



COMMISSION OF THE EUROPEAN COMMUNITIES

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OPINION OF THE COMMISSION

pursuant to Article 189 b(2)(d) of the EC Treaty, on the
European Parliament's amendments to the Council's
common position regarding the

Proposal for a
EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE

on consumer protection in the indication of the prices
of products offered to consumers

AMENDING THE PROPOSAL OF THE COMMISSION

pursuant to Article 189a(2) of the EC Treaty

OPINION OF THE COMMISSION

I. REVIEW OF THE PROCEDURE

On 12 July 1995 the Commission of the European Communities adopted the proposal for a Directive on consumer protection in the indication of the prices of products offered to consumers. The Economic and Social Committee delivered its opinion at its 331st plenary session of 20 and 21 December 1995, acting on a proposal from its rapporteur Mr Folias.

On 18 April 1996 the European Parliament adopted a legislative resolution embodying the opinion of the European Parliament, acting on a proposal from its rapporteur, Mrs Oomen-Ruijten. Following this resolution the Commission presented its amended proposal on 24 June 1996.

On 27 September 1996 the Council adopted the common position on the above-mentioned proposal for a Directive. On the same day the Commission presented the European Parliament with its communication on the common position of the Council.

Acting on a proposal from its rapporteur, Mrs Oomen Ruijten, the European Parliament on 18 February 1997 adopted its recommendation for the second reading on the common position.

In accordance with Article 189b (2) (d) of the Treaty, the Commission must deliver an opinion for the attention of the Council on the amendments adopted by Parliament. In this particular case the opinion amends the proposal from the Commission in accordance with Article 189a (2).

II. COMMENTS ON THE AMENDMENTS

The 22 amendments adopted by the European Parliament address three main concerns. Most of the proposed amendments clarify the wording and flesh out the scope of the text. Parliament has also taken into account the particular situation of certain small retail businesses. However, instead of the solution in the common position, namely the possibility of an exemption for the Member States and the option of proposing another system three years after the end of the transposition period, Parliament preferred a longer adaptation period with an obligation on the Member States to provide retailers with specific information on the transposition of the Directive. Finally, Parliament emphasised the importance of consumer information by providing for double pricing in euros and in national currency at the time the single currency is introduced.

1. Clarification and fleshing out of the text

These modifications of a more technical nature (amendments Nos 1, 2, 3, 5, 6, 7, 8, 11, 12, 13, 14, 17, 18, 19 and 22) do not substantially change the common position. The Commission has endorsed all these amendments. Some flesh out the recitals (amendments Nos 1, 2, 3 and 8) or delete certain recitals (amendments Nos 5, 6 and 7) which do not contain any additional information over and above that of the articles themselves. Other amendments flesh out the definitions and scope of the common position (amendments Nos 11, 12, 13, 18 and 19) or adapt the wording of the common position to the Parliament's amendments (amendments Nos 6, 7, 14 and 17). Amendment No 22 again introduces an obligation on the Member States to communicate in particular the penalties applicable to infringements of the national instruments transposing the Directive.

Amendment No 24 was not accepted by the Commission. This amendment concerns the detailed procedures governing price indications. The Commission believes that the Member States are best qualified to regulate these matters.

2. Small retail businesses

Amendments Nos 10, 20 and 21 on the situation of small retail businesses have been accepted by the Commission. The Parliament's solution, already taken up by the Commission at the first reading, is to provide for a longer adaptation period than that initially foreseen (amendment No 20). For example, this would make it possible to better recoup the investment in price marking technology over an extended period. In this connection, amendment No 10 emphasises the importance of technological progress. To facilitate application of the mechanism, amendment No 21 imposes a special obligation on the Member States to provide particular information on the transposition rules to retail businesses, in particular small retailers.

3. Introduction of the single currency

Amendments Nos 9, 15 and 16 concern double pricing rules (euro/national currency) during the transitional period, in connection with the introduction of the single currency. These amendments have not been taken up by the Commission in this proposal. While emphasising that price transparency is a priority in the framework of implementing Economic and Monetary Union, the Commission does not consider that this proposal for a Directive is the appropriate place for such rules. The Commission believes that it is too early at this stage to lay down such details, and that accompanying measures should be the subject of a more general instrument.

III. AMENDED PROPOSAL

Bearing in mind the above, and in accordance with Article 189a (2), the Commission's amended proposal adopts amendments Nos 1, 2, 3, 5, 6, 7, 8, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21 and 22.

Amended proposal for a European Parliament and Council Directive on consumer protection in the indication of the prices of products offered to consumers

COMMON POSITION

AMENDED PROPOSAL

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION, unchanged

Having regard to the Treaty establishing the European Community, and in particular Article 129a (2) thereof, unchanged

Having regard to the proposal from the Commission⁽¹⁾, unchanged

Having regard to the opinion of the Economic and Social Committee⁽²⁾, unchanged

Acting in accordance with the procedure laid down in Article 189b of the Treaty⁽³⁾, unchanged

1. Whereas transparent operation of the market and correct information is of benefit to consumer protection and to healthy competition between enterprises and products;

1. Whereas consumers must be guaranteed a high level of protection; whereas the Community should contribute thereto by specific action which supports and supplements the policy pursued by the Member States regarding adequate information of consumers on the prices of products offered to them;

2. Whereas consumers must be guaranteed a high level of protection; whereas the Community should contribute thereto by specific action which supports and supplements the policy pursued by the Member States regarding precise, transparent and unambiguous information of consumers on the prices of products offered to them;

2. Whereas the Council Resolution of 14 April 1975 on a preliminary

3. unchanged

¹ OJ No C 260, 5.10.1995, p. 5.

² OJ No C 82, 19.3.1996, p. 32.

³ Opinion of the European Parliament of 18 April 1996 (OJ No C 141, 13.5.1996, p. 191), Council common position of 27 September 1996 (OJ No C 333, 7.11.1996, p. 7) and Decision of the European Parliament of ... (not yet published in the Official Journal).

programme of the European Economic Community for a consumer protection and information policy⁽⁴⁾ and the Council Resolution of 19 May 1981 on a second programme of the European Economic Community for a consumer protection and information policy⁽⁵⁾ provide for the establishment of common principles for indicating prices;

3. Whereas these principles have been established by Directive 79/581/EEC⁽⁶⁾ and Directive 88/314/EEC⁽⁷⁾ concerning the indication of prices of certain foodstuffs and non-food products;

4. unchanged

4. Whereas the link between the indication of the unit price of products and their pre-packaging in pre-established quantities or capacities corresponding to the values of the ranges adopted at Community level has proved overly complex to apply; whereas it is thus necessary to abandon this link in favour of a new, simplified mechanism and in the interest of the consumer, without prejudice to the rules governing packaging standardisation;

5. unchanged

5. Whereas the obligation to indicate the selling price and the unit price contributes substantially to improving consumer information notably at the moment of purchasing, as this is the easiest way to enable consumers to evaluate and compare the price of products in an optimum manner and hence to make informed choices on the basis of simple comparisons;

6. Whereas the obligation to indicate the selling price and the unit price contributes substantially to improving consumer information, as this is the easiest way to enable consumers to evaluate and compare the price of products in an optimum manner and hence to make informed choices on the basis of simple comparisons;

⁴ OJ No C 92, 25.4.1975, p. 2.

⁵ OJ No C 133, 3.6.1981, p. 1.

⁶ OJ No L 158, 26.6.1979, p. 19. Directive as last amended by Directive 95/58/EC (OJ No L 299, 12.12.1995, p. 11).

⁷ OJ No L 142, 9.6.1988, p. 19. Directive as last amended by Directive 95/58/EC (OJ No L 299, 12.12.1995, p. 11).

6. Whereas, therefore, there should be a general obligation to indicate both the selling price and the unit for all products except for products sold in bulk, where the selling price cannot be determined until the consumer indicates how much of the product is required;

7. unchanged

7. Whereas Member States may decide not to apply the above mentioned obligation to products supplied in the course of the provision of a service and for sales by auction and sales of works of art and antiques;

deleted

8. Whereas it is necessary to take into account the fact that certain products are customarily sold in quantities different from one kilogram, one litre, one metre, one square metre or cubic metre; whereas it is thus appropriate to allow Member States to authorise that the unit price refer to a decimal or submultiple of those quantities or to a different single unit of quantity, taking into account the nature of the product and the quantities in which it is customarily sold in the Member State concerned;

deleted

9. Whereas the obligation to indicate the unit price may entail an excessive burden for certain small retail businesses under certain circumstances and whereas Member States should therefore be allowed to refrain from applying this obligation in such cases;

deleted

10. Whereas Member States should also remain free to waive the obligation to indicate the unit price in the case of products for which such price indication would not be significant or would be

8. Whereas Member States should also remain free to waive the obligation to indicate the unit price in the case of products for which such price indication would not be meaningful or would be

liable to cause confusion, for instance when indication of the quantity is not relevant for price comparison purposes, or when different products are marketed in the same packaging;

liable to cause confusion, for instance when indication of the quantity is not relevant for price comparison purposes, or when different products are marketed in the same packaging;

11. Whereas in the case of non-food products, Member States, with a view to facilitating application of the mechanism implemented, are free to draw up a list of products or categories of products for which the obligation to indicate the unit price remains applicable;

9. unchanged

12. Whereas Community-level rules can ensure homogenous and transparent information that will benefit all consumers in the context of the internal market; whereas the new, simplified approach is both necessary and sufficient to achieve this objective;

10. unchanged

13. Whereas particular attention should be paid to small retail businesses; whereas, to this end, the Commission should, in its report on the application of this Directive to be presented no later than five years after publication thereof in the Official Journal of the European Communities, take particular account of the experience gleaned in the application of this Directive by small retail businesses, inter alia regarding trends and technological development in selling methods,

11. Whereas particular attention should be paid to the adjustments which have to be made in small retail businesses, in particular taking into account technological developments and the planned timetable for introduction of the single currency; whereas to this end the Commission shall, one year before the final deadline for general application of the mechanism, present a report assessing the situation;

HAVE ADOPTED THIS DIRECTIVE:

Article 1

The purpose of this Directive is to stipulate the indication of the selling price and the price per unit of measurement of products offered by traders to consumers in order to improve

unchanged

consumer information and to facilitate comparison of prices.

Article 2

For the purpose of this Directive:

a) *selling price* shall mean the price for a unit of the product or a given quantity to the product;

a) 'selling price' shall mean the final price for a unit of the product, including VAT, all other taxes and the costs of all services which the consumer is obliged to pay for in addition;

b) *unit price* shall mean the price for one kilogram, one litre, one metre, one square metre or cubic metre of the product;

b) 'unit price' shall mean the final price, including VAT, all other taxes and the costs of all services which the consumer is obliged to pay for in addition, for one kilogram, one litre, one metre, one square metre, one cubic metre or one item of the product or any other quantity which is widely and customarily used in the Member States in the marketing of specific products;

c) *products sold in bulk* shall mean products which are not pre-packaged and are measured in the presence of the consumer;

unchanged

d) *trader* shall mean any natural or legal person who sells or offers for sale products which fall within his commercial or professional activity;

unchanged

e) *consumer* shall mean any natural person who buys a product for purposes that do not fall within the sphere of his commercial or professional activity;

unchanged

Article 3

1. The selling price and the unit price shall be indicated for all products referred

1. The selling price and the unit price shall be indicated for all products referred

to in Article 1, the indication of the unit price being subject to the provisions of Article 7.

2. Member States may decide not to apply paragraph 1 to:

- products supplied in the course of the provision of a service,
- sales by auction and sales of works of art and antiques.

to in Article 1, the indication of the unit price being subject to the provisions of Article 6.

2. Member States may decide not to apply paragraph 1 to:

- products supplied in the course of the provision of a service,
- sales by auction and sales of works of art and antiques.

Member States may decide not to apply the obligation to indicate the unit price to:

- products sold in vending machines.

- itinerant traders and personal in-home sales;

- foodstuffs sold in catering establishments, cinemas and theatres houses, cinemas and theatres, educational establishments, recreational establishments, staff shops at the workplace, hospitals, canteens and similar institutions;

3. For products sold in bulk, only the unit price must be indicated.

unchanged

4. Any advertisement which mentions the selling price of products referred to in Article 1 shall also indicate the unit price subject to Article 7.

4. Any advertisement which mentions the selling price of products referred to in Article 1 shall also indicate the unit price subject to Article 6.

Article 4

1. The selling price and the unit price must be unambiguous, easily identifiable and clearly legible.

unchanged

2. The selling price and the unit price deleted shall relate to the final price of the product under the conditions laid down by the Member States.

3. The unit price shall refer to a quantity declared in accordance with national and Community provisions. 2. unchanged

Where national or Community provisions require the indication of the net weight and the net drained weight for certain pre-packed products, it shall be sufficient to indicate the unit price of the net drained weight.

Article 5

Member States shall lay down detailed rules (e.g. marking or labelling) for indicating prices. unchanged

Article 6

Members States may stipulate that the unit price shall refer to a decimal multiple or submultiple of the quantities referred to in Article 2 (b) or to a single unit of quantity which is different from those referred to in Article 2 (b), taking into account the nature of the product and the quantities in which it is customarily sold in the Member State concerned. deleted

Article 7

1. Member States may waive the obligation to indicate the unit price of products for which such indication would not be significant because of the

Article 6

1. Member States may waive the obligation to indicate the unit price of products for which such indication is meaningless because of the products?

products' nature or purpose or would be liable to create confusion.

2. Member States may waive the obligation to indicate the unit price of the products for which indication of length, mass, surface or volume is not required by national or Community provisions. This applies in particular to products sold by individual item or singly.

3. With a view to implementing paragraphs 1 and 2, Member States may, in the case of non-food products, establish a list of the products or product categories to which the obligation to indicate the unit price shall remain applicable.

Article 8

Member States may provide that the obligation to indicate the unit price of products other than those sold in bulk, which are sold in certain small retail businesses, shall not apply, subject to Article 13, if the obligation to indicate the unit price would constitute an excessive burden for these businesses because of the number of products on sale, the sales area, the nature of the place of sale, specific conditions of sale where the product is not directly accessible for the consumer or certain forms of business, such as certain types of itinerant trade.

nature or purpose or would be liable to create confusion.

deleted

2. With a view to implementing paragraph 1, Member States may, in the case of non-food products, establish a list of the products or product categories to which the obligation to indicate the unit price shall remain applicable.

Article 7

Members States may provide that the obligation to indicate the unit price of products other than those marketed in bulk which are sold by certain small retail businesses shall apply at the latest six years after publication of this Directive, if the obligation to indicate the unit price from the date provided for in Article 12 (1) is likely to constitute an excessive burden for these businesses.

Article 8

Member States shall provide appropriate measures to inform retailers of the national law transposing this Directive. In particular, Member States shall work with professional organisations to provide appropriate information to ensure that small retailers are adequately informed of

Article 9

Member States shall lay down penalties unchanged
for infringements of national provisions
adopted in application of this Directive,
and shall take all necessary measures to
ensure that these are enforced. These
penalties must be effective, proportionate
and dissuasive.

Article 10

1. The transition period of nine years unchanged
mentioned in Article 1 of Directive
95/58/EC of the European Parliament and
of the Council of 29 November 1995
amending Directive 79/581/EEC on
consumer protection in the indication of
the prices of foodstuffs and Directive
88/314/EEC on consumer protection in
the indication of the prices of non-food
products⁽⁸⁾ shall be extended until the
date referred to in Article 12 (1) of this
Directive.

2. Directives 79/581/EEC and unchanged
88/314/EEC shall be repealed with effect
from the date referred to in Article 12 (1)
of this Directive.

Article 11

This Directive shall not prevent Member unchanged
States from adopting or maintaining
provisions which are more favourable as
regards consumer information and
comparison of prices, without prejudice
to their obligations under the Treaty.

⁸ OJ No L 299, 12.12.1995, p. 11.

Article 12

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than ...(*). They shall forthwith inform the Commission thereof. The provisions adopted shall be applicable as of that date. unchanged

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The methods of making such reference shall be laid down by Member States. unchanged

2. Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field governed by this Directive. unchanged

3. Member States shall communicate the provisions governing the penalties provided for in Article 9, and any later amendments thereto.

Article 13

The Commission shall, not more than three years after the date referred to in Article 12 (1), submit to the European Parliament and the Council a comprehensive report on the application of this Directive, in particular on the application of Article 8, accompanied, if appropriate, by a proposal.

The Commission shall, not more than three years after the date referred to in Article 12 (1), submit to the European Parliament and the Council a comprehensive report on the application of this Directive, in particular on the application of Article 7, accompanied, if appropriate, by a proposal.

The European Parliament and the Council shall, on this basis, re-examine the

The European Parliament and the Council shall, on this basis, re-examine the

* 24 months following the date of publication in the Official Journal.

provisions of Article 8.

provisions of Article 7.

Article 14

This Directive shall enter into force on unchanged
the day of its publication in the *Official
Journal of the European Communities*.

Article 15

This Directive is addressed to the unchanged
Member States.

Done at Brussels, ...

*For the European Parliament
The President*

*For the Council,
The President*

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DOCUMENTS

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