

4414.311 (Door-to-door
selling)

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DOCUMENT 227/77

Report

drawn up on behalf of the Committee on the Environment, Public Health and
Consumer Protection

on the proposal from the Commission of the European Communities to the
Council (Doc. 550/76) for a directive to protect the consumer in respect of
contracts which have been negotiated away from business premises

Rapporteur: Mr James W. SPICER
..

PE 48.826/fin.

By letter of 27 January 1977 the President of the Council of the European Communities requested the European Parliament, pursuant to Article 100 of the EEC Treaty, to deliver an opinion on the proposal from the Commission of the European Communities to the Council for a directive to protect the consumer in respect of contracts which have been negotiated away from business premises.

The President of the European Parliament referred this proposal to the Committee on the Environment, Public Health and Consumer Protection as the committee responsible and to the Legal Affairs Committee for its opinion.

On 16 March 1977 the Committee on the Environment, Public Health and Consumer Protection appointed Mr Spicer rapporteur.

It considered the proposal at its meetings of 16 March and 23 June 1977.

On 23 June 1977 the committee adopted the motion for a resolution and the explanatory statement unanimously with two abstentions.

Present: Lord Bethell, vice-chairman and acting chairman; Mr Baas, vice-chairman; Mr Spicer, rapporteur; Mrs Cassanmagnago Cerretti, Mr Edwards, Mr Evans, Lady Fisher of Rednal, Mr Guerlin, Mr Emile Muller, Mr Noè, Lord St. Oswald, Mrs Squarcialupi, Mr Vernaschi and Mr Veronesi.

The opinion of the Legal Affairs Committee is attached.

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A

The Committee on the Environment, Public Health and Consumer Protection hereby submits to the European Parliament the following motion for a resolution together with explanatory statement:

MOTION FOR A RESOLUTION

embodying the opinion of the European Parliament on the proposal from the Commission of the European Communities to the Council for a directive to protect the consumer in respect of contracts which have been negotiated away from business premises

The European Parliament,

- having regard to the proposal from the Commission of the European Communities to the Council¹,
 - having been consulted by the Council pursuant to Article 100 of the EEC Treaty (Doc. 550/76),
 - having regard to the report of the Committee on the Environment, Public Health and Consumer Protection and the opinion of the Legal Affairs Committee (Doc. 227 /77),
1. Welcomes the fact that in submitting this proposal for a directive, the Commission has complied with paragraphs 24 and 25 of the preliminary programme of the European Economic Community for a consumer protection and information policy of 14 April 1975²;
 2. Insists once more that in future, the Commission should submit to it the opinions of the Consumers' Consultative Committee on all proposals relating to consumer policy, so that its appropriate committees may express their views in full knowledge of the facts;
 3. Emphasizes the significance for consumer policy of this directive, which aims at ensuring greater protection for the consumer in respect of contracts negotiated away from business premises;

¹ OJ No. C 22, 29.1.1977, p. 6

² OJ No. C 92, 25.4.1975, p. 7

4. Insists that the scope of the directive should be extended to include goods exceeding 15 EUA in value, thus giving the directive the practical significance that it should have;
5. Calls on the Commission to stipulate that the consumer must be given a copy of the contract immediately and not to admit the possibility of its being forwarded at a later date;
6. Approves the provisions by which the consumer may exercise his right to cancel a contract, especially since they permit the trader to demand compensation for any damage to his goods;
7. Believes that the activities of mail order companies should be excluded from the scope of this directive, and if necessary should be dealt with by a separate measure;
8. Calls on the Commission to shorten from eighteen to twelve months the period within which the directive must be brought into force, in the interests of both consumers and traders, especially since the issue of the directive is laid down in the preliminary programme for consumer protection as one of the priority measures;
9. Again emphasizes the need for all national legal provisions, and not simply the main provisions, to be notified to the Commission in sufficient time for it to express an opinion on them;
10. Insists that the Council take a decision on this proposal for a directive within nine months of its notification, i.e. by October 1977 at the latest, in accordance with its commitment in the preliminary programme for consumer protection;
11. Calls on the Commission also to regard as a priority the submission of proposals for directives on consumer credit, home-study courses, securities and insurance contracts, in accordance with the preliminary programme for consumer protection;
12. Requests the Commission to make the following amendments to its proposal, pursuant to Article 149, second paragraph, of the EEC Treaty.

Council Directive
to protect the consumer in respect of contracts which have
been negotiated away from business premises

Preamble and recitals unchanged

Article 1 unchanged

Article 2

This Directive shall not apply to:

- (a) - (d) unchanged
- (e) contracts under which the price payable by the consumer does not exceed twenty-five European units of account;

Article 2

This Directive shall not apply to:

- (e) contracts under which the price payable by the consumer does not exceed fifteen European units of account;
- (f) contracts concluded between a trader and a consumer for the supply of goods and services to him provided:-
- the agreement was concluded on the basis of the trader's catalogue which the consumer has a proper opportunity of reading in the absence of a trader's representative, and
 - there is intended to be continuity of contact between the trader's representative and the consumer in relation to that or any subsequent transaction, and
 - the agreement confers on the consumer the right to return goods to the supplier within 14 days after the receipt or otherwise to cancel the agreement within that period without obligation of any kind (other than to take reasonable care of them)

Member States may make regulations for the purpose of ensuring that this exclusion shall not prejudice the interests of consumers and for the purpose of defining the term 'catalogue';

¹ For the complete text, see OJ No. C 22, 29.1.1977, p. 6

- (g) foodstuffs and drinks delivered
by regular roundsmen without
limitation on price.

Remainder unchanged

Articles 2(a) and 3 unchanged

Article 4

Article 4

Paragraph 1 unchanged

2. A copy of the doorstep contract
must be given to the consumer on
the signing thereof or forwarded
to him immediately thereafter.

2. A copy of the doorstep contract
must be given to the consumer
on the signing thereof (five
words deleted).

Article 5 unchanged

Article 6

Article 6

1. The consumer shall have a right of
cancellation by giving the trader
notice within a period of not less
than seven days after signature by
the consumer of the doorstep contract
in accordance with the procedure
laid down by national law. It shall
be sufficient if the notice is dis-
patched before the end of the
period.

1. The consumer shall have a right
of cancellation by giving the
trader notice within a period
of not less than seven days
after signature by the consumer
of the doorstep contract in
accordance with the procedure
laid down by national law. It
shall be sufficient if the
notice is dispatched before the
end of the period. Such
cancellation shall be notified
by registered letter.

Paragraphs 2, 3 and 4 unchanged

Articles 6(a) to 8 unchanged

Article 9

Except for any payment of a deposit required under national law, the trader shall be forbidden to require the consumer before expiration of the period mentioned in Article 6

- (a) to make full or partial payment of the contract price or to provide any other kind of payment or any surety.

(b) unchanged

Articles 10 - 12 unchanged

Article 13

Member States may prohibit the initiation of negotiations by a trader for doorstep contracts generally or in relation to certain goods or services only or may subject them to prior authorization.

Article 14

1. The Member States shall bring into force the measures necessary to comply with this Directive within eighteen months of its notification and shall forthwith inform the Commission hereof.
2. The Member States shall ensure that the texts of the main provisions of national law which they adopt in the field covered by this Directive are communicated to the Commission.

Article 9

Except for any payment of a deposit required under national law, the trader shall be forbidden to require the consumer before expiration of the period mentioned in Article 6

- (a) to make full or partial payment of the contract price or to provide any other kind of payment or any surety or to accept such payment.

Article 13

Member States may prohibit the initiation of negotiations by a trader for doorstep contracts to which this directive applies generally or in relation to certain goods or services only or may subject them to prior authorization.

Article 14

1. The Member States shall bring into force the measures necessary to comply with this Directive within twelve months of its notification and shall forthwith inform the Commission hereof.
2. The Member States shall ensure that the texts of the provisions of national law (1 word deleted) which they intend to adopt in the field covered by this Directive are communicated to the Commission in sufficient time for it to deliver an opinion on them.

Article 15 unchanged

Annex unchanged

EXPLANATORY STATEMENTI. General considerations

1. Paragraphs 24 and 25 of the preliminary programme of 14 April 1975 of the European Economic Community for a consumer protection and information policy¹ lay down inter alia that the Commission will study as a priority measure the protection of the consumer from unfair commercial practices in the case of door-to-door sales and submit appropriate proposals to the Council.

The Committee on the Environment, Public Health and Consumer Protection welcomes the fact that, in submitting this proposal for a Directive, the Commission has complied with these points in the programme.

2. The Council's letter of 27 January 1977 requesting the European Parliament's opinion on this matter refers to the fact that, in accordance with the Council Resolution of 14 April 1975 on the preliminary programme for consumer protection², the Council is required to act on this proposal within 9 months of its submission by the Commission. The Council would therefore appreciate it if the European Parliament could deliver its opinion as soon as possible.

Your committee will attempt to comply with this request but insists that the Council should comply with its commitment to adopt the Directive within the specified time-limit.

3. Your committee regretted that the Commission failed to submit the opinion of the Consumers' Consultative Committee on its original proposal for a directive. As Written Questions No. 658/75 by Mr Jahn³ and No. 785/76 by Mr Willi Müller⁴ pointed out, these opinions are extremely useful to the European Parliament because they enable Parliament and its appropriate committees to have full knowledge of the facts before they deliver an opinion on proposals from the Commission which take some or full account of the views of the Consumers' Consultative Committee.

¹ OJ No. C 92, 25.4.1975, p.7

² *ibid*, p.1

³ OJ No. C 67, 22.3.1976, p.46

⁴ Bulletin No. 46/76, p.12

The Commission's attitude is all the more incomprehensible in that a few months ago it forwarded the opinion of the Consumers' Consultative Committee on its proposal for a directive on liability for defective products¹ for information to the European Parliament at the request of the Committee on the Environment, Public Health and Consumer Protection.

Your committee is pleased to record, however, that, in the course of its examination of the draft directive on door-to-door sales, it was in fact sent the opinion of the Consumers' Consultative Committee, as promised by the Commission's representative. Nevertheless, it would ~~repeat~~ its urgent request that the Commission in future adopt the same approach towards all proposals relating to consumer policy.

4. In its Explanatory Memorandum on the proposal for a directive, the Commission rightly proceeds from the idea that the consumer generally needs special protection where contracts for goods or services are initiated away from business premises. Compared with contracts initiated on traders' business premises, the initiative to negotiate such contracts away from business premises generally stems from the trader and not from the consumer. The trader is versed in modern sales methods and in negotiating contracts away from business premises. He can make careful preparations for such negotiations and is free to choose the time of his visit. In contrast, the consumer who is approached in his home, at his place of work or another, similar place (e.g. in a showroom or during an excursion) is usually taken by surprise and unprepared for a sale. Frequently he has no time to give mature reflection as to whether he should acquire the offered goods or service at all or to discuss the matter with anyone. Furthermore, as a rule he has neither the time nor the opportunity to check the quality or price of the goods or service offered or other essential features of the offer before concluding the contract or to compare the offer with similar offers made by other traders. The element of surprise, combined with the stronger bargaining power of the trader, often leads the consumer to make hasty bargains or accept obligations which are not always in his best interests.

5. This proposal for a directive aims at providing the greater protection of the consumer necessary in the case of contracts negotiated away from business premises. This need exists not only in the case of contracts concluded at the doorstep or in the home but in other cases where the consumer, without taking the initiative, is drawn into negotiations. In

¹ OJ No. C 241, 14.10.1976, p.9

every such case the consumer is in the same psychological position: he is unprepared for a transaction and finds it difficult to evade negotiations with the trader.

The directive aims in general terms at ensuring a minimum of consumer protection. It therefore repeatedly states that the Member States may adopt supplementary measures which offer the consumer added protection or make the arrangements provided for in the directive even more favourable for the consumer.

6. The directive is rightly based on Article 100 of the EEC Treaty. The frequent commercial practice of initiating contracts or negotiating unilateral engagements between traders and consumers away from the place of business of the trader is subject to different legislation in the various Member States. The differences may have a direct effect on the functioning of the common market, and the relevant provisions must therefore be approximated. In particular, the legal obligations to which the trader is subject vary considerably, which hinders free competition within the common market. Moreover, the extent to which the consumer is protected varies greatly from one Member State to another, and these differences must be removed.

7. In point 4 of the Explanatory Memorandum, the Commission reviews the present legal situation in the various Member States in the field covered by the directive. From this it emerges that Ireland and Italy have no specific legal provisions on contracts concluded away from business premises. In contrast, the other Member States have more or less stringent protective provisions governing unfair commercial practices in connection with such contracts. These protective provisions range from the right to cancel a credit agreement made away from business premises within 5 days (United Kingdom) to a general prohibition (Luxembourg and Denmark) of the sale of goods away from business premises, (exemptions may be granted by special authorization).

II. Observations on the content of the proposal for a directive

8. Article 1(1) defines the scope of the directive. It covers all contracts between a consumer and a trader and all unilateral engagements by a consumer vis-à-vis a trader, which are initiated away from business premises, referred to as doorstep contracts.

A unilateral engagement is considered to exist when the consumer orders a particular object or commits himself to accept a particular service with no corresponding obligation on the part of the trader. It is self-evident that in such cases the consumer is also in need of protection, and this field is therefore rightly covered by the directive.

The directive does not, however, apply to contracts between two traders or contracts between two consumers, since as a rule neither contractual partner is at a disadvantage vis-à-vis the other.

9. Article 1(2) defines the terms 'consumer', 'trader' and 'business premises':

- (a) 'consumer': a natural person who in doorstep contracts acts otherwise than in a commercial or professional capacity;
- (b) 'trader': a natural or legal person who in the exercise of a commercial or professional activity concludes contracts with consumers;
- (c) 'business premises': the permanent place of business at which a trader exercises his commercial or professional activity as well as stalls at fairs and markets.

In its commentary on Article 1, the Commission points out that the definitions of 'consumer' and 'trader' have been kept very general to ensure that the directive has as wide a scope as possible. Since 'business premises' include only the permanent place of business of a trader, other premises which are rented for a short time only (e.g. showrooms, cinemas, restaurants, sports grounds) fall within the scope of the directive.

10. Article 2 delimits the scope of the directive. It therefore sets out exceptions. Thus, the directive does not apply to,

- (a) contracts where the consumer has himself initiated the contract negotiations; the ordering of catalogues, samples and patterns, a request for a visit or the demonstration of goods and participation in an organized event are not considered as initiating negotiations;
- (b) contracts which have been negotiated solely in writing;
- (c) contracts concluded before a court, a notary or other person who is under a duty to inform both parties of their rights and obligations;
- (d) contracts relating to immovable property or any rights thereto;
- (e) contracts under which the price payable by the consumer does not exceed 25 European units of account (approximately 70 DM); this amount is to be reviewed by the Council every three years and, where necessary, adjusted in the light of economic and monetary movement in the Community.

These exceptions appear logical, apart from the last one to which reference will be made later. If the consumer himself takes the initiative (a), then there can be no element of surprise as is otherwise the case with contracts concluded away from business premises. The consumer's initiative, however, must refer to the initiation of the actual contract. It is not sufficient for the consumer to have come into contact with the trader in some way. In the case of contracts negotiated solely in writing (b), the consumer has time to consider all the implications of the contract. Nor does he need special protection where he is formally informed by a third person of the content and implications of the contract (c). The exception contained in paragraph (d) (contracts relating to immovable property) covers, for example, applications for or transfers of a mortgage, the sale of a plot of land or the transfer of ownership of a flat. However, contracts relating, for instance, to the installation of a heating system, the maintenance of a heating oil tank or the repair of a roof are not contracts relating to a right to immovable property.

11. Your committee rejects, however, the exception contained in Article 2(e), according to which the scope of the directive is to be limited to contracts under which the price payable by the consumer does not exceed 25 EUA. In its commentary the Commission attempts to justify this provision by claiming that small daily doorstep sales such as milk and bread should not be subject to the relatively stringent provisions of this directive, and it does indeed appear inappropriate to require written contracts to be made for such sales and to remain in suspense during the cooling-off period.

We cannot, however, agree with the Commission that 25 EUA is a 'small sum'. Transactions involving such an amount can indeed place the consumer at a considerable disadvantage. Goods valued at between 15 and 25 EUA account for most of the articles offered to the consumer, not only at the doorstep, but also at his place of work, in the street, during an excursion or during a demonstration. In each of these cases the consumer is in the same psychological position, i.e. he is unprepared for the conclusion of a contract and has difficulty in evading negotiations with the trader.

Goods valued at more than 25 EUA, to which the directive is solely to be applied, are in any case less frequently offered for sale away from business premises, because the sales prospects are poorer. As a rule the consumer plans his larger purchases carefully, and only rarely will he enter into discussions on them away from business premises. Consequently, the Directive would have little practical effect in the strictly limited field of application laid down by the Commission.

The really small regular daily doorstep sales should not, of course, be covered by the provisions of the directive. Lowering the limit from 25 EUA to 15 EUA would be sufficient to take account of this. Daily doorstep sales will certainly not exceed this amount and as a rule remain well below it.

The Commission is therefore requested to amend Article 2(e) as follows:

'Contracts under which the price payable by the consumer does not exceed fifteen European units of account'.

12. There is a further reason why the scope of this directive should be extended. According to Article 13, the Member States may prohibit the initiation of negotiations by a trader for doorstep contracts generally or in relation to certain goods or services only or may subject them to prior authorization. The Member States will be more inclined to take advantage of this opportunity if the consumer protection provisions of the directive cover only a relatively small field. However, this would lead to the complete exclusion or considerable obstruction of door-to-door selling, which in turn cannot be in the consumer's interest. Indeed, in certain areas a relationship of mutual confidence has developed between door-to-door salesmen and their customers, to the benefit of both. Indeed, many elderly people are incapable of undertaking difficult journeys simply to buy odds and ends. The same is generally true of consumers who live in areas well away from shopping centres and therefore face long and time-consuming journeys to the nearest shop. In addition, the honest door-to-door salesman has nothing to fear from the consumer protection provisions of the Directive. His business will continue as usual so long as he is not subject to a general prohibition on the exercise of his profession or to considerable restrictions on his activities. It is therefore in the obvious interest of both consumer and trader for the consumer protection provisions of the directive to apply to door-to-door sales of goods costing between 15 EUA and 25 EUA.

However, in order to be quite certain that products delivered by regular roundsmen (e.g. milk, cheese, butter, soft drinks, bread, etc.) are excluded from the scope of the directive, your committee has recommended that a further paragraph (g) be added to Article 2, worded as follows:

'This Directive shall not apply to:

(g) foodstuffs and drinks delivered by regular roundsmen without limitation of price'.

13. As regards the delimitation of the scope of the directive, the legal position of 'collective buyers' from a mail order company is an important question.

The collective buyer only operates from time to time; he is himself a customer of the mail order company, who passes on the company's catalogue to people with whom he is in contact, such as relatives, friends, colleagues at work and neighbours; he collects their orders and forwards them to the company, takes delivery of the goods ordered and distributes them to those who have ordered the goods; he collects instalments where goods are bought on hire purchase, and, where necessary, forwards complaints and requests for replacements, and returns goods.

The mail order customer thus makes use of the collective buyer to simplify the ordering, delivery and return of goods. In such mail order transactions the collective buyer acts as a kind of purchasing assistant.

He does not force a contract on anyone, because to begin with he merely passes on the catalogue. The customers can then consider the goods on offer at their ease, no one presses them for an immediate decision to buy. As a rule, the collective buyer does not usually return until a few days later to take any orders. In the meantime, the purchaser can compare the goods listed in the catalogue with what is offered in other catalogues and in the shops. He thus enjoys all the advantages of the mail order system.

For the same reasons there can be no question of persuasion or intrusion. As a rule, the contact existing between the collective buyer and the purchaser and also the customer's prior intention to purchase exclude this possibility from the outset. The purchaser is almost always a long-standing customer of the mail order company because it has always given him good service.

The deciding factor in collective buying is that it reduces the cost of ordering and of returning goods which fail to please the customer. The proportion of goods returned is higher in the case of collective ordering than where mail order companies supply individual purchasers, because, as experience has shown, a trouble-free system encourages customers to return or exchange goods. Since the catalogue includes a wide range of goods at clearly marked prices, the potential customer has every opportunity to compare the prices and quality of goods. Furthermore, the consumer may always return to the mail order firm any goods which fail to please him. This right to return goods is a basic principle of mail order companies.

In the light of these considerations, your committee decided by 6 votes

to 4 with one abstention to call on the Commission to extend the exceptional provisions of Article 2 by a further paragraph (f) to read as follows:

'This directive shall not apply to

(f) Contracts concluded between a trader and a consumer for the supply of goods and services to him provided:-

- the agreement was concluded on the basis of the trader's catalogue which the consumer has a proper opportunity of reading in the absence of a trader's representative, and
- there is intended to be continuity of contact between the trader's representative and the consumer in relation to that or any subsequent transaction, and
- the agreement confers on the consumer the right to return goods to the supplier within 14 days after the receipt or otherwise to cancel the agreement within that period without any obligation of any kind (other than to take reasonable care of them)

Member States may make regulations for the purpose of ensuring that this exclusion shall not prejudice the interests of consumers and for the purpose of defining the term "catalogue".'

Furthermore, your committee takes the view that the activities of mail order companies should, if necessary, be dealt with by a separate measure (see paragraph 7 of the resolution).

14. Pursuant to Article 2 bis, the directive will not preclude the adoption of specific Community provisions for certain types of contract which might contain obligations in respect of contracts negotiated away from business premises, particularly those covering consumer credit, home-study courses, moveable assets (securities) and insurance contracts.

Your committee recognizes that a special type of consumer protection is required in the case of such contracts and that, consequently, separate directives must be issued. This is indeed expressly laid down in paragraphs 20, 21, 24, 28 and 29 of the preliminary programme on consumer protection. Your committee calls on the Commission, however, to comply with these paragraphs as a priority measure and hence to submit proposals for directives on consumer credit, home-study courses, moveable assets and insurance contracts in the near future.

15. Your committee approves the provision of Article 3, pursuant to which doorstep contracts must be made in writing and in particular, contain the following information:

- name and address of the contracting parties,
- a description of the goods or service forming the subject matter of the contract,
- a time-limit for delivery,
- the price,
- the terms of payment,
- notice of the right of cancellation enjoyed by the consumer, which must be set apart from the main text of the contract and must contain the name and address of the party against whom the right of cancellation may be exercised.

The Commission rightly points out in its commentary that the provision that the contracts must be drawn up in writing will ensure that the consumer can see clearly the content and implications of his engagement. It will also ensure that the consumer can study the conditions of the contract at his leisure after the trader has gone and before he decides whether he will continue with the contract or exercise his right of cancellation.

16. Pursuant to Article 4(1), the consumer must sign the doorstep contract in his own hand. Article 4(2) lays down that a copy of the doorstep contract must be given to the consumer on the signing thereof or forwarded to him 'immediately thereafter'.

Your committee objects to the latter provision insofar as it allows the copy of the contract to be forwarded later. There is no reason why the consumer should not be given a copy of the contract at once. Forwarding it at a later date can only lead to uncertainty, misunderstandings and conflicts. What is meant by the vague term 'immediately thereafter'? This can surely be interpreted in various ways: some people would understand 'immediately' to mean a few hours, others a day, others three days, etc. An additional factor is the time taken for the doorstep contract to be delivered by post. Nor is it clear what would happen if the contract were to be lost in the post or if the consumer claimed that he had not received it.

However, the most important argument against this provision is undoubtedly that it makes considerable inroads into the seven-day period allowed the consumer by Article 6(1) to exercise his right of cancellation. In its commentary on Article 4, the Commission rightly points out that the copy of the written agreement given to the consumer should enable him to consider the content of the contract during the cooling-off period. But he can only do this if the cooling-off period is actually guaranteed in practice.

Your committee therefore calls on the Commission to delete the reference to forwarding the copy of the contract at a later date and consequently to reword Article 4(2) as follows:

'A copy of the doorstep contract must be given to the consumer on the signing thereof.'

17. Article 5 lays down that a doorstep contract is void if the provisions of Articles 3 and 4 have not been complied with.

Your committee approves this provision without reservation. The legal penalties for non-compliance with the protective provisions of Article 3 (contracts must be made in writing and contain the necessary information) and Article 4 (the consumer must be given a copy of the contract) must be severe. Consequently, it is in the interests of effective consumer protection that contracts may be declared void.

18. Article 6 governs the consumer's right of cancellation. Within a period of not less than seven days after signing the doorstep contract he may give the trader notice that he is cancelling the contract. It is sufficient if the notice is dispatched before the end of the period.

In the interests of clarity, i.e. to avoid misunderstandings and consequent legal disputes, it should be stipulated that notice of cancellation must be sent by registered letter. Otherwise it will be difficult for the consumer to prove that he has sent his notice of cancellation within the time-limit. Your committee therefore requests that Article 6(1) should be supplemented by the following sentence:

'Such cancellation shall be notified by registered letter.'

In its commentary the Commission points out that the consumer is entitled to a period of reflection of at least seven days, within which he can decide whether he wants to make use of his right of cancellation. However, this is only valid if - as your committee requests (in point 16 of the Explanatory Statement) - the possibility provided for in Article 4(2) that a copy of the doorstep contract may be forwarded later is deleted.

19. The provision contained in Article 6(2) raises a problem. According to this, the Member States may fix a later date from which the seven-day period is to begin. While it is true that this could lead to more favourable provisions for the consumer, these would depend on the individual Member States and different regulations might come into force. Such differences could lead to precisely those distortions of competition which the adoption of this directive, pursuant to Article 100 of the EEC

Treaty, is designed to eliminate.

However, in the interests of flexibility, your committee has decided to retain Article 6(2).

20. Pursuant to Article 6(3) of the directive, the serving of notice to the trader is to have the effect of releasing the consumer from any contractual obligation. This means that an effective exercise of the right of cancellation of a contract cannot result in any obligations on the part of the consumer. Your committee welcomes this provision. It also welcomes Article 6(4), according to which the consumer may not renounce his right of cancellation. This will render void any clause in a doorstep contract which states that the consumer renounces his right of cancellation.

21. Article 6 bis states that the provisions of Article 6 (consumer's right of cancellation) do not apply

(a) where the services concern a direct insurance - other than life assurance - and

(b) where immediate cover of risks is agreed if the consumer so requests.

After hearing the Commission's representative explain this exceptional provision, your committee approves its inclusion.

22. Your committee welcomes Article 7, which requires the trader to hand to the consumer a separate cancellation form corresponding to the model annexed to the directive in order to facilitate the exercise of his right of cancellation. As the Commission rightly points out in its commentary, experience has shown that many consumers either do not know how they can cancel the contract they have signed or are averse to writing letters. This provision is therefore an important aid to the consumer.

23. Article 8 deals with the revocation of contracts which have already been executed in full or in part before the consumer exercises his right of cancellation. The following rules are laid down:

- Any payments must be reimbursed; any goods received must be returned at the expense and risk of the trader.
- The consumer is not required to pay for normal use of the goods during the period when the right of cancellation is valid.
- Member States may make provision for supplementary requirements relating to the consequences of cancellation.

This will prevent the consumer from being inhibited in the use of his right of cancellation by having to pay considerable costs for the revocation or large sums for the temporary use of the goods. In fact, the longer a contract has been running, the greater are the consumer's psychological inhibitions against cancelling the contract.

Your committee approves these protective provisions, especially since they give the trader the opportunity of demanding compensation for any damage to goods, since damage exceeds the limits of 'normal use' referred to in Article 8(2).

24. Article 9 forbids the trader, before expiration of the period of the right of cancellation,

- (a) to require the consumer to make full or partial payment of the contract price or to provide any other kind of payment or any surety; or
- (b) to require the consumer to sign a bill of exchange, cheque or any other kind of negotiable instrument or for the trader to take such a document,

except for any payment of a deposit required under national law.

The Commission rightly justifies this provision by stating that the intention is to prevent as far as possible the creation of a fait accompli before the expiry of the cooling-off period which could influence the consumer in such a way that he does not exercise his right of cancellation. If this is the aim of the provision, it should be supplemented so as to prohibit the trader to accept any payment or surety. What is valid for the acceptance of negotiable instruments must also be valid for the acceptance of payments or sureties: in both cases a fait accompli is created which would make it more difficult, at least psychologically, for the consumer to exercise his right of cancellation. A suitable addition should therefore be made to Article 9(a).

25. Article 10 lays down that the burden of proof is to lie with the trader in cases of dispute:

- (a) as to whether a doorstep contract has been negotiated exclusively at the initiative of the consumer; or
- (b) whether a doorstep contract has been negotiated solely in writing.

If these questions are answered in the affirmative, the doorstep contracts do not, pursuant to Article 2(a) and (b), fall within the scope of the directive.

In its commentary, the Commission rightly states that without Article 10, the right of cancellation might in many cases not be exercised since the consumer cannot as a rule prove that the trader initiated the negotiations or that the negotiations were conducted orally.

Your committee therefore approves Article 10.

26. Under Article 11, contractual provisions are void if they:

- require the consumer to pay some form of compensation if he exercises his right of cancellation; or
- provide that a court other than that normally competent to hear such a case has jurisdiction.

These provisions aim at preventing:

- the consumer being deterred from exercising his right of cancellation by the obligation to pay a sum of money,
- the contracting out of the general rule of law as to jurisdiction.

These provisions are logical and are therefore approved by your committee.

27. Article 12 aims at preventing evasion of the provisions relating to the right of cancellation. It therefore contains the provision that the consumer must not be hindered in or stopped from exercising his right of cancellation because of a false statement as to the date of conclusion of the doorstep contract.

To this end, the Member States are required to provide

- (a) either that the doorstep contract must be dated by the consumer in his own hand
- (b) or that the doorstep contract must be registered with an appropriate body.

This should prevent a doorstep contract from being predated and hence the consumer's cooling-off period of at least seven days being shortened or totally eliminated.

Although the second alternative granted to the Member States to prevent such practices (registration of the contract with an appropriate body) appears somewhat complicated and does not in every case measure up to practical requirements, your committee approves Article 12.

28. Pursuant to Article 13, Member States may prohibit the initiation of negotiations for doorstep contracts generally or in relation to certain goods or services only or subject them to prior authorization.

It is quite understandable that the Commission does not wish to cause the Member States to make large-scale amendments to their present legislation on doorstep contracts. In Luxembourg and Denmark, for example, the conclusion of contracts away from business premises is generally prohibited. In the Netherlands and Germany a trader who wishes to sell services away from his business premises requires special authorization. Although these stringent provisions make for protection of the consumer, they also raise the question whether their retention would not be incompatible with the harmonization which is provided for in Article 100 of the EEC Treaty and is also the general aim of the Commission. Because of the alternative provisions of Article 13, it is quite possible that the present distortions of competition will continue.

Despite these not inconsiderable reservations, your committee approves Article 13 on condition that its provisions remain restricted to doorstep contracts to which this directive applies.

29. Article 14(1) requires the Member States to bring into force the measures necessary to comply with this directive within 18 months of its notification.

As mentioned in point 28, since the directive is based very firmly on the present situation and since its early application should therefore result in no amendments or at least no fundamental amendments to Member States' legislation, your committee calls for a reduction in the period for putting the directive into effect from 18 to 12 months. Furthermore, the preliminary programme on consumer protection described the issue of this directive as one of the priority measures. Moreover, the earliest possible application of the directive would be in the obvious interest of both consumer and trader.

30. Article 14(2) requires Member States to ensure that the texts of the main provisions of national law which they adopt in the field covered by this directive are communicated to the Commission.

In line with its previous attitude to similar cases, which was supported by the Legal Affairs Committee, your committee considers that all national legal provisions should be communicated to the Commission and that this should be done in sufficient time for it to deliver an opinion on them.

The word 'main' can be interpreted in various ways. Moreover, provisions which at first sight appear 'minor', even to the Commission, may be important. Finally, the Commission must be informed of any intended national legislation in sufficient time for it to consider whether it is in line with the objectives of the directive and, where necessary, use its veto.

Consequently, your committee - as in similar previous cases - calls on the Commission to amend Article 14(2) as follows:

'The Member States shall ensure that the texts of the provisions of national law which they intend to adopt in the field covered by this directive are communicated to the Commission in sufficient time for it to deliver an opinion on them.'

31. Article 15 contains the obvious provision that the directive is addressed to the Member States.

The annex contains a model of the cancellation form referred to in Article 7. As already mentioned in point 22 of this Explanatory Statement, a special cancellation form, corresponding to the model in the annex, must be handed to the consumer when he signs a doorstep contract.

III. Re the opinion of the Legal Affairs Committee

32. The Committee on the Environment, Public Health and Consumer Protection regrets that the Legal Affairs Committee was unable to deliver its written opinion at a reasonably early date. It should be recalled in this connection that, in its letter of 27 January 1977 consulting Parliament, the Council rightly pointed out that, in accordance with the preliminary consumer protection programme of 14 April 1975, it is required to act on the proposal in question within nine months of its submission by the Commission. It accordingly asked Parliament to deliver its opinion as soon as possible.

In these circumstances, the Committee on the Environment felt that there could be no justification for further delaying the adoption of the draft report submitted to it by its rapporteur on 25 March 1977. It unanimously decided to adopt the report immediately so as to be sure that Parliament would deliver its opinion at the September part-session, thus allowing the Council at least one month in which to consider the decision it must take in October 1977.

The Legal Affairs Committee naturally has the right to deliver its written opinion at a subsequent date or, pursuant to Rule 44(4) of the Rules of Procedure, present it orally to Parliament during the debate on Mr Spicer's report.

OPINION OF THE LEGAL AFFAIRS COMMITTEE

Draftsman : Mr W. CALEWAERT

On 7 February 1977 the proposal in question was referred to the Committee on the Environment, Public Health and Consumer Protection as the committee responsible and to the Legal Affairs Committee for its opinion.

On 17 February 1977 the Legal Affairs Committee appointed Mr Calewaert draftsman.

It considered the draft opinion at its meetings of 18 May 1977 and 12/13 July 1977 and, at the latter meeting, adopted it by 8 votes to nil with 9 abstentions.

Present: Sir Derek Walker-Smith, chairman; Mr Riz, vice-chairman; Mr Calewaert, draftsman; Lord Ardwick, Mr Bayerl, Mr Bouquerel, Sir Geoffrey de Freitas, Mr de Keersmaecker, Mrs Ewing, Mr Fletcher-Cooke, Mrs Iotti, Mr Massullo, Lord Murray of Gravesend, Mr Schwörer, Mr Schwabe (deputizing for Mr Schmidt), Mrs Squarcialupi and Mr Vernaschi (deputizing for Mr Scelba).

I. INTRODUCTION

1. The proposed directive aims at giving the consumer better protection in the case of contracts in the course of negotiations away from the trader's business premises and not at the consumer's initiative.

The consumer is usually unprepared for the conclusion of such agreements since the element of surprise plays an important role and the initiative stems from someone who is better informed. A consumer will often hastily sign a contract without being fully aware of its consequences. This is therefore an area where consumer protection is needed.

The proposal contains two main points. Firstly, such contracts must be made in writing if they are not to be declared void. Secondly, the consumer is given the right to cancel the contract within a period of 7 days.

The proposed directive aims at giving only limited protection to the consumer. It is, of course, open to the Member States to take any additional measures they consider necessary.

2. Having examined the proposed directive, the draftsman feels that the Legal Affairs Committee should confine its judgment to the legal aspects of the proposal. The Legal Affairs Committee therefore leaves it to the committee responsible to pronounce on the amount of protection it offers to the consumer.

II. THE LEGAL ASPECTS

3. The legal basis for this proposal is Article 100 of the EEC Treaty.

In paragraphs 24 and 25 of the preliminary programme of the European Economic Community for a consumer protection and information policy, of 14 April 1975¹, it is stated, inter alia, that the Commission is seeking as a matter of priority to protect consumers from unfair commercial practices in door-to-door sales, and is submitting appropriate proposals to the Council.

The Commission can have recourse to the instruments of Article 189, and possibly Article 235, of the EEC Treaty, if no specific provision is made for the powers it requires. In the present case, it was decided to take a directive as the legal basis, pursuant to Article 100 of the EEC Treaty. According to this article, two conditions must be met for a directive to be issued:

¹ OJ No. C 92, 25.4.1975, page 7.

1. ... 'the approximation of such provisions laid down by law, regulation or administrative action in Member States...'
2. ... 'as directly affects the establishment or function of the common market'.

As regards 1, this matter is the subject of regulations in most Member States.

As regards 2, these provisions directly affect the functioning of the Common Market. Firstly, since the level of protection varies from one country to another. Secondly, this method of selling is often carried on over national frontiers and thus affects international trade.

Since the two conditions of Article 100 of the EEC Treaty are met, the Legal Affairs Committee can agree that this article may serve as the basis for this subject.

4. The directive does not apply only to agreements in respect of goods, but also to services. This emerges from Articles 6 - 13, the commentary on Articles 1 and 13 and the preamble. However, for reasons of clarity, it would be desirable also to include this point in Article 1 (1) by adding the expression 'in respect of goods and services' after the word 'trader'

5. Article 1 (1) states that the directive shall also apply to 'unilateral engagements by a consumer towards a trader'. The commentary on Article 1 quotes the example of a consumer ordering an electrical appliance or binding himself unilaterally to acquire goods or to accept services.

Your rapporteur considers that this example is not a case of unilateral commitment but rather the acceptance of a public offer. The quality of trader and the fact that negotiations took place show that the trader is making a public offer. If a consumer accepts this offer, a (multilateral) agreement is concluded. The rapporteur considers the meaning of the above-mentioned phrase to be unclear.

6. Article 1 (1) states that the directive shall apply to contracts, negotiations for which have been initiated away from business premises.

This wording is more limiting than that of the explanatory memorandum on this article, which states that the directive 'also applies to contracts which have been negotiated partly on and partly away from business premises'. Since the wording of the article is more limiting than that of the explanatory memorandum and might give rise to less desirable trading practices, the words 'initiated (away from business premises)' in Article 1(1) should

perhaps be replaced by: 'conducted entirely or partly (away from business premises)'.

7. Article 1 (2) gives a number of definitions.

The definition of 'trader' is very limited and does not include persons working on his behalf. In order to provide for all cases covered by the directive the intermediary - a concept which is fairly common in commercial law - must be included within the scope of the proposed directive. A phrase to this effect could therefore be added, for example: '... any person acting as his representative'.

8. Article 2, (a) and (b), raised the question of the difference between selling by correspondence and selling by catalogue. The directive does not apply to selling by correspondence (offer by letter or catalogue sent through the post) since there is no element of surprise in this. However, if the catalogue is offered by a salesman who visits the consumer at his home, then the directive does apply, since the element of surprise is present.

9. Article 2 bis states that specific provisions on certain listed types of contract may derogate from the obligations contained in this directive.

If no special provisions are applicable to the types of contract named they will be subject to the present directive. Derogations can be made expressly in specific provisions in due course, but it does not seem necessary to include a provision to this effect in this directive.

10. Article 5 states the sanction to be imposed if the provisions of Articles 3 and 4 are not complied with, but does not preclude Article 13 under which the Member States may prohibit negotiations generally or in relation to certain goods or services only, or subject them to prior authorization.

11. It was observed that Article 6 (cancellation) might duplicate Article 3 (written contract). The answer to this is that Article 6 is no longer relevant if the conditions of Article 3 are not met. The contract must be drawn up in writing for two reasons: firstly, to allow the consumer clearly to see the content thereof and secondly, to specify the date when the cooling-off period starts.

12. Article 6 bis states that the provisions of Article 6 (cancellation) will not apply to direct insurance other than life assurance if at the consumer's request immediate cover of risks is granted.

It should be noted that according to Article 2(a) the directive will not apply to contracts which have been negotiated exclusively at the initiative of the consumer. In the case of insurance agreements the consumer will normally have taken the initiative himself. If the initiative is taken by the insurer, there is no reason for making an exception here and not granting the consumer a period during which he may cancel the agreement. It would, however, be undesirable if insurance contracts giving immediate cover of risks could be cancelled by the consumer with impunity. The Legal Affairs Committee therefore suggests that the consumer should be required to pay a premium to cover the period allowed for cancellation in the event of the agreement being cancelled by the consumer.

13. Article 9 states that the trader may not require any payment before expiration of the period allowed for cancellation (paragraph (a)) nor may he accept or require the consumer to sign a negotiable instrument (paragraph (b)), unless national law requires the payment of a deposit. The Legal Affairs Committee considers that the distinction between 'requiring payment' and 'requiring or taking negotiable instruments' is unwarranted. It does not find the explanatory memorandum convincing on this point. Firstly, cheques are generally accepted as a means of payment, so that it is difficult to understand why payment may be taken in cash but not by cheque. Secondly, the possibility of cancellation provided for in Article 6 depreciates if payment may not be required but may be taken. Thirdly, the burden of proof that such a requirement has been uttered lies with the consumer, which can cause problems. The Legal Affairs Committee therefore proposes that the words 'or, for the trader, to take such payment' should be added to (a).

III. CONCLUSIONS

14. The Legal Affairs Committee believes that this directive will be extremely useful, but feels that it should propose six amendments.

(1) Article I (1)

The words 'in respect of goods and services' might be added after the word 'trader'.

(2) Article 1 (2)

The words 'initiated (away from business premises)' might be replaced by 'conducted entirely or partly (away from business premises)'.

(3) Article 1 (2)

The following could be added: '... or any person acting as his representative'.

(4) Article 2 bis

This article might be deleted

(5) Article 6 bis

The words 'the provisions of Article 6 shall not apply' might be replaced by: 'the consumer shall pay a premium to cover the period allowed for cancellation even if he cancels the contract'.

(6) Article 9

The following could be added to paragraph (a): 'or, for the trader, to take such payment'.

IV. REPORT BY MR SPICER (PE 48.276)

Since the Legal Affairs Committee has been asked for its opinion, it considers that it should examine the amendments proposed in the report by Mr Spicer on behalf of the Committee on the Environment, Public Health and Consumer Protection from a purely legal viewpoint.

- (a) Article 2(e). It is proposed to reduce the amount from 25 u.a. to 15 u.a. Since this is a political choice, the Legal Affairs Committee has nothing to say on the matter.
- (b) Article 2(f). It is proposed to exclude selling by catalogue from the directive under certain conditions. The amendment is in line with the view set out in the explanatory memorandum and the general tenor of the directive (surprise element).
- (c) Article 2(g). It is proposed to exclude from the scope of the directive foodstuffs and drinks delivered by regular roundsmen, without limitation on price. The Legal Affairs Committee endorses this amendment, as it fits in with the general purport of the directive.
- (d) Article 4. It is proposed to delete the words 'forwarded to him immediately thereafter'. The Legal Affairs Committee considers that this does indeed fit in better with the purport of the directive.
- (e) Article 6 (1). It is proposed to add the words 'such cancellation shall be notified by registered letter'. This amendment is not legally justified, since the same Article 6 (1) specifies that cancellation must be 'in accordance with the procedure laid down by national law'. The Legal Affairs Committee therefore does not accept this amendment.

- (f) Article 9(a). This amendment is in line with that proposed by the Legal Affairs Committee, the word 'take' being preferable since it is also used in (b).
- (g) Article 13. It is proposed to add 'to which this directive applies'. Since it is the text of the directive which is involved, it is pleonastic to refer to the directive. After all, contracts excluded from the scope of the directive are also specified therein. The Legal Affairs Committee considers this amendment superfluous.
- (h) Article 14 (1). It is proposed to reduce the period from eighteen to twelve months. This is not a legal problem so the Legal Affairs Committee will deliver no opinion on it.
- (i) Article 14 (2). Two amendments are proposed:
- firstly, to delete the word 'main'. The Legal Affairs Committee agrees with this proposal.
 - secondly, it is proposed to add '... intend to' and 'in sufficient time for it to deliver an opinion on them'. The Legal Affairs Committee notes that such an amendment would mean prior censorship by the Commission of Member States' legislation.

