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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. 157/77) for a directive on consumer protection in the marking and
display of the prices of foodstuffs

Rapporteur: Lady FISHER OF REDNAL

By letter of 8 June 1977 the President of the Council of the European Communities requested the European Parliament, pursuant to Article 235 of the EEC Treaty, to deliver an opinion on the proposal from the Commission of the European Communities to the Council for a directive on consumer protection in the marking and display of the prices of foodstuffs.

The President of the European Parliament referred this proposal to the Committee on the Environment, Public Health and Consumer Protection.

On 24 June 1977 the Committee on the Environment, Public Health and Consumer Protection appointed Lady Fisher of Rednal rapporteur.

It considered this proposal at its meetings of 19 October and 23 November 1977.

At its meeting of 23 November 1977 the committee unanimously adopted the motion for a resolution and the explanatory statement.

Present: Mr Ajello, chairman; Mr Jahn, Lord Bethell and Mr Baas, vice-chairmen; Lady Fisher of Rednal, rapporteur; Mr Edwards, Mr Evans, Mr Guerlin, Mr E. Muller, Mr Ney, Lord St. Oswald, Mr Spicer, Mrs Squarcialupi and Mr Veronesi.

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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 on consumer protection in the marking and display of the prices of foodstuffs

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 235 of the EEC Treaty (Doc. 157/77),
 - having regard to the report by the Committee on the Environment, Public Health and Consumer Protection (Doc. 416 /77),
1. Welcomes the fact that with the present proposal the Commission has implemented a further part of the preliminary programme of the European Economic Community of 14 April 1975 for a consumer protection and information policy²;
 2. Regrets the fact that the Commission has once again neglected to inform it of the opinion of the Consumers' Consultative Committee on the proposed directive, and repeats its request to the Commission that it in future forward without delay the opinion of the Consumers' Consultative Committee on all proposals relating to consumer policy so that Parliament's appropriate committees may comment on them with a full knowledge of the facts;
 3. Deplores the fact that the scope of the directive is confined to foodstuffs and calls on the Commission to submit at an early date and in accordance with the preliminary programme for consumer protection further proposals for directives that also make it compulsory to display unit prices for all normal household articles;
 4. Insists that, in the interests of consumer information, the marking and display of the prices of all foodstuffs sold in hotels, restaurants, cafés, public houses and similar establishments be made compulsory;

¹OJ No. C 167, 14.7.1977, p.4

²OJ No. C 92, 25.4.1975, p.2

5. Notes that the consumer has a justifiable interest in being informed of the date of expiry of the offer at the place of sale itself;
6. Calls on the Commission to issue provisions on the method of determining the net weight in good time before the present directive enters into force;
7. Calls on the Commission to reduce the period within which the directive should enter into force from 18 to 12 months, in the acknowledged interest both of the consumer and of the trade, especially as the adoption of the directive is set out as a priority measure in the preliminary programme on consumer protection;
8. Emphasizes the need for the Member States to inform the Commission of all their national laws in sufficient time for it to express an opinion on them;
9. Insists that the Council, pursuant to its undertaking in the preliminary programme on consumer protection, adopt this proposed directive within 9 months of receiving it, i.e. by February 1978 at the latest.
10. Requests the Commission to make the following amendments to its proposal pursuant to the second paragraph of Article 149 of the EEC Treaty.

Proposal from the Commission of the European
Communities to the Council for a directive for
consumer protection in the marking and display
the prices of foodstuffs

Preamble and recitals unchanged

Articles 1 to 4 unchanged

Article 5

In the case of advertisements,
special offers, offers on normal
trade terms and catalogues, the
prices shall be marked and displayed
in the same manner as the other
information required to identify
the foodstuffs put up for sale.

Any advertisement displayed at a
place other than the place of sale
and which mentions prices shall
state the date of expiry of the
offer or that it applies only
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Any advertisement displayed at a
place of sale or at a place other
than the place of sale which mentions
prices, shall state the date of
expiry of the offer or that it
applies only while stocks last.

Articles 6 to 11 unchanged

¹For full text, see OJ No. C 167 of 14.7.1977, p. 4

Article 12

1. Member States shall bring into force the necessary laws, regulations and administrative provisions in order to comply with this Directive within 18 months of the date of notification and shall immediately inform the Commission thereof.

2. Member States shall send the Commission the text of the provisions of their national laws which they have adopted in the field covered by this Directive.

Article 12

1. Member States shall bring into force the necessary laws, regulations and administrative provisions in order to comply with this Directive within 12 months of the date of notification and shall immediately inform the Commission thereof.

2. Member States shall send the Commission the text of the provisions of their national laws which they intend to adopt in the field covered by this directive in sufficient time for the Commission to express an opinion on them.

Article 13 unchanged

EXPLANATORY STATEMENTI. General considerations

1. Point 35, fifth indent, of the preliminary programme of the European Economic Community for a consumer protection and information policy¹ adopted on 14 April 1975 lays down that one of the priorities with regard to consumer information concerning goods and services shall be the drawing up of common principles for stating the price and possibly the price per unit of weight or volume.

The Committee on the Environment, Public Health and Consumer Protection welcomes the fact that the Commission has implemented this point in the programme by means of the draft directive on consumer protection in the marking and display of the prices of foodstuffs now before the committee.

2. In this connection reference should be made to Written Question No. 114/77 by Mr ALBERS on the standardization of provisions for the marking and display of prices². Mr ALBERS asked the Commission inter alia whether it was prepared to cooperate in efforts to increase as far as possible market transparency for the consumer.

In its reply of 3 June 1977 the Commission stated, referring to the proposal for a directive it has now submitted, that opportunities for rationalization of the market by reducing the number of authorized weights or volumes for prepackaged products should not be neglected in the case of provisions on the marking and display of prices. Such a reduction was particularly urgent where the weights or volumes at present allowed were too close to each other and hence likely to mislead the consumer.

3. In the explanatory memorandum to its proposal for a directive the Commission rightly points out that clear marking and display of prices per unit of measurement (unit pricing) should make it easier for the consumer to compare prices at the point of sale and thus is likely to increase market transparency and intensify competition. It will also help to counteract certain misleading advertising ploys and reduce the waste resulting from the use of certain types of packaging.

¹ OJ No. C 92, 25.4.1975, p.9.

² OJ No. C 191, 10.8.1977, p.47.

4. Between 1969 and 1975 four Member States of the Community adopted laws and regulations on pricing per unit of weight or volume: Germany, France, the United Kingdom and Belgium.

The other Member States do not have specific legislation on the matter, but most, especially Denmark, have detailed price legislation. The Netherlands and Denmark have already taken steps to make unit pricing compulsory.

This directive is designed to make unit pricing general in all Community countries.

5. The Committee on the Environment, Public Health and Consumer Protection deplores the fact that the Commission has once again neglected to inform it of the opinion of the Consumers' Consultative Committee. In this connection we may point out that in paragraph 16 of its resolution of 14 September 1977 on Community consumer policy Parliament insists emphatically that, in keeping with the statement by its President, Mr Roy Jenkins, the new Commission forward all opinions of the Consumers' Consultative Committee, immediately the final version is available, to the European Parliament and its appropriate committees for their information. As is pointed out in the explanatory statement accompanying this motion for a resolution¹, it is clear that the opinions of the Consumers' Consultative Committee, which consists of 25 members qualified in consumer affairs, can play a very useful part in the work of Parliament. Indeed, the European Parliament and its appropriate committees must be put in a position to comment, with full knowledge of the facts, on proposals put forward by the Commission, which does not always take full account of such opinions. The European Parliament is not only entitled to cultivate closer links than hitherto with consumers and their representative organizations but is obliged to do so. The Committee on the Environment, Public Health and Consumer Protection therefore insists that the Commission forward to it immediately the opinion of the Consumers' Consultative Committee on this draft directive, as it has already done in the case of its proposals for directives on liability for defective products and doorstep selling.

¹ See Mr Bregegere's report on Community consumer policy (Doc. 114/77), point 23 of the explanatory statement.

6. The present proposal for a directive is a useful follow-up to two directives already adopted by the Council:

- a directive of 19 December 1974 on the making-up by volume of certain prepackaged liquids¹,
- a directive of 20 January 1976 on the making-up by weight or volume of certain prepackaged products².

Furthermore, the present proposal for a directive is a follow-up to two other proposals on

- ranges of quantities for certain prepackaged products,
- the labelling, presentation and advertising of foodstuffs for sale to the final customer,

both of which are being considered by the Council at the present time.

7. Non-standard bottles and tins would have to display a unit price. Has consideration been given to the effect this might have on the exports of Third World countries who pack for worldwide trade? It could place their commodities in a different class on retailers' shelves as they would be the only cans to be unit-priced. The standardization of packages seems the simplest and therefore the best way of helping the consumer to make fair comparisons between price and quantity. This is why this method has been encouraged, but it has not proved itself to be a total solution to consumers' problems. It could be said that the Commission's directive on the standardization of ranges of prepacked products did not go far enough.
8. Unit pricing appears to be a more direct approach to helping the consumer, but research on the subject shows varied opinions. Surveys carried out in France by the Directorate-General for Competition and Prices of the Ministry of Economic Affairs and Finance have shown that the marking and display of the unit price undoubtedly promotes competition and therefore helps to moderate prices. Investigations in Canada, however indicate that unit pricing is most appreciated by the relatively affluent and in particular by educated consumers. Some governments see the obligation to mark and display the unit price as part of an anti-inflation policy. Most reports show that the consumer has to be educated to use unit pricing correctly if he is to derive maximum benefits in terms of time and money.

¹ OJ No. L 42, 15.2.1975, p.1.

² OJ No. L 46, 21.2.1976, p.1.

II. Consideration of the main provisions of the proposal for a directive

9. In Article 1 the field of application of the directive is laid down and defined. The directive covers all foodstuffs for supply to the final customer and put up for sale. It does not, however, apply to foodstuffs sold between traders, to wholesale sales to commercial buyers or to storage in depots, even where these depots or stores are in the immediate vicinity of the place of sale. Neither does it apply to foodstuffs offered for sale in hotels, restaurants, cafés, public houses and similar establishments.
10. In point 12 of the explanatory memorandum accompanying the proposal for a directive the Commission announces its intention of gradually extending the principle of the marking and display of prices per unit measurement to other categories of products frequently purchased by the consumer. The Committee on the Environment, Public Health and Consumer Protection calls on the Commission to submit as soon as possible further proposals for a directive on compulsory unit pricing, particularly in the case of the more common household articles (e.g. detergents, cosmetics). It is hard to see why consumer protection should be less important in the case of these products.

The same is true of the marking and display of prices in hotels, restaurants, cafés, public houses and similar establishments. The Committee on the Environment, Public Health and Consumer Protection will naturally not go so far as to ask that, for instance, the price per kilo of the ham sandwich consumed by the traveller in a railway restaurant be openly displayed. On the other hand, the committee insists that in the interest of the consumer's need for information a comprehensive list of prices for all foodstuffs offered for sale be made compulsory for establishments of this kind. The committee therefore asks the Commission to submit shortly a proposal for a directive on this matter.

11. Article 2 defines the ways in which foodstuffs can be offered for sale, as mentioned in Article 1:
- foodstuffs sold in bulk,
 - prepackaged foodstuffs,
 - foodstuffs prepackaged in pre-established quantities,
 - foodstuffs prepackaged in variable quantities.

The committee agrees to this article.

12. The central article of the whole directive is Article 3. It lays down that the selling price and the price per unit of measurement (kilo or litre) must be marked and displayed. These prices are to include all taxes. These compulsory indications of price are to apply also to all advertising, special offers, offers on normal trade terms and catalogues.

The committee welcomes the fact that the latter point is spelt out in this way, since price marking and display in advertising, special offers, etc. of this kind are increasingly being used as a sales promotion technique. Their drawing power may, however, work to the customer's disadvantage, and they must not be allowed to mislead the consumer.

13. Article 4 requires the selling price and the unit price at the place of sale to be marked and displayed

- on a label,
- on a shelf label,
- on a notice,
- on a poster or
- on a wall chart

clearly and visibly and in such a manner that the consumer cannot be misled. In the case of foodstuffs which are not directly accessible to the consumer, e.g. which are kept in refrigerated cabinets, the prices must be displayed on a poster or on a wall chart.

The Commission justifies these various options with regard to the marking and display of prices by saying that an undue burden must not be placed on the retailer, since this might be accompanied by an increase in the retail price.

This provision allows flexibility as to manner of marking, but appears to be overruled by Articles 9 and 10.

14. Article 5 contains an important provision with regard to the marking and display of prices in the case of advertisements, special offers, offers on normal trade terms and catalogues. If the prices listed in these advertisements are not displayed at the place of sale itself, the date of expiry of the offer must be stated or it must be pointed out that the offer applies only while stocks last.

It is obvious that this provision serves to provide the consumer with clear information. However, it is hard to see why the particulars that must be provided concerning the duration of the offer

should not also apply to advertisements at the place of sale itself. Even at the place of sale the consumer is justified in wanting to be informed about the length of time for which the offer holds good.

The committee therefore asks the Commission to amend the second paragraph of Article 5 to read as follows:

'Any advertisement displayed at a place of sale or at a place other than the place of sale which mentions prices, shall state the date of expiry of the offer or that it applies only while stocks last.'

15. Article 6 (1) lays down essentially that the unit price marked and displayed shall be expressed as a price per litre in the case of liquid foodstuffs and a price per kilogram in the case of other foodstuffs. If the foodstuffs are prepackaged in quantities of less than 100 grams or 10 centilitres, the unit price marked and displayed may be expressed as a price per 10 centilitres or per 100 grams.

According to Article 6 (2) this price refers to the net weight of the foodstuffs, and, where appropriate, to the net drained weight. The Commission must also have issued regulations as to the method of determining drained weight before acceptance of Article 6 (2).

16. Article 7 lays down that foodstuffs sold in bulk must be marked with and must display the unit price and no other information relating to price.
17. Article 8 regulates the marking and display of prices for foodstuffs sold separately. In their case both the unit price and the price of each item must be marked and displayed.

There is, however, one exception to this provision. There is no obligation to mark or display the unit price for foodstuffs sold separately, provided they are set out in lists published by the national administrations. The Member States are obliged to communicate these lists to the Commission together with any amendments thereto.
18. Article 9, which lays down that foodstuffs prepackaged in variable quantities must be marked with and must display both the unit price and the price of the quantity sold, is entirely logical.

19. Article 10 regulates the question of marking and displaying prices on foodstuffs prepackaged in pre-established quantities. In the case of foodstuffs of this kind, the unit price and the price of the quantity contained in each package are to be marked and displayed.

In two cases, however, exemptions from the basic regulation are possible:

- (a) Foodstuffs prepackaged in pre-established quantities, in accordance with the range of nominal quantities laid down by Community directives, would be exempt from the obligation to be marked with and to display the unit price.
 - (b) The range of nominal quantities laid down by national regulations, where no Community directives on the matter are as yet in force, would be exempt from the obligation to be marked with and to display the unit price.
20. Article 11 lays down that over a suitable transitional period the competent national authorities in Ireland and the United Kingdom must determine for each category of products the units of mass (kilogram and gram in the international system; pound and ounce in the imperial system) and of volume (litre and millilitre in the international system; pint, gallon and fluid ounce in the imperial system) in which the unit price must be marked and displayed.

The committee has no objections to make to these transitional provisions.

21. Article 12 obliges the Member States to bring into force the necessary laws, regulations and administrative provisions in order to comply with this directive within 18 months of the date of notification. Since the directive, which in any case contains derogations and transitional provisions, entails no serious difficulties for manufacturers or trading interests in adjusting, the committee asks as it has done in the case of other directives consumer protection, that the period within which it should enter into force be reduced from 18 months to 12 months. It may be added that, as has been mentioned in point I of this explanatory statement, the adoption of this directive is set out in the preliminary programme on consumer protection as one of the priority measures.

22. Article 12 further requires Member States to send the Commission the text of the provisions of their national laws which they adopt in the field covered by this directive.

In conformity with the position it has hitherto taken up and with the view of the Legal Affairs Committee in similar cases, most recently in Mr Spicer's report (Doc. 227/77) on consumer protection in respect of contracts negotiated away from business premises, the committee should urge that all national legal provisions be notified to the Commission, in sufficient time for it to express an opinion on them.

This means that the Commission must be notified in good time of projected national legal provisions, so that it can examine whether they conform to the objectives of the directive and, where necessary, veto them.

The committee therefore asks the Commission to amend Article 12 (2) to read as follows:

'The Member States shall send the Commission the text of the provisions of their national laws which they intend to adopt in the field covered by the directive in sufficient time for the Commission to express an opinion on them'.