Cabinet du Ministre de la Santé publique  
Press Service  
Eric Poskin  
rue de la Loi 66  
B - 1040 Brussels  
Tel: +32 2 238 28 11  
Fax: +32 2 210 45 66

or:



Centre coopératif de la consommation  
Catherine Istace  
rue Haute 28  
B - 1000 Brussels  
Tel: +32 2 513 28 60  
Fax: +32 2 514 54 43

<sup>1</sup> A favourite Belgian dish.

The **Italian Region of Piedmont**, acting on a proposal from the *Consulta regionale per la difesa e tutela del consumatore* (Regional Council for defence and protection of the consumer) published four brochures on topical consumer issues in 1994:

**Assicurazione - Guida ai servizi assicurativi** (Guide to insurance services) has the twin objective of providing consumers with data on products and services and informing them of their rights and obligations. The Guide includes tips from consumer associations urging consumers to compare different products, to scrutinise all the terms of the proposed contract, to negotiate the modification or removal of potentially harmful ones (such as unfair terms), and to check whether the contract guarantees transparency, peace of mind and the possibility of cancellation.

**Investibene - Guida al risparmio** (Prudent investments - Guide to savings) describes the range of products offered to savers by post offices, banks and finance houses. It describes the characteristics of the different products, emphasises the questions to be asked and the calculations to be made before taking the plunge, and points out that certain financial investments must be monitored very frequently. The thing to remember is that consumer decisions in this domain must be dictated by a perfect awareness of needs and must be based on an intimate knowledge of the market. In this context, there is no shortage of reviews, journals and brochures that are chock-full of seductive and enticing offers, but rarely go into detail. However, thanks to the author's analyses, it will be possible to consult such material while bearing in mind the key factors that should guide investment decisions.

**Condominio** (Apartment buildings) brings together the basic rules governing this domain and enlightens apartment owners on key notions of liability and management. The brochure takes into account both the provisions of the Civil Code and trends in case law. Hence the work is divided into two parts. The first part is devoted exclusively to the provisions of the Civil Code, while the second focuses on the

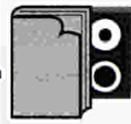
applicability of the rules to specific cases. To manage their property well, apartment owners must be familiar with the principles underlying the rules and must be open to dialogue (for example, meetings of apartment owners that get too heated always herald unnecessary expenditure) and apply their knowledge with a view to optimal planning of outgoings and investments, both in order to conserve and upgrade the capital stock.

**La strada del Nuovo Codice** (Guide to the new Rules of the Road) was born of the need to inform road users of their rights and duties (obligations, penalties, precautions to be taken and recommended behaviour) following the publication in 1992 of the new Rules of the Road, which since then have been repeatedly amended. This Guide reflects the status in March 1994 (thus you should check whether the provisions are still relevant). The idea is also to bridge the gap between the citizen and the public authorities. To this end the Guide explains the tasks of the different police bodies, but also the reciprocal obligations between drivers and the traffic police, or between the office responsible for issuing driving licences and the private individual applying for one, or again informs the reader how to appeal a decision and the period within which the public authorities must respond.

To obtain these guides, contact:

Regione Piemonte  
Piazza Castello 165  
I - 10122 Torino  
Tel: +39 11 57 57

In September 1994 the **Centre Régional de la Consommation de la Région Nord - Pas-de-Calais** published an excellent technical study on how to go about buying a veranda in Belgium (title: **Achat d'une véranda en Belgique**). The study was prepared in the light of the large number of verandas bought by French residents from Belgium-based artisans and the typical problems associated with such transactions. The study deals with the case in which an artisan manufactures the product in Belgium and subsequently assembles it at the client's residence in France. The point is that a veranda assembled by the client himself is considered as a simple merchandise (without the element of *service*) and hence is governed by the usual rules governing cross-border purchases.



This study, accompanied by a succinct factsheet targeted at the general public, is divided into five major parts.

Part 1 discusses the precautions to be taken prior to the contract (get several estimates, check whether the firm is indeed registered in Belgium, insist on a building permit, take out an insurance policy, etc.).

Part 2 concerns the contract and highlights the differences that apply depending on where the contract is concluded (at home following canvassing, at the seller's premises in Belgium, or at an exhibition in France or in Belgium). The study surveys the main features of both estimates and contracts, pointing out possible pitfalls (final price in excess of the estimate, unfair terms in the contract, etc.).

Part 3 informs intending buyers of the provisions that they and the firm must comply with in regard to payment.

Part 4 highlights the differences in Belgian and French warranty law. It answers the following questions: What are the different types of warranty that apply to this type of work? What are the different procedures for approval of the completed work? Finally, how can a warranty be relied on?

Part 5 tells us what to do in the event of a dispute, both in regard to amicable settlements and litigation proper. In the second case, the situation is quite complicated because several types of problems may have to be addressed at the same time: the nature of the contract (is it a «contract for sale and the provision of services» or a «works contract?»), determination of the applicable law (Belgian, French or other) in accordance with the Rome Convention of 19 June 1980 and determination of the competent jurisdiction (French or Belgian) in accordance with the Brussels convention of 27 September 1968. Clear as mud? If so, why not contact a consumer organisation, for example the AEIC, which can give you all the advice you need?

To obtain the complete study or the factsheet, contact:

Agence européenne d'Information sur la Consommation (AEIC)  
Martine Demeyere  
47 bis rue Barthélémy Delespaul  
F - 59000 Lille  
Tel: +33 20 21 92 52  
Fax: +33 20 54 18 45

Ever since 1957, representatives of consumers, the retail trade and industry in Denmark have been working together to promote voluntary consumer information labelling of goods and services. This labelling system is called VAREFAKTA. How does cooperation function in Dansk Varefakta Naevn (the Danish consumer information labelling institute)? How are the various interests accommodated in drafting the labelling rules? What are the characteristics of a VAREFAKTA label? What benefits does VAREFAKTA offer to consumers, trade and industry alike? A ten-minute video called **VAREFAKTA** answers these questions and tells the story of Dansk Varefakta Naevn and VAREFAKTA. It is intended for all persons interested in information labelling.

The video can be rented or purchased and exists in English, French and German language versions.

To order, contact:

Dansk Varefakta Naevn  
Amagerfaelledvej 56  
DK - 2300 Copenhagen S  
Tel: +45 32 96 13 32  
Fax: +45 32 96 08 32

<sup>1</sup> The authors note in a delightfully deadpan manner that «there is no easy way of determining the competent court and the law applicable to the dispute ...»

To obtain your (free) subscription to **INFO-C**  
simply fill in the reply coupon below and return it to the following address :

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Consumer Policy Service  
European Commission  
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J70 4/14  
B - 1049 Brussels  
Fax : +32 2 296 32 79  
E-mail: s.reynolds@mhsg.cec.be



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