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## Report

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

Consumer Protection

on Community consumer policy

Rapporteur: Mr M. BRÉGÈRE

PE 47.778/fin.



By letter of 2 February 1976, the Committee on the Environment, Public Health and Consumer Protection requested authorization to draw up a report on Community consumer policy.

Authorization was given by the President of the European Parliament in his letter of 19 February 1976. On the same day the Legal Affairs Committee was asked for its opinion.

On 16 February 1976, the Committee on the Environment, Public Health and Consumer Protection appointed Mr Brégégère rapporteur.

It considered the draft report at its meetings of 16 March, 31 March, 28 April and 17 May 1977 and unanimously adopted the motion for a resolution and the explanatory statement on 17 May 1977.

Present: Mr Ajello, chairman; Mr Jahn, vice-chairman; Mr Brégégère, rapporteur; Mr Brown, Mr Creed, Mr Evans, Mr Martens (deputizing for Mr Van Aerssen), Mr Willi Müller, Mr Noè, Lord St. Oswald, Mr Schwabe, Mrs Squarzialupi and Mr Vernaschi.

The opinion of the Legal Affairs Committee is attached.

C O N T E N T S

	<u>Page</u>
A. MOTION FOR A RESOLUTION .....	5
B. EXPLANATORY STATEMENT .....	9
I. General considerations .....	9
II. Proposals for Community initiatives based on the outcome of the European Symposium held in Montpellier on the judicial and quasi-judicial means of consumer protection (10 - 12 December 1975) .....	12
(a) Extending consumer education and information .....	12
(b) Strengthening conciliation bodies of every kind ....	16
(c) Setting up or expanding the powers of arbitration bodies .....	17
(d) Simplifying and humanizing traditional procedures ..	18
(e) Making specialized organizations responsible for consumer protection (ombudsman and/or representative specialized organizations) .....	20
III. Proposals for Community measures based on the outcome of the Colloquium of Consumers' Organizations held in Brussels ( 2 - 3 December 1976) .....	22
IV. Proposals for action by the Community based on the outcome of the Fourth European Consumers' Forum held in Berlin (26 - 27 January 1977) .....	32
V. Consideration of the opinion of the Legal Affairs Committee .....	36
Opinion of the Legal Affairs Committee .....	39

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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

on Community consumer policy

The European Parliament,

- having regard to the preliminary programme of the European Economic Community for a consumer protection and information policy dated 14 April 1975<sup>1</sup>,
  - having regard to the summary report of the Commission of the European Communities on the European symposium held in Montpellier from 10 to 12 December 1975 on the judicial and quasi-judicial means of consumer protection,
  - having regard to the outcome of the abovementioned symposium in Montpellier, of the colloquium of Consumers' Organizations in the Community held on 2-3 December 1976 in Brussels and of the Fourth European Consumers' Forum held on 26-27 January 1977 in Berlin,
  - 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. 114 /77),
1. Insists that the Commission and the Council implement the preliminary programme of the European Economic Community for a consumer protection and information policy within the set period;
  2. Urges the Commission, therefore, to put forward at an early date proposals for a Community system of consumer advice centres and for a directive on the provision of advice to consumers by certain bodies which draws on the experience gained in a number of countries and guarantees the greatest possible degree of consumer protection;

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<sup>1</sup> OJ No. C 92, 25.4.1975, p. 1

3. Requests the Commission to submit, within a reasonable period, a proposal for a directive on the setting up of conciliation bodies to resolve disputes between consumers and purveyors of goods or services and on the establishment of a binding arbitration procedure, as this will be an important contribution to consumer protection;
4. Advocates furthermore that Community measures be drawn up and implemented at an early date to improve, simplify and harmonize judicial procedures in legal disputes on consumer matters, and considers it appropriate that provision be made in these measures for collective legal action by consumer organizations;
5. Requests the Commission to propose in the near future preventive measures at Community level aimed at:
  - introducing techniques which cause a minimum of environmental pollution,
  - encouraging manufacture of products which can be re-used or from which the waste can be recycled,
  - increasing the life-span of certain products,
  - banning the use of excessively large packages and unjustifiably expensive packaging materials.
6. Regards it as essential that the Commission make an important contribution to the war on waste by putting forward taxation proposals to encourage the recycling of goods and to apply the minimum rate of value added tax for repair and maintenance work;
7. Stresses the need for the Commission to embark and make rapid progress on the measures envisaged in paragraph 30 of the preliminary consumer protection programme, to provide protection against forms of advertising which encroach on the consumer's freedom of decision, including measures to supervise written, oral and visual advertising;
8. Requests the Commission to include in its final proposal for a directive on deceptive and misleading advertising provisions enabling the consumer to rescind any contract concluded on the basis of such advertising and to lodge a claim for compensation for any damage he may have suffered;
9. Points out that, pursuant to Article 39 of the EEC Treaty, one of the objectives of the common agricultural policy is to ensure that supplies reach consumers at reasonable prices, and is of the view that the system of agricultural market organizations needs to be examined and shaped more in accordance with consumer interests than hitherto;

10. Requests the Commission furthermore to take all necessary steps to secure the rapid implementation of the priority measures of consumer protection as laid down in paragraph 16 of the Preliminary Consumer Protection Programme under the heading of the approximation of laws in the agricultural, foodstuffs and industrial sectors, and to ensure that such protection is not jeopardized by other policies;
11. Calls for the development of scientific research to be pursued with the final consumer in mind and for continuous information on the essential data required to strike a balance between progress and consumer protection;
12. Calls on the Commission to submit, at an early date and in accordance with paragraphs 35 and 36 of the preliminary consumer protection programme, further proposals for directives on measures to provide the consumer with information concerning goods and services, and on comparative product tests;
13. Urges the Commission to submit appropriate proposals designed to ensure that:
  - consumers are given precise information on the composition of products and, where appropriate, on the presence of any preservatives, dyes or other additives which could adversely affect the health and safety of the consumer,
  - steps are taken to harmonize the procedures in the Member States relating to the supervision of products and withdrawal of those considered dangerous, and to harmonize within the Community the penalties for any contravention;
14. Attaches particular value to the Commission's support for the exchange and dissemination of information on topics of interest to the consumer, especially the publication, as laid down in paragraph 39 and 45 of the preliminary programme, of an annual report on steps taken by the Community and the Member States in the consumer interest;
15. Insists that the Commission in future include in all proposals affecting consumer policy a provision obliging the Member States to monitor scrupulously the application of provisions of national law enacted on the basis of the directive in question and, in cases of non-compliance, to impose severe penalties;
16. Insists moreover emphatically that, in keeping with the statement by its President, 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;

17. Calls upon the Commission and the Council to replace their current concept of 'defending and protecting the consumer' with the more general and more active concept of 'furthering the interests of the consumer';
18. Supports in principle the view that the harmonization of national legislation must take account of progress and incorporate or improve further on such provisions as are most favourable to the consumer, and therefore requests the Commission to take account of this objective in future proposals for measures on harmonization;
19. Endorses the right of the consumer to be heard as an equal economic partner, and therefore asks the Commission to consider how it can strengthen consumer participation in the preparation and enactment of Community legislation;
20. Instructs its President to forward this resolution and the report of its committee to the Council and Commission of the European Communities and to the parliaments and governments of the Member States;

EXPLANATORY STATEMENTI. General considerations

1. Your Committee on the Environment, Public Health and Consumer Protection was prompted to draw up its own-initiative report by the European symposium on the judicial and quasi-judicial means of consumer protection. This symposium took place, on the Commission's initiative, from 10 to 12 December 1975 in Montpellier with the cooperation of the Faculty of Law and Economics of the University of Montpellier and of the local Chamber of Commerce and Industry. For further details about the symposium and the initial outcome, reference is made to the memorandum dated 23 January 1976 (PE 43.491) drawn up by your rapporteur.

2. As is clear from point 21 of the memorandum, the Commission had announced that it would be drawing up a summary report on the basis of the papers given at the symposium in Montpellier and of the results of the discussions. In addition, the Commission said that it would shortly be submitting practical proposals with the object of satisfactorily defining the consumer's right to take legal action and to obtain redress for the damage or injury he has suffered.

3. Since the summary report announced for March 1976 had still not been produced by October, your rapporteur addressed Written Question No. 570/76<sup>1</sup> to the Commission asking for an explanation for the delay. In December 1976, the summary report was finally submitted to the European Parliament, and whether this happened independently or as a result of the Written Question is of no concern now.

The summary report contains a number of specific proposals put forward by the Commission. Page 39 of the report contains a reference to the fact that these suggestions 'may be submitted to the Council in the proper form after various experts have given their opinions.'

4. Your committee is of the view that the European Parliament should also deliver an opinion on the summary report before the Commission submits its final proposals to the Council. This will be done in the context of the present own-initiative report.

This report will not however confine itself to the results of the symposium in Montpellier. As its title indicates, it is more concerned with Community consumer policy in general. The foundation of this policy

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<sup>1</sup> OJ No. C 305, 27.12.1976, p. 25

is the Council Resolution of 14 April 1975 on a preliminary programme of the European Economic Community for a consumer protection and information policy<sup>1</sup>. The view of your committee is that the European Parliament should be realistic and confine itself at present to ensuring that the preliminary consumer protection programme is implemented within the set period. Paragraph 49 of the programme states that it is to be regarded as the first stage of a more comprehensive programme which might need to be developed at a later date. The aim was to complete this first stage within four years. This means that the programme ought to be realized by April 1979.

5. Your committee intends therefore, in the context of this report, to consider also whether, and, if so, to what extent, the prompt implementation of the consumer protection programme leaves anything to be desired and how, within the framework of the Community legislative procedure, speedier and more effective methods can be employed in the sphere of consumer protection. In considering this question, the suggestions put forward by the Colloquium of Consumers' Organizations, held by the Commission on 2 - 3 December 1976 in Brussels, might be of great use. This meeting, to which the Commission had invited consumers' representatives and national government agencies responsible for consumer protection, provided an opportunity to take stock of what the Community had done on behalf of consumers and more particularly to ascertain the views of consumers' representatives on future action.

Four speeches were given dealing with the following:

- (a) work on health and safety,
- (b) the legal and economic interests of consumers,
- (c) consumer information and education,
- (d) consumer representation.

The consumers' colloquium was dealt with in a special note by the committee secretariat (PE 47.349), to which reference is made.

Finally, your committee decided also to include in the present report the results of the Fourth European Consumers' Forum, which took place in Berlin on 26 and 27 January 1977 under the sponsorship of the Commission of the European Communities. At this forum, talks were given on the following subjects:

- (a) the long-term development of food prices at producer and consumer level,

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<sup>1</sup> OJ No. C 92, 25.4.1975, p. 1

- (b) improving quality transparency for the consumer by means of product information and comparative tests,
- (c) how can the consumer be given greater protection against deceptive advertising (e.g. self-imposed restrictions or legal controls, collective action, monopolies commission, ombudsman)?

At the conclusion of the proceedings, the bodies that had joined together to form the Fourth European Consumers' Forum adopted a resolution containing a number of specific demands addressed to the Commission of the European Communities. These demands will be examined later on in this report in chapter IV 'Proposals for action by the Community based on the outcome of the Fourth European Consumers' Forum held in Berlin (26 - 27 January 1977).'

II. Proposals for Community initiatives based on the outcome of the European symposium held in Montpellier on the judicial and quasi-judicial means of consumer protection (10-12 December 1975)

6. The stated objective of the symposium was to study, pursuant to paragraph 33 of the preliminary consumer protection programme, the following systems and legislation:

- systems of assistance and advice in the Member States,
- systems of redress, arbitration and the amicable settlement of disputes existing in the Member States,
- the laws of the Member States relating to consumer protection in the courts, particularly the various means of recourse and procedures, including actions brought by consumer associations or other bodies,
- systems and laws of the kind referred to above in certain third countries.

7. The participants at the symposium were agreed that the legislation in the Member States concerning judicial and quasi-judicial consumer protection needed to be improved, particularly in the following areas:

- (a) extending consumer education and information,
- (b) strengthening conciliation bodies of every kind,
- (c) setting up or expanding the courts of arbitration,
- (d) simplifying and humanizing traditional procedures,
- (e) making specialized organizations responsible for consumer protection (ombudsman and/or representative consumer organizations).

(a) Extending consumer education and information

8. By providing pertinent information, an attempt should be made to achieve a situation in which the individual consumer knows his rights, at least in the most important cases. It does, however, largely depend on the consumer himself whether and to what extent he takes advantage of the information provided. At present the information that is offered is only used by the consumers to a limited extent; this primarily applies to the socially weak consumers (migrant workers, for example) who are in particular need of protection.

9. Measures proposed:

- Member States should develop introductory courses on consumer affairs in schools.
- At the same time, courses should be organized to train teachers responsible for these courses.
- University courses on consumer law should be encouraged.
- Member States should introduce consumer information schemes using all available methods - radio broadcasts, television programmes, and features in the mass circulation newspapers and specialized publications.
- In the field of product information, consumer organizations or the Ministries responsible should publish detailed information sheets on consumer rights as regards specific products and on certain economic or legal cases (e.g. door-to-door selling).
- It would also be useful to distribute to the consumer specific information put out by the supplier or producer, covering in particular the ingredients or composition, directions for use and dangers of the product as well as some legal information.
- Consumer advice centres should, if not already in existence, be set up in the Community with the main task of giving factual answers to consumers' letters and to questions by telephone and from personal callers.
- To supplement the consumer advice centres, which are chiefly concerned with consumer problems, citizens' legal advice bureaux ought to be set up to deal with citizens' personal problems in general.

10. Brief explanation of proposed measures:

Radio and television programmes for the consumer could take the following forms:

- news flashes (lasting from 2 to 10 minutes) broadcast at peak listening/viewing times for certain programmes (news bulletins or regional news);
- half-hour programmes aimed at housewives or elderly listeners and broadcast in the afternoon. These could cover subjects like consumer credit or renting a flat;

- programmes aimed at special groups of consumers, like car owners, and broadcast less frequently;
- programmes for foreign workers to inform them of their rights in their host country;

The daily press should certainly devote more space to comparative surveys of goods and services and other general consumer topics.

In the specialized press, a regular section should be included for consumer information containing articles on household equipment, food-stuffs, beverages, cosmetics, and so on.

Periodicals devoted solely to consumer information, like 'Which', 'Que Choisir', '50 Millions de Consommateurs', 'Consumentengids' and 'Taenk', need to be made available to a much larger readership by being distributed free of charge in citizens' advice bureaux, travel agencies, at trade fairs, exhibitions, railway stations, airports, etc.

To improve the effectiveness of consumer advice centres, mobile units could be created to provide consumer advice at special events and to reach the many places where it would not be feasible to open permanent centres. One such example is the University of Oslo's legal assistance scheme ('Law Bus'), which since it started in 1971 has given very good results.

The 'Law Bus' is a mobile legal information service for consumers and is run by 20 to 30 law students and law graduates, working on a regular basis. It has three aims:

- (a) to provide the general public with legal assistance,
- (b) to enable an assessment to be made of the pattern of demand for legal assistance in society,
- (c) to give students some practical experience in law to supplement their academic training.

In setting up citizens' legal advice bureaux, the view of the participants at the symposium was that the following two models should point the way:

- the British Law Centres and Citizens' Advice Bureaux,
- the Dutch 'Wetswinkels'.

In Great Britain, there are 600 Citizens' Advice Bureaux staffed mainly by part-time voluntary workers. They advise consumers on legal questions and have very detailed information on recurring problems at their disposal.

In addition, there are 17 Law Centres, which seek to provide the inhabitants of poorer areas with as complete a range of legal services as possible. They are, above all, intended for consumers who are not entitled to free legal aid.

There are at present about 100 'Wetswinkels' (law shops) in the Netherlands and they are distributed over the whole country. They cater in a similar way for those who cannot afford to consult a lawyer. Until now the law shops have been financed by donations and subsidies from public and private bodies. In view of the success enjoyed by the 'Wetswinkels', attempts are currently being made in the Netherlands to institutionalize this system. A working party set up for this purpose has recently put forward the following proposals for improvements which, in the view of your committee, could be of use to the Community with a view to setting up similar organizations:

- Bureaux to give preliminary advice should be easily accessible.
- Legal advice bureaux need a central organization, housed in the legal aid premises.
- Specialized services should be set up for specific branches of law, as well as a research department.
- The bureaux should be financed by the government in conjunction with the legal aid system and provided with permanent staff.

These bureaux should operate as follows:

- give an independent opinion,
- inform the citizen of his legal position,
- advise him on the decision to be taken,
- defend the citizen, possibly by initiating legal action,
- help the citizen when court decisions are executed,
- attend to non-legal problems (such as social problems).

Your Committee on Consumer Protection calls on the Commission to establish at an early date a Community system of consumer advice centres based as far as possible on existing models. Despite the many difficulties which may confront a system of this kind in some Member States, the Commission must make a decisive effort in the interests of consumers in the Community to establish a system on these lines.

(b) Strengthening conciliation bodies of every kind

11. Those taking part in the symposium rightly proceeded on the basis that recourse to legal proceedings to settle consumers' disputes was not a satisfactory solution, because the process was cumbersome and very expensive compared with the often minor injury in question. One solution which was considered simpler and less costly was the setting up of conciliation bodies.

By way of preventive action, conciliation bodies can make ethical agreements with certain kinds of companies to eliminate, in advance, disputes with consumers, or at least make them less likely.

Upon receiving complaints from consumers regarding irregular commercial practices, a conciliation body must be able to approach the firms concerned and ask them to put a stop to the practices in question, drawing attention, if need be, to the fact that they are illegal and could give rise to legal sanctions. This kind of procedure has already proved its worth in a number of Member States, especially where the body has been representative and included individuals of high standing.

12. The main task of conciliation bodies undoubtedly consists in the amicable settlement of disputes between consumers and purveyors of goods or services. It is clearly difficult for a consumer who has good reason to bring a complaint against a firm to propose a friendly solution to the dispute on his own account, as this would put him at a disadvantage in relation to the opposing party. On the other hand, it is much easier for a conciliation body to propose a friendly settlement which takes account of the interests of both parties. This type of amicable agreement, which is not enforceable, differs from the conciliation decisions sometimes handed down by the courts, like the magistrates courts in France, where the judge proposes a settlement which both parties accept.

13. The most interesting solution on these lines and one which was recommended by those taking part in the symposium for adoption in the countries of the Community, was the Swedish model called the Complaints Office, which was set up in 1968 and has so far proved successful. Although financed by the Ministry of Commerce and hence free of charge to the consumer, the Complaints Office is an autonomous body which endeavours to work out principles and find solutions acceptable to the two parties involved. The staff is appointed and paid by the main consumer organization in Sweden, the National Office for Consumer Policy. The Complaints Office has a chairman and six judges and can also call on technical experts and ask laboratories to carry out tests. The statutes of the office require that, at a consumer's request, it examine any

dispute over goods and services between the consumer and a trader and decide how, in its opinion, it should be settled. The office's decisions are not legally binding: they are only recommendations, but in an average of 85% of cases they are found acceptable.

The public submit complaints to the office through its secretariat by telephone or letter or by calling in personally. The office delivers its decisions in writing, and also issues forms for complaints about various kinds of goods and services.

Your committee urges the Commission to make an important contribution to consumer protection by submitting, as soon as possible, a proposal for a directive on the setting up of conciliation bodies based largely on the Swedish model.

The Commission states that it is at present studying this problem but that it would be premature to draw any conclusions from this study.

(c) Setting up or expanding the powers of arbitration bodies

14. Several countries (Denmark, Netherlands, Switzerland, USA) have set up arbitration bodies to settle minor disputes - consumers' grievances generally fall into this category - in order to relieve the pressure on the courts. Arbitration of this kind is much less costly than legal proceedings and it is also much faster. Furthermore, as arbitration bodies are generally organized according to trades, the problem of expert knowledge is greatly simplified. The powers of these bodies vary from country to country and their decisions are not always binding, or only become enforceable after a higher authority or a court becomes involved.

15. In its summary report, the Commission rightly points out that these existing arbitration systems will need to be harmonized at Community level, particularly as regards their organization, their powers and their operation. It also needs to be established under what conditions arbitration awards would be enforceable and in what circumstances the enforceability would be subject to confirmation.

In this context, the Commission puts forward for consideration an arbitration procedure which can be summarized as follows: provision could be made for one sole arbitrator who would have to be independent and preferably a lawyer. Another possibility would be a collegiate system, in which case there would have to be equal representation in order to safeguard both sides. The arbitration procedure would need to vary according to the amount at stake. Disputes over small claims could be settled by a sole arbitrator, whereas more important cases would require a joint arbitration committee, unless, of course, the two sides preferred to settle their case in the ordinary courts. Heads of companies should be required, if the consumer so desires, to go before a court of arbitration.

Your Committee on Consumer Protection requests the Commission to put forward a proposal for a directive along these lines, which should surely be in the interests of both consumers and managers of manufacturing or service undertakings.

The Commission states that it is also studying this problem; however, no valid conclusions can as yet be drawn.

(d) Simplifying and humanizing traditional procedures

16. Independent of the conciliation and arbitration procedures described and advocated above, there is, of course, an urgent need to improve ordinary legal procedures. Ways should be sought of simplifying the procedures and making them less expensive and less time-consuming. Some Member States have already set up or are planning to set up new legal machinery to safeguard consumer interests in minor cases, on the lines of the Small Claims Courts in the USA, the County Courts in the United Kingdom and the Swedish Law of 1974. In its summary report, the Commission states that it would welcome the idea of other Community countries taking similar initiatives.

On the other hand, your Committee on Consumer Protection would specifically urge the Commission to submit at an early date a proposal for a directive on the improvement of legal procedures relating to consumer disputes. This is a further important area in which harmonization of varying national legislation is an urgent requirement. The request by your committee is in complete conformity with paragraph 33 of the preliminary consumer protection programme, which states<sup>1</sup> inter alia that the Commission will:

- study the laws of the Member States relating to consumer protection in the courts, particularly the various means of recourse and procedures, including actions brought by consumer associations or other bodies;
- submit, where necessary, appropriate proposals for improving the existing systems and putting them to better use.

17. The proposed directive on the simplification of legal procedures ought to be based on the following principles, which are put forward for discussion in the summary report:

- A clerk of the court helps the parties to draft complaints and to prepare a clear and full defence.
- The case is heard by one judge, who conducts it expeditiously without too much formality and picks out the main points so that both sides know on what to base their case.

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<sup>1</sup> OJ No. C 92, 25.4.1975, p.8

- No legal representation is allowed. If need be, a technical expert can be called in and paid for by the court.
- The judge tries to settle the dispute amicably.
- In most cases the procedure would be verbal.
- For most cases one hearing should be sufficient.
- Only absolutely essential expenses may be recovered from the losing party.
- The right of appeal is strictly limited.
- This procedure should only be used for civil cases where the value of the injury suffered does not exceed a fairly small sum.
- As far as practical organization is concerned, the tribunal or board should be located as near as possible to the parties concerned and evening hearings should also be arranged for those who cannot attend during the day.

18. Further improvements could be made to the current legal procedures as follows:

- I. wider access to legal aid,
- II. lower legal costs,
- III. introduction of a scale of fees for lawyers,
- IV. modernizing the trappings of the legal system.

Re: I. The Commission points out that in some Member States it is difficult to obtain legal aid and that it very often takes so long that those concerned are obliged to arrange with a lawyer for deferred payments of fees. The formalities for obtaining legal aid therefore need to be simplified and the waiting time shortened. The income threshold for obtaining aid should also be adjusted upwards. Finally, the consumer should be granted free legal aid automatically if the complaint has been upheld by a public complaints office or by an office recognized by the state.

Re: II. A precondition for any reduction in court costs would be to simplify procedures along the lines proposed above.

Re: III. There is a need, where this has not already been done, to clarify the highly intricate system of lawyers' fees, making it more comprehensible to the complainant. Fees should be calculated not only according to the sum under dispute, but also according to time

spent by the lawyer and to the duration of proceedings. In this way, a citizen could be told the probable cost of his case before engaging a lawyer and could judge beforehand whether the sum at stake justified the outlay.

Re: IV. Officers of the court and magistrates must be given strict instructions by the responsible ministries to draft legal acts and judgements in clear, direct and simple language, avoiding archaic turns of phrase.

19. The bringing of cases for redress by individual consumers is, however, not always the most effective way of achieving collective protection, which is after all the prime objective. In many cases, it would be more practical for consumer organizations to intervene by taking action under criminal and/or civil law to press for compensation in principle. Experience has shown that legal action by individuals is only worthwhile if the damage or injury suffered is substantial, but it should not be forgotten that although individuals are not seriously affected by malpractices on a small scale, and individual legal action is not, therefore, justified, the total sum of money involved can constitute a huge illegal profit, and this should be eliminated. Only collective action can achieve this. In the United States and Canada, where this procedure is operated, good results have been obtained, since it has been shown that, on the whole, collective action is beneficial to the consumer.

Your committee therefore calls on the Commission also to make provision in its proposed directive on the improvement of legal procedures for recourse to collective action by consumer organizations.

(e) Making specialized organizations responsible for consumer protection (ombudsman and/or representative specialized organizations)

20. The Commission rightly points out that the question of who is to pay for consumer protection is a matter of major importance.

In several countries, consumer centres are responsible for coming to the consumer's aid. They are supported by organizations concerned with consumers' interests and financed almost entirely out of public funds. Consumer centres advise consumers themselves or else put them in touch with local advice bureaux. They also try as far as possible to help consumers who have filed complaints against companies to obtain satisfaction.

The Commission suggests that, alongside these private organizations, public services also be set up with the aim of informing the consumer of his individual rights. These services could carry out surveys, and inform

and cooperate with other public services, private firms and industrial and commercial undertakings to improve the consumer's position.

Lastly, the consumer's position could be improved by appointing an ombudsman as in Denmark or Sweden. He would be responsible for monitoring firms' trading practices in areas where there is legal protection for consumers against abuses and unfair practices. In order to do this, he would need to carry out continual checks on their trading activities and monitor the clauses and conditions under which firms sell to the consumer.

21. In your committee's view all the proposed measures would provide a reliable safeguard for consumers. They would bring about a marked decline in infringements of the rules on fair trading practice and of the many laws applicable in other fields, and furthermore ensure fair competition and the proper use of advertising. These measures must naturally go hand in hand with action by the authorities to promulgate regulations penalizing dishonest business practices on pricing, quality, display of quantities, sales methods, conditions of sale in sales contracts, advertising and, generally, any activities connected with consumer affairs.

Your committee requests the Commission to submit also a proposal for a directive on the provision of advice to consumers by specified bodies; this should be based on the experience already gained in many countries and guarantee the greatest possible degree of consumer protection.

III. Proposals for Community measures based on the outcome of the Colloquium of Consumers' Organizations held in Brussels (2 - 3 December 1976)

22. For the proceedings and results of the Colloquium of Consumers' Organizations, which took place in Brussels on 2 and 3 December 1976, reference is made to the note drawn up by the secretariat (PE 47.349), which concludes with the full text of the recommendations and demands adopted by the consumers' organizations as a 'working document for the Consumers' Consultative Committee and the Commission'.

23. At the colloquium in Brussels, Mr Dumont, chairman of the Consumers' Consultative Committee (CCC) from 1973 to 1976, and others taking part in the conference emphasized that the opinions of the Consumers' Consultative Committee ought to be of great interest to the European Parliament.

Your committee endorses this statement. It is clear that the opinions of this body, which consists of 25 members<sup>1</sup> qualified in consumer affairs, could play a very useful part in the work of Parliament. Indeed, the European Parliament and its responsible committees must be in a position to comment, with full knowledge of all the facts, on proposals put forward by the Commission which does not always take full account of such opinions. In the view of your committee, 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. Regrettably, the Commission gave a negative answer to Written Question No. 658/75 by Mr Jahn<sup>2</sup> dealing with this matter. In his recent Written Question No. 785/76, Mr Willi Müller has reopened the matter<sup>3</sup>. An answer is still awaited from the Commission.

Your committee insists that, in keeping with the statement by its President, Roy Jenkins, the new Commission refer all opinions of the Consumers' Consultative Committee to the European Parliament and its appropriate committees for their information, immediately the final version is available.

24. Your committee proposes to deal now with some of the conclusions of the Colloquium of Consumers' Organizations held in Brussels.

At the colloquium, it was rightly pointed out that the consumer's position was dependent on the EEC's policy in various sectors (industry,

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<sup>1</sup> The Commission Decision of 3 December 1976 (OJ No. L 341, 10.12.1976, p. 42) stipulates that 15 members of the CCC be appointed on proposals from the European consumer organizations, and that 10 seats be attributed to individuals specially qualified in consumer affairs.

<sup>2</sup> OJ No., C 67, 22.3.1976, p. 46

<sup>3</sup> Bulletin No. 46/76, p. 12

research, energy, environmental protection, agriculture, transport, markets, medium-term economic policy) which may, though not necessarily, be considered from the aspect of consumer protection. Consumer policy must not be limited to a list of largely protective measures, which had no basic coherence and were designed to give the consumer a retrospective means of correcting the course of a system, which otherwise would continue to be controlled by and for the producers. Consumers could not be satisfied with effective protection against threats to their economic interests or with advice, help and redress as laid down in the preliminary consumer protection programme. The Commission was therefore urged to drop its concept of consumer protection in favour of a policy of furthering the consumers' interests. There was accordingly an urgent need to improve the quality of goods and the supply structure rather than simply banning harmful products. Your committee agrees with this objective. The consumer must be recognized as an equal partner, and consumer policy must not be confined to defensive measures. The committee therefore calls on the Commission to replace the concept of 'defending and protecting the consumer' by the more general concept of 'furthering the consumers' interests'.

25. In order to wage effectively the war on waste in accordance with the first environmental protection programme, all Member States should, in the opinion of those taking part in the colloquium, reduce the value added tax on second-hand goods, or abolish it completely, and introduce the lowest rate of tax for repairs and maintenance.

In its environmental protection programme, the Commission confined itself to campaigning in retrospect against environmental pollution caused by waste products. In various opinions delivered by the European Parliament and the Economic and Social Committee, the Commission was requested to propose preventive measures, for example:

- the introduction of techniques which caused less environmental pollution,
- the manufacture of products which could be reused or from which the waste could be recycled,
- measures to increase the life-span of products.

In this sector, environmental protection ran parallel to consumers' interests, the campaign against inflation, the need for a more rational economic order and the economic interest of the tax-payer, who must pay for the disposal of all unwanted waste. Taxation, and in particular excise duties, should be used to direct consumption and production; for example, taxes on non-returnable or non-biodegradable packaging, which would also conform to the 'polluter pays' principle.

Your committee considers these demands justified. Moreover, it takes the view that, in the context of the war on waste, measures should be taken as a matter of urgency against abuses in the field of packaging, i.e. against excessively large packages, which might also lead the consumer to believe that they contain more product than is in fact the case, and against unjustifiably expensive packaging materials which, in the final analysis, the consumer has to pay for. It is also clear that there is a close relationship between environment policy (problems of the recycling and the life-span of products) and consumer policy (problems of education and information). The committee therefore requests the Commission to propose in the near future preventive measures at Community level aimed at:

- introducing techniques which cause less environmental pollution,
- manufacturing products which can be reused or from which the waste can be recycled,
- increasing the life-span of certain products,
- banning the use of excessively large packages and unjustifiably expensive packaging materials.

An important contribution to the war on waste would certainly also be provided by action at Community level to encourage the recycling of goods by means of tax concessions and to introduce the minimum rate of tax for repair and maintenance work. Furthermore, your committee firmly believes that little or no VAT should be charged on products which need special design features to ensure safe handling.

In this connection the Commission states that the question of reducing value added tax was not dealt with in the preliminary consumer protection programme, and points out that the problem should be considered in the context of taxation policy. Moreover, the question of the rate of value added tax is being studied at Community level.

However, for the above reasons, the Committee on Consumer Protection maintains the view that a close relationship must be established between taxation policy and consumer policy.

26. The symposium also considered the problem of advertising, which, apart from its partially fraudulent character and frequently barefaced exaggeration, involved the potential danger of manipulation, especially when a medium forced its message on the consumer, as did television.

In these circumstances, your committee agrees with the participants at the symposium that work must begin, and rapid headway be made on measures to provide protection against forms of advertising which encroach on the consumer's freedom of decision. The Commission must propose the supervision of written, oral and visual advertising. Such advertising can be costly

for the consumer and have an adverse effect, in particular on children and those consumers most easily influenced.

27. The consumers' organizations put forward the legitimate request that Community legislation should not simply involve the harmonization of current national provisions, which are often outdated, but also a process of modernization taking over and even improving those national legal provisions which favour the consumer. Community regulations must enable the Member States to adopt those provisions which are most favourable to the consumer. Community and national legal provisions must be reviewed at regular intervals in order to take account of changes in the economic life of society.

Your committee considers this demand justified and accordingly requests the Commission to take account of this objective in future proposals for measures on harmonization.

28. In order to guarantee the consumers' right to express an opinion as equal economic partners, the consumers must be heard. They must have the opportunity of expressing their opinion as equal partners especially in the consultative committees, in the European Standards Committee, etc. Consumers, who are by no means given the support which manufacturers receive, demand effective facilities for their work.

This request by the participants in the colloquium is also endorsed by your committee. It would ask the Commission to consider how it can strengthen consumer participation in the preparation and enactment of Community legislation.

29. Attention was, moreover, rightly drawn to the fact that Community regulations will only be applied if they are not seen as compromises but underpinned by sufficiently high deterrent penalties that are commensurate with the total damage suffered by the consumer and are given mandatory publicity.

Your committee insists therefore that the Commission include in all future proposals affecting consumer policy a provision obliging the Member States to monitor scrupulously the application of provisions of national law enacted on the basis of the directive in question, and, in cases of non-compliance, to impose severe penalties.

30. The consumers' organizations went on record as saying that the health and safety of consumers could only be guaranteed by increasing their awareness of quality. The consumer was interested in the end product and he could demand a quality product which satisfied his needs and tastes, did not damage his health and was safe. This meant that the consumer was increasingly interested in the individual links in the chain of production, from production to consumption through the various stages of marketing.

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It was the task of the manufacturer, the processor and the distributor to satisfy the consumers' requirements to the best of their ability, and it was the consumers' responsibility to show by their purchases which products were most appropriate.

The consumer could only exercise his responsibility if there was genuine market transparency: this required proper information about the product and consumer education giving him the means of making objective purchasing decisions. Freedom to decide what to purchase in full knowledge of the facts was the prerequisite for competition, and, in the long-run, also for high standards of guaranteed health and safety.

The desired objective of guaranteeing the health and safety of the consumer, the purchaser, and the user of goods and services for personal, family or collective purposes demanded the further development, at Community as well as national level, of a coherent series of decisions under which consumer interests are protected.

The principles underlying these measures must be the basis for the drawing up of standards and the introduction of methods, through which safety was guaranteed and health not only protected, but also maintained.

Your committee, in agreement with the consumers' organizations, would therefore urge:

- the development of scientific research to be pursued with the final consumer in mind;
- continuous information on the essential data for the necessary balance to be struck between progress and consumer protection;
- the drawing up of directives in the form of a body of rules leading to the enactment of legal provisions that cater most satisfactorily for consumer interests; these directives would not only serve to promote trade but also to take account of the health and safety of the consumer. This consideration demands that food additives should be tested not only for their toxicological aspects but also for their technological necessity.

The Commission has promised to forward to the appropriate committees of the European Parliament the opinions of the Scientific Committee for Food.

31. The consumer organizations consider that the consumer has a legitimate right to information concerning the whole manufacturing process and even to its supervision, for, in his capacity as the final consumer, he alone justifies the product's existence.

Of course, consumers in our democratic society must exercise this right to information and supervision through officially-recognized organizations. In cooperation between the economic sectors (consumers, manufacturers, farmers, researchers) standards must be set governing such supervision.

Your committee supports these demands and requests the Commission to submit appropriate proposals designed to ensure that:

- consumers are given precise information on the composition of products and, where appropriate, on the presence of any preservatives, dyes or other additives which could adversely affect the health and safety of the consumer;
- steps are taken to harmonize procedures in the Member States relating to the supervision and withdrawal of products considered dangerous, and to harmonize within the Community the penalties for any contravention.

The first demand must still stand even though, as the Commission remarks, it may affect commercial law. In your committee's view, a change in commercial law would be a necessity and would apply equally to all Member States, thus excluding the possibility of discrimination.

Furthermore, the Community must take all necessary steps to secure the early implementation of the priority measures laid down in paragraph 16 of the preliminary programme for the protection and information of the consumer and ensure that such protection is not jeopardized by other policies.

32. Those taking part in the colloquium noted that the specialist associations and the authorities in the Member States were, to varying degrees, under the obligation to inform. So far, very few comparative studies had been made in this field; the Community ought therefore to encourage such studies, even

making them a permanent feature, and see to the publication of findings, since the pace of development in this field was rapidly increasing in all countries.

The information required by legal and administrative provisions was inadequate, and compliance with the requirement was often unsatisfactory (professional secrecy, exceptions, inadequate supervision, difficulties in bringing cases to court).

The consumers' associations were very well aware of the consumers' role as citizens and participants in the economy and felt that consumers and especially the most handicapped of them could not effectively fulfil their role in the economy and society without comprehensive and objective information supplemented by continuous further training and the right to express freely opinions and criticisms.

They pointed out that the EEC must do much more in the field of consumer information and training with a view to the harmonization of and more effective coordination between national policies, the object being to provide consumers with better information, particularly by significantly improving on informative labelling and reporting by the mass media.

Your committee therefore urges the Commission to take new initiatives in order:

- (a) to consider with the consumers' associations the means of setting up a European Training Centre, whose task it would be to develop and produce teaching materials, to support the training of teachers and to help set up model schools in the Member States;
- (b) to encourage the setting up of regional and local information and consultation centres for consumers;
- (c) to urge national governments to create the legal and material conditions for systematic consumer reporting by the mass media and for the exercise of free expression of opinion and criticism by the consumers' associations through these mass media, to which they must have easy access;
- (d) to consider the means of setting up a European Technical Documentation Centre which would be available to consumers' associations and any group interested in consumer problems;
- (e) to extend its own information facilities by setting up a press agency responsible for consumer problems which would facilitate the exchange of information and, in particular, enable the consumers' associations to disseminate the results of their studies and their opinions more rapidly within the Community.

33. The consumers' organizations felt that compulsory information must be supplemented by self-imposed information accepted voluntarily or as a result of negotiations with the consumers' representatives. In the private business sphere, the Community should encourage the drawing up and general application of model contracts for the various trades; a start had already been made with this in some countries.

If information was to be useable, it must be written in a language which was clear and easily understood by the consumer. In this context, it was said that the Community itself had not always set a good example of linguistic clarity in its directives.

A study conducted by EUROCOOP showed that government departments were pursuing a timid wait-and-see policy with reference to the training of adult consumers and that private initiatives, that is, consumers' organizations and the technical institutions which cooperated with them, played an important role. At present there was no real specific training course in the Community. Private experiences, however valuable they might be in certain cases, were insufficient and needed better coordination. They reached only a small proportion of the population since the funds available for educating consumers were inadequate and totally disproportionate to the measures taken for vocational training. The initiatives undertaken by the mass media were interesting, but they too were uncoordinated and did not always correspond to consumers' real needs and expectations.

Your committee endorses these arguments and consequently requests the Commission to take the necessary steps in order:

- to encourage national governments to introduce and extend without delay special training for consumers, conducted by specialized teachers, beginning in the nursery schools with own-initiative activities, continuing throughout school and university and supplemented by facilities made available to adult consumers with a view to continuous further training;
- in view of the deficiencies in consumer information and training, to begin a broadly-based campaign to arouse public interest and to initiate a widespread commitment by Europeans to the national consumers' associations.

34. Those taking part in the colloquium established furthermore that, although there was general agreement on the usefulness of consumer representation, practical results were by and large conspicuous by their absence. But consumer representation was no abstract concept; it was taken on by people who had access to the decision-making centres and who made every effort to see that decisions were not always taken for the benefit of industry and trade but as far as possible in the general interest, that is in the consumer's interests.

At present, consumers must make do with the consumers' associations whose members at least had some qualification to take action on behalf of the consumers in their dealings with industry: they dealt with consumer questions and their work, which frequently consisted of comparative tests of products, gave them access to technical information concerning consumer goods; they were independent of political parties.

The consumers' representatives must know the needs, opinions and preferences of the majority of consumers as accurately as possible. This was their most important qualification. Beyond that, they needed further knowledge in order to work efficiently. Of course, they would never be experts and never know as much as manufacturers about certain technical details, such as electrical safety, transport management and food additives. But they must know enough about all these matters to discuss them sensibly and recognize whether the arguments against their proposals had a basis in truth or not. They should also be competent in committee work and be able to negotiate and express their point of view as clearly as possible.

European consumers should demand from their governments the right to representation which at present they did not have. But the consumers' organizations must also earn this right by speaking for all consumers on the basis of sound information, using the appropriate means and without being unnecessarily harsh.

35. On the basis of this account, given by consumers' representatives themselves, of their role and of their conception of themselves, your committee urges that consumer representation in the Community be strengthened and that consumers be consulted better and more often.

Consideration must be given as to how institutional reforms can be speedily arrived at, which will allow the different institutions of the Community - Parliament, Economic and Social Committee, Commission and Council of Ministers - to listen to the voice of European consumers and to allow them to participate in the Commission's Community policy.

This expansion of consultation at European level must be accompanied by a corresponding reinforcement at national level.

In accordance with the relevant conclusions of the Brussels colloquium, your committee considers it appropriate that the following measures be taken:

- As a first step towards eventual full equality for consumers in Europe through its various institutions, the Commission must strengthen the Consumer Service by adding to the number of its staff, by the provision of experts for the Consumers' Consultative Committee and by raising the Service's status to that of a Directorate-General.

- Member governments must ensure that the consumer interest is strongly represented in its executive. It would not be appropriate for this consumer interest to be subordinated to a department of trade or industry.
- Member governments must give effective representation to consumers in all organizations and bodies where the consumer's interest is involved.
- Governments must grant consumers a commensurate number of seats in the EEC's Economic and Social Committee.
- On a general point, the Commission, the Council and Member governments must make an effort to ensure that the shortcomings of the values inherent in the existing consumption society (which is connected with the deterioration of much of the quality of life) are recognized and that it be transformed into a consumer society, which will satisfy consumers' real wants and needs.

IV. Proposals for action by the Community based on the outcome of the Fourth European Consumers' Forum held in Berlin (26-27 January 1977)

36. On 27 January 1977, the Fourth European Consumers' Forum held in Berlin adopted the following resolution at the close of its deliberations:

1. The bodies that have joined together to form the European Consumers' Forum are of the view that the high prices in the agricultural sector are chiefly due to the system of agricultural market organizations and the way it is managed. The existing agricultural market organizations ought to be modified so that continual surpluses at the expense of consumers and tax-payers can be avoided. The Forum calls on Mr Gundelach, European Commissioner for agriculture, and national governments on no account to extend this system to other products, such as potatoes or sheep.
2. The comparative product test and product information are important sources of consumer information. The European Consumers' Forum urges the European Commission and national governments to give active encouragement to product information on a consumer-orientated basis. It is recommended that an exchange of experience be arranged in the form of a seminar on product information lasting several days.
3. The Forum calls on the European Commission to encourage national governments to promote consumer information and consumer training strongly in schools, in adult education and in the media. At the same time, the Forum calls on national governments to promote consumer information and consumer training strongly in schools, in adult education and in the media.
4. The Forum supports the general line adopted in the preliminary draft report by the European Commission on false and misleading advertising which was submitted to the Consumers' Consultative Committee (CCC), and hopes that the European Council of Ministers will decide as soon as possible on a corresponding improvement in consumer protection.

In particular, the Consumers' Forum considers it essential that the consumer be able to rescind any contract concluded on the basis of false and misleading advertising and that he receive redress for any damages he may have suffered.

5. The Consumers' Forum calls on the President of the European Commission, Mr Jenkins, in keeping with his inaugural speech and in accordance with the European Commission's consumer protection programme, to give due weight to consumer policy within the Commission to deal with consumer policy. The Consumers' Forum therefore requests that a Directorate-General for Consumer Affairs be set up.

6. The Consumers' Forum urges national governments to send the officials responsible for consumer policy in their respective countries to negotiations in Brussels on matters which also affect consumers.

37. Further details concerning this meeting, particularly the talks given, are contained in the note by Mr Jahn (PE 47.823).

Your committee values the results and conclusions of the Fourth European Consumers' Forum, although it is unable to agree on all the details. It would however seem useful to deal in the present report with those points on which there is agreement.

38. Your committee approves the endeavours to modify the existing agricultural market organizations with a view to avoidance in the future of continual surpluses at the expense of consumers and tax-payers. In so doing, the committee is of course aware that the realization of this objective will be difficult and will therefore need to be achieved on a step-by-step basis. Nevertheless, the binding stipulation contained in Article 39(1) (c) of the EEC Treaty - that one of the objectives of the common agricultural policy is to ensure that supplies reach consumers at reasonable prices - needs to be borne in mind in this context.

In this connection your committee notes with satisfaction that the Bureau of the European Parliament granted its request to deliver an opinion in respect of the consideration of the future agricultural prices.

Your committee does however view as unrealistic the demand that the Commission on no account extend the system of agricultural market organization to other products, such as potatoes and sheep. The Commission has in fact already submitted a proposal to the Council on the organization of the potato market and a proposal on the organization of the sheep market is being prepared. Your committee feels that, in the final analysis, what will matter most is whether the system of agricultural market organizations is shaped more in accordance with consumer interests than has been the case up to now.

39. Your committee affirms the statement that the comparative product test and product information are important sources of consumer information. Progress in this field will depend above all on the Commission putting into effect at an early date the priority measures laid down in paragraphs

35 and 36 of the preliminary consumer protection programme, relating to:

- information concerning goods and services,
- comparative tests<sup>1</sup>.

This must be achieved by putting forward concrete proposals for directives in these areas, even though the preliminary consumer protection programme makes no express provision for specific proposals on comparative tests but simply requires the Commission to take the necessary steps to ensure that the bodies carrying out comparative tests cooperate as closely as possible. The first step was the Commission's proposal for a directive on the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer (Doc. 52/76). The European Parliament delivered an opinion on this proposal on 9 July 1976, on the basis of a report by Mr Walkhoff (Doc. 211/76).

40. The promotion of consumer information and consumer training in schools, in adult education and in the media had already been called for at the Colloquium of Consumers' Organizations in Brussels. This demand is fully justified. The promotion of consumer education, the training of instructors and the dissemination of a wide range of information are objectives laid down in paragraphs 43 to 45 of the preliminary consumer protection programme<sup>2</sup>. Your committee attaches particular importance to the immediate implementation of paragraph 45: the encouragement by the Commission of the exchange and dissemination of information on topics of interest to consumers. A major element of this will be the publication of an annual report as provided for in paragraph 39 of the preliminary consumer protection programme, on steps taken by the Community and the Member States in the consumer interest by legislation and its implementation, information, consultation and coordination. In this connection, reference should be made to Written Question No. 783/76 by Mr Willi Müller<sup>3</sup>, in which the Commission is asked inter alia when it is expected that the first annual report will be published and what steps it has taken to ensure that the annual report is brought to the attention of the general public and hence the greatest possible number of consumers.

Your committee calls on the Commission to take the necessary measures to fulfil these legitimate demands at an early date.

41. The Forum is justified in putting forward the demand that the Council take a decision as soon as possible on an improvement in consumer protection relating to false and misleading advertising. Paragraph 22 of the preliminary

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<sup>1</sup> OJ No. C 92, 25.4.1975, p.9

<sup>2</sup> op. cit., p. 10 and 11

<sup>3</sup> Bulletin No. 46/76, p. 10

consumer protection programme<sup>1</sup> lays down appropriate measures to protect the consumer against false or misleading advertising. A corresponding draft directive is currently being examined by the Consumers' Consultative Committee.

Your committee requests the Commission to submit its final proposal for a directive without delay to the European Parliament and the Council and, in so doing, to take account of the opinion of the Consumers' Consultative Committee. Provision must be made in this proposed directive for the consumer to rescind any contract concluded on the basis of false and misleading advertising and to lodge a claim for compensation for any damages he may have suffered.

The Commission states that it is difficult to envisage withdrawal from contracts concluded as a result of misleading advertising because the problem of the burden of proof would arise. It therefore intends to consider withdrawal from contracts in detail in the context of the proposal for a directive on contract clauses.

42. Your committee agrees with the Fourth European Consumers' Forum that, in keeping with the inaugural speech by its President, Roy Jenkins, and in accordance with the preliminary consumer protection programme, the Commission must give due weight to consumer policy. The demand that a Directorate-General for Consumer Affairs be set up also corresponds to a request made by the Colloquium of Consumers' Organizations held in Brussels (cf. point 35 of the present report).

Even though your committee does not feel that the setting up of a Directorate-General on these lines (which is more an internal organizational concern of the Commission) is a matter of vital importance, it nevertheless still supports this demand. A great deal will depend on the Commission achieving the staffing levels required to cope promptly with the wide range of tasks in the field of Community consumer policy. It will, in consequence, need to increase the number of qualified officials substantially. This will only be possible if it actually applies to the Council for budgetary appropriations to create the required number of new posts.

43. Lastly, your committee endorses the demand made by the Consumers' Forum in Berlin that the Governments of the Member States send their officials responsible for consumer policy to the Council of Ministers in Brussels for negotiations on matters that also affect consumers. It is clear that Council decisions will only be able to take sufficient account of aspects concerning consumer policy, if negotiations are conducted by qualified government representatives in possession of the necessary experience in the field of consumer policy.

<sup>1</sup> OJ No. C 92, 25.4.1975, p.7

V. Consideration of the opinion of the Legal Affairs Committee

44. Your committee has carefully studied the opinion drawn up by Mr Riz on behalf of the Legal Affairs Committee. The full text of this opinion is attached to the present report.

The Legal Affairs Committee has restricted its comments to the legal aspects of the Commission's report on the Montpellier symposium on judicial and quasi-judicial means of consumer protection.

45. First of all, an error in point 3 of the opinion should be corrected. It was not the Committee on Consumer Protection but the Bureau which asked the Legal Affairs Committee for an opinion.

On the whole, the Committee on Consumer Protection takes the view that the present motion for a resolution and the explanatory statement should be based primarily on consumer policy principles. Purely legal considerations, which are often based on outmoded concepts that have been superseded by developments in social policy, must therefore take second place. In your committee's view it will not always be possible to reconcile all the aspects of progressive Community directives on consumer protection with the traditional legal systems of some Member States. However, this will not be necessary. Instead, the legal systems should be adjusted to developments in consumer policy and social policy.

46. The Legal Affairs Committee asks the Committee on Consumer Protection to clarify the term 'consumer'. The preliminary consumer protection programme of 14 April 1975, as proposed by the Commission and adopted by the Council after consulting the European Parliament, makes it clear that the word 'consumer' covers not only purchasers of goods intended for immediate consumption but also purchasers and users of non-perishable products. Your committee has always understood and used the word in this sense.

47. The Legal Affairs Committee has no legal comments to make on the improvement of consumer education and information or on the strengthening of conciliation bodies.

On the other hand, it does have misgivings about the creation and strengthening of courts of arbitration, since in its view the complicated nature, cost and slowness of proceedings generally place the consumer at a disadvantage. Moreover, recourse may be had to arbitration only at the joint request of both parties, or pursuant to a clause in the contract or to an agreement reached after the dispute has arisen. It is also pointed out that the decisions of arbitration tribunals are not always enforceable.

However, your committee would refer to points 14 and 15 of the explanatory statement, which draw attention to the favourable experience of several countries in this field and point out that arbitration is much less costly and much faster than legal proceedings. Arbitration procedures need, of course, to be harmonized to the maximum benefit of consumers, and it must be established in what circumstances arbitration awards would be enforceable and in what conditions enforceability would be subject to confirmation. For these reasons the Commission is asked in paragraph 3 of the motion for a resolution to submit a proposal for a directive establishing a binding arbitration procedure.

48. The Legal Affairs Committee also criticizes the Commission's proposal for simplifying and humanizing Court procedures. It takes the view that the term 'humanizing' is difficult to understand in this context. The Committee on Consumer Protection has admittedly not expressly discussed this concept in its report, but it has described in detail (points 16 to 18 of the explanatory statement) what improvements in traditional procedures are possible and necessary. Clearly, present court procedure in civil cases, which involves long delays, lengthy proceedings, considerable expenditure on court and lawyers' fees, and old-fashioned terminology which in most cases the layman cannot understand, often strikes the plaintiff as 'inhuman', although courts themselves contest this view by pointing to the provisions in force. At all events, it is clear that in the interests of the plaintiff, efforts should be made to modernize traditional court procedures in order to dispel the widespread public concern at our often old-fashioned and antiquated system. Your committee therefore takes the view that a good deal of 'deadwood' needs to be cleared away in this connection.

49. In this context your committee is in favour of the Commission's proposal that a clerk of the court (registrar) should help the parties to draft their complaints and to prepare a full and clear statement of their case. This solution, which would be a desirable aim for the entire Community, is not in fact new. In Germany the registrar of the court is obliged, if so requested, to give appropriate assistance to the parties in civil cases. He may not, of course, play any part in the judgment. However, this is not the case in any Member State. The clerk of the court has no influence on judicial decisions. For this very reason he is in a good position to give completely independent and objective assistance to the parties in the preparation of their case.

50. The committee on Consumer Protection agrees with the Legal Affairs Committee that consumers should not be denied the right of legal representation, even though, in the simplified procedure, the amount involved in the litigation would be relatively small. However, steps must be taken to ensure that no one is forced to accept legal representation. In other words,

the plaintiff must be free to decide himself whether or not to employ a barrister to represent his interests in Court. In this connection, it should also be pointed out that a minority of the members of the Legal Affairs Committee took the view that in the simplified procedure the right to legal representation could be waived.

51. Finally, the Legal Affairs Committee raises the question whether it is permissible to depart, by reason of the status of one of the parties involved (the consumer), from the two-tier principle in the administration of justice. It points out that appeals against court decisions are an essential element of procedural law. Since the producer would stand to lose much more than the consumer if the court ruled against him, it would be in his interests for the legal proceedings to be attended by all the guarantees laid down by law (for example, the right of appeal).

In considering these objections of the Legal Affairs Committee, it should be noted that the restriction of the right of appeal proposed by the Commission is intended to apply only to the simplified procedure, which would be used only in cases where the amounts in dispute were small. In normal court procedure, the right to appeal to a higher court would naturally be maintained. Moreover, the idea that civil cases involving small amounts of damages should not be referred to more than one court is not new. Arrangements of this type exist in several Member States.

In the interests of simplifying the procedure, your committee therefore favours this arrangement, which also has the support of a minority of the members of the Legal Affairs Committee (see Annex to the opinion by Mr Riz). For this reason paragraph 4 of the motion for a resolution advocates that Community measures should be drawn up and implemented at an early date to improve, simplify and harmonize judicial procedures in legal disputes on consumer matters.

OPINION OF THE LEGAL AFFAIRS COMMITTEE

Draftsman : Mr RIZ

At its meeting of 9 March 1976 the Legal Affairs Committee appointed Mr Vernaschi draftsman.

On 20 December 1976 it appointed Mr Riz draftsman in place of Mr Vernaschi who was no longer a member of the committee.

At its meeting of 28 March 1977, the Legal Affairs Committee adopted the draft opinion by 15 votes to 2, with three abstentions.

Present: Mr Jozeau-Marigné, vice-chairman, acting chairman;  
Mr Riz, draftsman, Mr Albertini (deputizing for Mr Zagari), Lord Ardwick,  
Mr Bayerl, Mr Bouquerel, Mrs Ewing, Sir Geoffrey de Freitas, Mr Hansen,  
Mrs Iotti, Mr Kunz, Mr Lagorce, Lord Murray of Gravesend, Mr Masullo,  
Mr Rivierez, Mr Schmidt, Mr Schwörer, Mr Shaw, Mr Sieglerschmidt,  
Mrs Squarcialupi.

## I - INTRODUCTION

1. The establishment of the common market has clearly benefited companies in the Member States by opening the way to profitable forms of trans-frontier cooperation and giving access to larger markets than merely national ones.

This means, if only very indirectly, that the Community has at the same time a special responsibility towards the consumers of these firms' products.

2. With this responsibility in mind, on 14 April 1975 the Council adopted a resolution<sup>1</sup> on a preliminary programme of the European Economic Community for a 'consumer' protection and information policy<sup>2</sup>.

The most important Commission proposals in the field of consumer protection include that for a Council Directive relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products<sup>3</sup>, and that for a Council Directive to protect the consumer in respect of contracts which have been negotiated away from business premises<sup>4</sup>.

3. The subject of this opinion is the report of the Commission of the European Communities (see Notice to Members PE 47.232) on the Montpellier Symposium of 10-12 December 1975 on judicial and quasi-judicial means of consumer protection. The Committee on the Environment, Public Health and Consumer Protection requested authorization to draw up an own-initiative report on the Commission report, which was forwarded to the European Parliament for information in December 1976, and also asked the Legal Affairs Committee for its opinion.

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<sup>1</sup>OJ No. C 92, 25.4.1975, p. 1

<sup>2</sup>The term 'consumer' has entered common usage but is evidently unsuitable, for example, in cases where it also refers to purchasers and users of non-perishable goods; the concept of the 'consumer' should be studied carefully by the committee responsible.

<sup>3</sup>OJ No. C 241, 14.10.1976, p. 9

<sup>4</sup>OJ No. C 22, 29.1.1977, p. 6

4. After establishing a few general principles (para. 32), the preliminary programme of the European Economic Community for a consumer protection and information policy<sup>1</sup> stipulates that, before April 1979, the Commission shall:

- '(i) study:
  - systems of assistance and advice in the Member States,
  - systems of redress, arbitration and the amicable settlement of disputes existing in the Member States,
  - the laws of the Member States relating to consumer protection in the courts, particularly the various means of recourse and procedures, including actions brought by consumer associations or other bodies,
  - systems and laws of the kind referred to above in certain third countries;
- (ii) publish papers synthesizing and comparing the advantages and disadvantages of the different systems, procedures and documentation relating to consumer assistance, advice and to redress and legal remedies;
- (iii) submit, where necessary, appropriate proposals for improving the existing systems and putting them to better use;
- (iv) study the feasibility of a procedure for exchanging information on the outcome of action for redress and legal recourse relating to products mass-marketed in all or several Member States' (para. 33 of the programme)

## II - REMARKS ON THE COMMISSION'S REPORT

5. In Part I of the report on the Montpellier Symposium the Commission makes a commendably early start in meeting the obligations deriving from points (i) and (ii) above; a summary is given of the various reports presented at the symposium, showing the diversity of the judicial means to which the consumer may have recourse to protect his interests in the various Member States.

The Commission's main concern is about the fact that, in the majority of cases and because of the minor damages suffered, consumers in the various Member States are dissuaded from bringing actions against producers by the complicated nature and cost of legal proceedings.

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<sup>1</sup> OJ No. C 92, 25.4.1975, p.8.

6. At the end of Part I of the report the Commission puts forward a number of suggestions for improving the systems of consumer protection. As they are only suggestions, the Legal Affairs Committee will limit itself to a brief analysis; however, it would like to make a number of comments on them, seeing that, according to the report, 'these suggestions may be submitted to the Council in the proper form after various experts have given their opinions'<sup>1</sup>.

7. In Part II the Commission emphasizes the need for 'new legislation regarding the legal protection of consumers, particularly as regards:

1. Extending consumer education and information;
2. Strengthening conciliation bodies of every kind;
3. Setting up or expanding the powers of courts of arbitration;
4. Simplifying and humanizing traditional procedure;
5. Making specialized organizations responsible for consumer protection'<sup>2</sup>.

The Legal Affairs Committee notes that 'extending consumer education and information' does not embrace, except in very indirect fashion, judicial or quasi-judicial protection of the consumer; it is concerned with the preparation - and, to some extent, the prevention - of court actions.

8. The committee has no comments of a legal nature to make on the extension of consumer education and information or on the strengthening of conciliation bodies.

As regards setting up and expanding the powers of courts of arbitration (point III, page 53), the Legal Affairs Committee points out that recourse may be had to arbitration only at the joint request of both parties, or pursuant to a clause in the contract or to an agreement signed after the dispute has arisen.

The committee considers that, at least in the majority of cases, the producer will refuse arbitration, since the complicated nature, cost and slowness of legal proceedings generally place the consumer at a disadvantage.

<sup>1</sup> Commission report, p. 39

<sup>2</sup> Commission report p. 40.

In addition, even where the producer is willing to go before a court of arbitration, the fact that the decisions of arbitration tribunals are not always enforceable constitutes a major drawback: the producer may refuse to accept an award which is not in his favour.

9. On the question of simplifying and humanizing<sup>1</sup> traditional procedures, the Commission advocates a procedure on the lines of that used in certain tribunals in the United States and the United Kingdom, under which:

- '(a) A clerk of the court helps the parties to draft complaints and to prepare a clear and full defence.
- (b) The case is heard by one judge, who conducts it expeditiously without too much formality and picks out the main points so that both sides know on what to base their case.
- (c) No legal representation is allowed. If need be, a technical expert can be called in and paid for by the court.
- (d) The judge tries to settle the dispute amicably.
- (e) In most cases the procedure would be verbal.
- (f) For most cases one hearing should be sufficient.
- (g) Only absolutely essential expenses may be recovered from the losing party.
- (h) The right of appeal is strictly limited.
- (i) This procedure should be used only for civil cases where the value of the injury suffered does not exceed a fairly small sum.
- (j) As far as practical organization is concerned, the tribunal or board should be located as near as possible to the parties concerned and evening hearings should also be arranged for those who cannot attend during the day. Obviously this will depend on the number of disputes to be settled in a given area'.<sup>2</sup>

10. As regards point (a), it should be pointed out that, under the legal systems of some Member States, the clerk of the court is a public official; some of his functions are linked to those of the judge (documentation of acts), while others are independent (keeping of records)<sup>3</sup>: however, it is not his function to be an assistant to the parties.

<sup>1</sup> It is difficult to see what is meant by 'humanizing' in this context

<sup>2</sup> Commission report, p. 55

<sup>3</sup> See, for example, Articles 57 and 58 of the Italian Code of Civil Proceedings

The proposal in point (c) not to allow legal representation should be reconsidered, seeing that the right of defence (in other words, the right to be defended) is a fundamental principle of the legal systems of the Member States<sup>1</sup>, and should not be denied to either the consumer or the producer by reason of their status.

11. With reference to point (g), the committee notes that, even in ordinary proceedings, only essential expenses may be recovered from the losing party.

As for limiting the right of appeal as proposed in point (h), the Legal Affairs Committee wishes to point out that appeal against court sentences, an essential element of procedural law, is governed by definite rules in the various countries. The question here arises whether, by reason of the status of one of the parties involved (the consumer), we should depart from the two-tier principle in the administration of justice.

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12. It must be pointed out here that, even where the damages claimed represent a modest sum, the producer stands to lose much more than the consumer if the court rules against him, in view of the possible consequences with regard to third parties and the ruling's value as a precedent.

That is why it is in the producer's interests for legal proceedings to be attended by all the guarantees laid down by law (representation in court, right of appeal etc.).

13. With these reservations, the Legal Affairs Committee agrees in principle with the need to simplify legal procedures.

### III - LEGAL BASIS FOR POSSIBLE PROPOSALS

14. Although it is only indirectly related to the subject of this opinion, the committee has also considered the question of the legal basis for Commission proposals that might be forthcoming on the basis of some of its suggestions contained in the report on the Montpellier Symposium.

<sup>1</sup> See, for examples, Article 24, second subparagraph, of the Italian Constitution: 'The right of defence is indefeasible at every stage and level of legal proceedings'.

15. We consider that the most suitable legal basis would be Article 235 of the EEC Treaty, as the protection of consumers would presumably contribute to 'the constant improvement of living conditions' referred to in the Preamble of the Treaty, and therefore constitute 'one of the objectives of the Community' (see Article 235).

16. Article 2 of the EEC Treaty sets the Community the 'task of promoting... a continuous and balanced expansion, an increase in stability (and) an accelerated raising of the standard of living'. However, the terms of this article are too vague to be taken as the basis for secondary legislation.

Article 100 (approximation of laws) would seem an equally unsatisfactory basis, as it stipulates that the provisions to be harmonized must 'directly affect the establishment or functioning of the common market'. This article does not constitute a suitable legal basis for any of the measures proposed, e.g. the creation of new judicial bodies, extension of consumer information, etc.

17. The Legal Affairs Committee reserves the right to examine these problems in detail at such time as Commission proposals are submitted for its consideration.

ANNEX I

MINORITY OPINION

A minority of the committee stressed the absolute necessity of simplifying and humanizing existing legal procedures; in this spirit, the minority felt that in proceedings where one of the parties is a consumer the guarantees on legal representation and the two-tier principle of justice could be waived.