INFO-C

Information from the Consumer Policy Service of the European Commission n° 1

1992 : What benefit for the Consumer?

For many Community citizens, the Internal Market process is seen as being essentially a matter for politicians and businessmen, and they are not yet convinced that consumers will gain any great benefit. Indeed, the fear that the Internal Market may lead to a lowering of standards of consumer protection as the remaining barriers to trade are removed, is still relatively widespread.

The Commission is, however, fully aware that the Internal Market will not be a success unless consumers are completely confident that it will have a beneficial impact on their daily lives.

The benefits for consumers are expected to be:

- a wider choice of goods and services, both on their national market and from other Member-States; and

- lower prices due to increased competition.

In order to give greater priority to consumers' interests during the run-up to "1992" as well as after the completion of the Internal Market, the present Commission decided, at the start of its mandate in 1989, to establish an autonomous Consumer Policy Service.

This decision was followed by a Communication to the Council on the need to re-launch consumer policy and the adoption, in May 1990, of a Three-Year Action Plan in which the objective of improving the flow of consumer information was identified as a priority area.

As part of the Commission's actions to meet this objective, the Consumer Policy Service is launching this newsletter.

Its purpose is to provide information on the development of EC consumer policy and of the consumer aspects of other EC policies. It will also provide a forum for the interchange of news of policies, actions, studies and meetings related to consumer issues in Member States.

Its target readership are the professionals working in "relay organisations", that is to say in public authorities, the media, consumer associations, the academic world, etc., whose daily work is concerned with consumer matters, and which form a vital link for channelling information to individual consumers .

INFO-C

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Date : texts finalised the 20/9/91
ISSN N° 1018 - 5755

OF SPECIAL INTEREST

INTRODUCTION TO THE CONSUMER POLICY SERVICE

Provision within the Commission for looking after consumer affairs has come a long way since its early beginnings in 1968 as a small unit within the DG for Competition. The first improvement in its status followed the Paris Summit of 1972 which stressed the need, in the light of the forthcoming enlargement (DK, IRE, UK), for a new impetus in environmental and consumer protection. So in 1973 a special service, the Environment and Consumer Protection Service, was established to deal with those two areas of activity.

This service produced the first action plan, the *"Preliminary Programme of the EEC for a consumer protection and information policy"* in 1975. The tenets adopted for the safeguarding of consumer interests in the Community were fivefold :

a) the right to protection of health and safety,

b) the right to protection of economic interests,

c) the right of redress,

d) the right to information and education,

e) the right of representation (the right to be heard).

These principles stood the test of time and were reiterated both in the *Second programme* (1981) and in the *New impetus for a Consumer Protection Policy* (1985). Most recently they were reformulated in the *"Three-year action plan of consumer policy in the EEC (1990-1992)"* with the main change being that protection of economic interests and the right to redress have been subsumed under the title *"consumer transactions"*.

During the period 1975 - 1990 the service evolved, first to become a directorate within the DG for the Environment, Consumer Protection and Nuclear Safety, created in 1981 and then, in early 1989, to become a separate administrative unit, the *"Consumer Policy Service"* headed by a Director-General, Mr K. BARLEBO-LARSEN.

The service had always laboured under the handicap that consumer protection was not included as a policy area in the Treaty of Rome. This has now been largely rectified by a new Article 100a, introduced by the Single European Act, which in its para. 3, reads : *"The Commission, in its proposals envisaged in paragraph 1 concerning health, safety, environmental protection and consumer protection, will take as a base a high level of protection"*.

The four main areas of focus identified in the Three-year action plan,

i.e. - Consumer Representation

- Consumer Safety
- Consumer Transactions
- Consumer Information

are reflected in the way staff (currently around 80 people) is sub-divided within the Service, of which the structure is shown below.

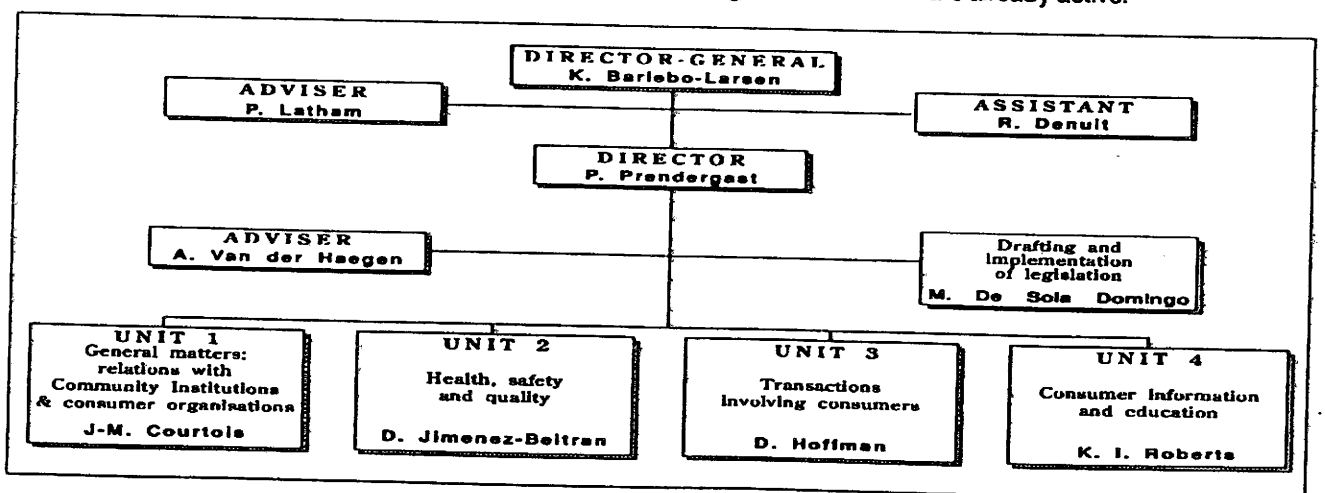
Current work program

In implementing its action plan, the Service is undertaking, inter alia, the following work :

-in the field of consumer safety, the General Product Safety Directive is now being discussed in the Council. A draft directive on liability for physical damage arising from the supply of services , will, it is hoped, be adopted by the Council in the near future;

-the draft Directive on Unfair Contract Terms was recently submitted to the Council and the Service has prepared a proposal directive intended to permit comparative advertising .

In addition, efforts are being made to improve the representation of consumers, particularly in Southern Europe and in Ireland, by providing financial assistance to strengthen and extend those consumer organisations which are already active.



MEDICINAL PRODUCTS : TOWARDS A EUROPEAN AGENCY

Both on account of the progress made in biotechnology and the free circulation of goods and services across frontiers, the Commission has considered it to be imperative to regulate the free circulation of medicinal products for human and veterinary use. This is why it recently made a proposal to the Council for a Regulation concerning the setting-up of a European Agency for the assessment of medicinal products. At the same time the Commission brought together the proposals for directives which would result from this initiative under the general title, *"Future System for the free circulation of medicinal products in the European Community"*.

The future agency would basically be responsible for :

- carrying out assessments of new medicinal products,
- resolving differences concerning other medicinal products,
- coordinating warning systems and national inspections.

It would take over two existing organizations: the Committee for proprietary medicinal products, which lays down scientific criteria of quality, safety and efficiency of medicinal products, and the Committee for veterinary medicinal products, which has the same responsibilities in the veterinary field.

The Commission's proposal envisages two different procedures, one decentralized and the other centralized. The latter would be mandatory for medicinal products based on biotechnology (a form of advanced technology) and medicinal products intended to increase productivity, but would be optional for other innovative medicinal products. This second procedure would lead to a Community authorization, valid in all member States.

The Community would consequently become responsible for the follow-up of the medicinal product and up-dating its technical file. The decentralized procedure would be based on the principle of mutual recognition and would allow the progressive extension of authorizations to market a product now given by a member State, to other member States, subject to substantial guarantees regarding the respect of strict requirements on quality, safety and efficacity. The Agency would therefore not be involved in this procedure except in a case where there is disagreement between Member States regarding the respect of these requirements. Checks on medicinal products would remain the responsibility of Member States. The Community plans to leave firms a certain amount of choice between the two procedures and to allow them a period of adjustment - until 1996 - in order to avoid the bureaucratization of the system. However, it is the decentralized procedure which would doubtless be the most used after 1992, provided the Regulation is finally adopted by the Council. If this is the case, the two procedures should come into operation in 1993 and then be reviewed in 1999-2000 in the light of experience.

Current Work and Community achievements in the medicinal product sector

With its proposal for an Agency to assess medicinal products, the European Commission completes its portfolio of measures intended to achieve the Single Market in the pharmaceutical sector. The Commission recently proposed to the Twelve a system of certification to ensure the protection in the market of patented proprietary medicinal products. Such a certification system would provide new medicinal products with a total effective protection throughout the Community for a maximum period of 16 years and is, according to the Commission, likely to meet the needs of the industry while still retaining a balance required by a health policy, in particular the balance necessary to safeguard the health of consumers. Certain reservations concerning this monopoly have however been expressed by the European Bureau of Consumers' Unions (BEUC). It says, in effect, that the result of this monopoly would be to keep prices higher and that consumers should receive some compensation for this (1).

As far as Community achievements are concerned, the Commission has for 25 years been progressively harmonizing criteria and the procedures for marketing authorization as well as the control of medicinal products at the manufacturing stage. Among the dozen proposals adopted by the Council during the past four years, one can cite as an example the directive intended to introduce a greater transparency in national procedures for fixing prices and for refunds on medicinal products by the Social Security. Furthermore, three proposals with a view to the national use of medicinal products deal with the safety of wholesale distribution, the conditions under which medicinal

products are supplied to the public, with or without a prescription and with improving the information made available to the patient via the label and the printed insert.

As for pharmaceutical advertising, this has been the subject of a proposal for a directive to regulate both promotional activities directed at the medical profession and publicity about self-medication products, aimed directly at members of the public.

Finally it should be pointed out that the interest provoked by these activities has led the European and world pharmaceutical industry to organize a big international symposium in Brussels in November 1991. The Commission, the US Food and Drug Administration and the Japanese authorities are actively participating in order to encourage recognition of tests on medicinal products and thus decrease the overall cost of pharmaceutical research.

(1) BEUC Press release of 6.12.1990

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"HIDDEN DEFECTS" IN CONTRACTS

Numerous defects are often hidden in the terms of certain sale or service contracts. It is obviously the consumer who suffers the consequences. Therefore the Commission decided to kill off these unfair practices, called "unfair contract terms", by adopting, in July, a proposal for a directive on this subject.

A black list of unfair terms which are to be prohibited in contracts made in the Member States will be prepared. Limitation of the guarantee or refusal of a refund are examples of clauses to be banned.

The Commission also wanted to look into the thorny problem of time-share contracts. It has been proposed that the consumer be allowed a seven-day cooling-off period from the date of signature. This period will allow the potential purchaser the possibility of changing his mind.

References : O.J. n° C 243, 28.9.90, p.2

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LIFE ASSURANCE AND MOTOR INSURANCE

On 8 November 1990 the Council adopted two directives concerning the freedom to offer insurance services, directives which will enter into force in Member States in 1993.

The first concerns **life assurance** . In future the consumer will be free to buy this type of assurance anywhere in the Community. In the same way, the companies concerned will be free to offer their services throughout the Twelve. Two systems will be in force : the first concerns contracts concluded at the initiative of the policy-holder, for which control rests with the insurer's Member State. The second requires that, in all other cases, it is the Member State in which the policy-holder lives which ensures proper protection. From 1996, brokers will be able to operate across frontiers and to propose life assurance contracts from companies in another Member State.

Third-party **motor insurance** is the subject of the second directive. It is the follow-up to the second non-life insurance directive of 1988 which covered certain risks, but not the risk to third-parties. Its main objective is to bring compulsory third-party motor insurance within the scope of the 1988 directive in order to allow freedom to offer services in this area but with two limitations. Firstly, companies will not be able to exercise this freedom except in the case of major risks until the adoption of a third directive, which will better protect the individual. Secondly, in the case of cross-frontier insurance services, companies will have to designate a representative in the EEC countries in which they exercise this right.

References : O.J. N°L 330; 29.11.90, p. 44 (life assurance) and p. 50 (motor insurance).

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It is to be noted also that, in the field of third-party car insurance, a directive which will fill the gaps existing in the field of obligatory community-wide cover for passengers, was also adopted by the Council on 14 May 1990.

References : O.J. N° L129,19.5.1990

HOLIDAYS WITH COMPLETE PEACE OF MIND

1990, European Tourism Year, was the year which marked the start of measures to protect the "Consumer-tourist". It was indeed precisely 13 June 1990 that saw the adoption, by the Council, of the Directive intended to protect consumers who enter into a contract, in the Community, for a package holiday.

Holidaymakers can unfortunately suffer sometimes from the non-fulfilment or inadequate fulfilment of their contract.

But this is aggravated by the fact that tour operators offer holidays for which they receive payment in advance *in full.* When problems arise due to hotel overbooking or deficiencies in the transport arrangements, the organisers tend to refuse to accept any responsibility on the grounds that they are not responsible for either the day-to-day running of the hotels or of the air transport. The consumers who suffer do not get, for the most part, any compensation. The Directive redresses this by making the organisers responsible for the provision of the services specified in the contract.

The only exceptions are cases of *force majeure* or similar, which are impossible to anticipate or to circumvent.

However, even in these cases, the organisers must make every effort to help the consumer.

As concerns information about such holidays, the Directive includes specific requirements concerning the content of any brochures, though there is no obligation to produce a brochure, since the Directive also covers packages put together at the special request of an individual consumer, against payment of an inclusive amount. In any case, the contract must obligatorily be in writing.

Special provisions regarding last-minute booking as well as maintaining prices have also been included. It has been laid down too, that consumers can transfer their rights to a third person in the event of being prevented from travelling.

In addition, it is possible to cancel the contract if the organisers try to change the basic features of the arrangements which have been agreed.

Furthermore the Directive includes provisions covering the guarantees which the organisers must provide, the refund of the amounts paid and the repatriation of consumers if the organisers become insolvant.

The Directive should be transposed into national legislation and implemented by 31st December 1992.

References : OJ n° L158-23.06.90, p. 59-63

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PAYMENT SYSTEMS : A Warning

The European Commission has just adopted a Communication which analyses the reactions provoked by the Discussion paper published by the Commission (1) on payments systems, at the instigation of the Vice-President responsible for financial institutions, Sir Leon BRITTAN and Commissioner Karel VAN MIERT responsible for the protection and promotion of consumer interests. The Discussion Paper demonstrated clearly that the transfer of an amount of money from one Member State to another is long, complicated and expensive. This Discussion Paper is therefore destined to provide an impetus to action in this area.

The Commission has studied four main problems :

- Cash transfers
- Transfers
- Cheques
- Payment cards

In its Communication the Commission provided for the creation of two committees, now in place, to assist it: one a technical committee; the other bringing together representatives of the banking sector, users and SMEs (Small- and Medium-sized Entreprises). The Communication also brought out the problem of payment systems dealing with large amounts, which did not figure in the Discussion Paper.

The banking sector and other interested parties reacted favourably to this document and admitted the present systems could be improved.

At the same time as the Discussion Paper appeared, the Commission examined the working of the Eurocheque system. The results were not long in appearing. The Commission has sent a list of objections to Eurocheque International pointing out that the organisation does not appear to have fulfilled the

requirements laid down in Article 85, paragraph 3, of the Treaty.

This Article sets out the conditions under which restrictive agreements between firms benefit from a derogation from Article 85, paragraph 1, which in principle, prohibits such agreements. Under the former Article, Eurocheque had benefited from such an exemption since 1984, an exemption which has now expired. The firm has requested its renewal but the Commission is of the opinion that five aspects of the agreement raise serious doubts.

These concern :

-Insufficient information given to those issuing cheques abroad, on the various components of the charges which they are asked to pay.

-The imposition by Eurocheque of a minimum commission between banks, which restricts competition.

-The systematic charging to the customer of this inter-bank commission.

-The relatively low clearing amount which means that, above 340 ECU, an eurocheque is considered as an international transfer. This is disadvantageous for the consumer for he is then subject to a high level of charges.

-The way eurocheques are accepted in the retail sector in France. In fact, French retailers, unlike their counterparts in other Member States, are the only ones to pay commission to their bank on foreign eurocheques.

Since this list of grievances, the forerunner of a possible decision not to renew the exemption, was sent, Eurochèque International and the Commission have been actively involved in discussions with a view to arriving, if possible, at an amicable solution.

(1) Reference: COM(90) 447

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ENERGY CONSERVATION

The SAVE programme (Special Action Programme for Vigorous Energy Efficiency) was adopted by the Commission in October 1990. Initially planned to run for five years, its object is to relaunch Community activity in the area of energy saving.

Energy saving has again become a priority in view of developments in the energy market, and of increased concern for the protection of the environment. Actions in three spheres are foreseen :

-technical : given the arrival of the internal market, it is necessary to set technical standards which meet the needs of energy efficiency;

-financial : in order to encourage investment in energy conservation, the programme will publicize available financial instruments;

-behavioural : SAVE operates in the field of consumer education and information with a view to changing people's habits.

It should be noted that at the same time, the Commission adopted a first standard setting out the requirements for the performance of new space heaters.

References : O.J. n° C 301 - 16.11.90, p. 11.

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GAS APPLIANCES : Safety and energy saving

The European Community recently turned its attention to non-industrial gas appliances which, owing to the variations from one Member State to another (particularly in measures covering safety standards), cannot circulate freely throughout the internal market.

It was therefore considered necessary for there to be Community legislation in this area.

The Council has adopted a Directive covering safety and health requirements which will enter into force in the Community on 1.1.1992.

This Directive will introduce a high level of protection, for example concerning gases produced by combustion which should not contain inadmissible concentrations of substances dangerous to health,etc.

Appliances complying with this directive will bear a "CE" label .

References : O.J. n° L 196, 26.7.1990, p. 15.

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NUTRITIONAL LABELLING

The Council Directive on nutritional labelling rules for foodstuffs intended for sale to the final consumer and mass caterers, was adopted in September of last year. It complements the Directive 79/112/EEC on general food labelling. Nutritional labelling is optional but becomes obligatory when a nutritional claim is made.

When supplying information about nutrition on the labels of food products, the producer must comply with this new Directive, once it is in force in the Member States. Details of energy values and of certain nutrients must then be mentioned. The Directive also specifies the order in which the items shall be given and the units to be used to calculate these values .

A proposal for a Council Directive, which would give the Commission power to adopt measures making nutritional labelling obligatory for certain nutrients, is still before the Council.

References : O.J.n° L 276 - 6.10.90

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SWEETENERS :
A list to be requested

Since 21 December 1988 a general directive, covering the additives which can be used in foodstuffs, has been in existance.

A vertical directive dealing with particular additives is a natural consequence. The Commission has therefore turned its attention to sweeteners which are a particular type of food additive used to introduce a sweet taste into food products.

The Commission has recently approved a proposal for a directive, the object of which is to lay down a list of permitted sweeteners and the food products in which they can be used. Without any doubt this is a worthwhile initiative from the point of view of children who are, as is well known, prime consumers of soft drinks and confectionary containing sweeteners.

References : OJ n° 242 - 27.09.90, p.4

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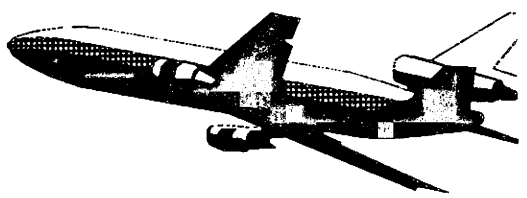
AIRLINE OVERBOOKING :
When will it take off ?



With the aim of protecting travellers against the practice of overbooking by airline companies, the Commission adopted a proposal for a Regulation in February 1990.

Indeed, having established statistically that a certain number of travellers reserve a seat on a plane but do not appear, companies accept bookings for more places than are in fact available on the plane.

Some consumers consequently find themselves disadvantaged in the event of all the passengers presenting themselves for embarkation.

The Regulation therefore obliges the carrier to adopt rules to be followed when embarking passengers on a flight that has been overbooked. Once these rules have been fixed, they will be available for consultation on request.

Where there is an insufficient number of places, the traveller has the right to choose between three solutions (included in the Regulation), and compensation is also provided for.

In any event, airlines will be obliged to transport the ticketholder to his final destination.

The Regulation came into force in all the Member States on 8 April 1991.

References : OJ n° C 129, 24.05.90, p. 13

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COMPARATIVE ADVERTISING : Not unconditional

Legalising comparative advertising has been discussed for a long time, particularly as it is already permitted in certain Member States, such as Spain, the United Kingdom, Ireland and Portugal. France has prepared a draft law on the subject.

Magazines and T.V. programmes from these countries, containing this type of advertising, often cross the frontiers of States where it is not permitted.

Thus Commissioner Karel VAN MIERT has decided to propose an amendment to the 1984 Directive on misleading advertising by adding provisions concerning the use of comparative advertising. The draft allows this type of advertising but only under certain conditions so that such advertising conforms as far as possible to the idea of giving objective information to European consumers. Member States must see that there are effective means of checking that these requirements are respected.

The BEUC (European Bureau of Consumers' Unions) believes that the main objective of comparative advertising is not to safeguard the interests of consumers who will become the "hostages" of the verbal attacks and counter-attacks between various sectors of industry.

It admits however that it could be a supplementary source of useful information for consumers, provided the rules concerning its composition are respected.

References : OJ n° C- 11.07.91, p.14.

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ENVIRONMENT AND CONSUMERS

A "Community Ecology Mark" is the subject of a recent proposal to the Council for a Commission Regulation. It is intended to reward products which are less harmful to the environment and whose global impact thereon - that is, their effects during production, distribution, consumption or use and their subsequent disposal - is much less than that of other products in the same category. It will be attributed to products which comply with the ecological criteria established at Community level and be uniformly applicable throughout the whole Community. All products are covered, with the exception of food products, drinks and pharmaceutical products.

The Commission has laid down a period of five years during which national systems will co-exist with the Community system.

During this period the Community will be able to examine the suitability of such coexistence, to study the working of the system of awarding ecology marks and, if necessary, to propose appropriate changes to the Regulation.

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TEACHING MATERIAL

The **"Safety Pack"** is a teaching aid, of which a limited number were produced by the Commission of the European Communities so that it could be tested in the Member States. The pack consists of seventeen work sheets devoted to the various aspects of safety in the home. It has been prepared in the nine Community languages and is accompanied by notes for the teacher. He or she can choose to use only some of the worksheets in preference to others according to the interests and the ages of the pupils (10 to 14 year olds) and the subject being taught (language, science, technology...).

The **"Safety Pack"** has been tested in Germany, Belgium, Denmark, France, Spain, Greece, Ireland, Luxembourg, Portugal and the United Kingdom during the 1989-1990 school year and more recently in Italy.

The results of these tests have been the subject of detailed analysis and this will lead to improvements in all the language versions which will become available shortly.

The Commission will be responsable for the correction and improvement of the plates and art work which will be made available to Member States in order to allow them to publish and distribute this material.

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