

CONSUMER PROTECTION IN THE EUROPEAN COMMUNITY

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INTRODUCTION

Over the last 50 years, European states have progressively moved closer towards economic integration. In 1951, the European Coal and Steel Community ("ECSC") was the first Community to be established, under a treaty of the same name.¹ In 1957 two treaties were signed. The first was the Treaty of Rome, establishing the European Economic Community ("EEC").² The second was the Treaty establishing the European Atomic Energy Community ("EURATOM"). Both entered into force in 1958 and the three entities became the European Communities collectively.

In 1967 the Merger Treaty was signed and established a single Council and Commission for the three Communities, acquiring the collective name "European Community" ("EC"). In 1992, the three Communities were absorbed into a new supranational body, the European Union, following the signing of the Maastricht Treaty on European Union and Economic and Monetary Union.³ However, since 1993 the EC has been taken as referring to the former EEC only, which to the uninitiated may be quite confusing.⁴

This article traces the development of EC consumer protection policy and law and highlights the fact that developments in this area have been slow to unfold. There still remains a good deal to be done for consumers in the EC.

THE LEGISLATIVE PROVISIONS

Only a small number of provisions relating to the consumer or consumer protection, were included in the 1957 Treaty of Rome, now more commonly known as the EEC Treaty. In total, only five Articles of the

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¹ The treaty came into force in 1952.

² Sometimes referred to as the Common Market.

³ This Treaty entered into force on 1 October 1993.

⁴ To complicate matters, the EC Treaty and the Maastricht Treaty have now been amended by the 1997 Treaty of Amsterdam, which envisages the numbering of provisions in these two treaties.

EEC Treaty refer specifically to the consumer or consumer protection. Article 39(1) in Part Three, Title II, Agriculture⁵ states that the objectives of the common agricultural policy are:

- (a) to increase agricultural productivity by promoting technical progress and by ensuring the rational development of agricultural production and the optimum utilization of the factors of production, in particular, labour;
- (b) to ensure a fair standard of living for the agricultural community, in particular by increasing the individual earnings of persons engaged in agriculture;
- (c) to stabilize markets;
- (d) to ensure the availability of supplies; and
- (e) to ensure that supplies reach consumers at reasonable prices.

In stating these objectives Article 39(1) includes only one specific reference to "consumers" in paragraph (e).

In the same Title, Article 40(2) provides that:

[i]n order to attain the objectives set out in Article 39 a common organization of agricultural markets shall be established. This organization shall take one of the following forms, depending on the product concerned:

- (a) common rules on competition;
- (b) compulsory co-ordination of the various national market organizations; or
- (c) a European market organization.

Further, Article 40(3) provides:

The common organization established in accordance with paragraph 2 may include all measures required to attain the objectives set out in Article 39, in particular regulation of prices, aids for the production and

⁵ In the original EEC Treaty of 1957, the provisions on agriculture were contained in Part Two, Title II. The 1992 Maastricht Treaty inserted a new Part Two entitled "Citizenship of the Union". It shifted the former Parts Two and Three into Part Three under the title "Community Policies". Thus, the agriculture provisions remain in Title II but in Part Three of the Treaty.

marketing of the various products, storage and carryover arrangements and common machinery for stabilizing imports or exports.

The common organization shall be limited to the pursuit of the objectives set out in Article 39 and shall exclude any discrimination between producers or consumers within the Community.

Several other provisions that specifically, make mention of consumers or consumer protection are found in Part Three in Title V of the EC Treaty. This Title sets out common rules relating to Community policies on competition, taxation and approximation of laws.

Article 85(1) contains rules on competition. This provision prohibits:

- (a) all agreements between undertakings;
- (b) all decisions by associations of undertakings; and
- (c) all concerted practices that may affect trade between member states and whose object or effect is to prevent or restrict or distort competition within the Common Market.

Article 85(2) declares that all such agreements and decisions are "automatically void". However, Article 85(3) provides that any such agreement, decision or concerted practice shall not be prohibited if:

[it] contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit. However, the agreement, decision or concerted practice shall not:

- (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
- (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

It must be noted that three of the EC's original languages do not in fact use the word "consumer" in the text of Article 85(3). The French, Italian and Dutch texts adopt "*utilizateurs*", "*utilizzatori*" "*gebruikers*" respectively. These words, when translated into English, are plural words that mean "users", not "consumer". On the other hand, the German text uses the

singular word "*verbraucher*", which means "consumer". Furthermore, the German word "*verbrauchen*" means "to consume", "to use", or "to use up". "*Verbrauch*" means "consumption" or "use", and "*verbraucher*" refers to the person who does these things.

When the EEC Treaty was translated into the official English text, the word that was adopted was "consumers" and the reference was plural in nature. In practical terms, it may be assumed that the word, as used in the English language in its various forms,⁶ would be used in the same way as its German counterpart.

Article 86 prohibits "any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it." Such abuse is "incompatible with the common market in so far as [the abuse] may affect trade between Member States." This article makes specific mention of consumers when it expressly provides that the abuse may consist of the "limiting [of] production, markets or technical development to the prejudice of consumers".⁷

Finally, Article 92 on "Aids granted by States" declares that such aids would be incompatible with the Common Market if they distort or threaten to distort competition in certain circumstances, within the specific context of "individual consumers". Article 92(2)(a) provides that aid is permissible if it has "a social character, [and is] granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned".

PROGRAM OF ACTION

The economic objectives of Articles 39, 40, 85, 86 and 92 as outlined above, are clear, and references to the "consumer" are readily identifiable. However, these provisions do not create a Consumers' Charter or anything that remotely resembles a consumer protection program. From the early 1970s, member states and the EC Commission and Council have increasingly become conscious of this fact. When the first enlargement of EC membership took place by the accession of Denmark, Ireland and the

⁶ The English version of Article 79(3), on Transport and the banning of discrimination by carriers of goods, adopts the word "users" as the translation for the word "gerbruikers" (Dutch), "usagers" (French), "verkehrsnutzer" (German) and "utenti" (Italian).

⁷ Article 86(b).

United Kingdom on 1 January 1973, the time was ripe for the EC to show a "human face".⁸

With this idea in mind, in 1974 the Commission established an embryonic Consumer Protection Service. On 14 April 1975 following a proposal from the Commission, the Council adopted by resolution the EEC's Preliminary Program for a Consumer Protection and Information Policy.⁹ The European Parliament and the Economic and Social Committee expressed support for such a program. The Council's resolution stated that "improvement of the quality of life is one of the tasks of the Community and as such imp[li]e[d] protecting the health, safety and economic interests of the consumer", *inter alia*.¹⁰ It added that the "fulfilment of this task require[d] a consumer protection information policy to be implemented at Community level".¹¹

The formal introduction to this Preliminary Program affirms the Community's "involvement in improving the quality of life of its peoples". It refers to a "new deal for the consumer" and asserts that:

[the] consumer is no longer seen merely as a purchaser and user of goods and services...but also as a person concerned with the various facets of society which affect him either directly or indirectly as a consumer. Consumer interests may be summed up by a statement of five basic rights:

- (a) the right to protection of health and safety;
- (b) the right to protection of economic interests;
- (c) the right of redress;
- (d) the right to information and education; and
- (e) the right of representation (the right to be heard).

In addition, Paragraph 4 of the Introduction states:

All these rights should be given greater substance by action under specific Community policies such as the economic, common

⁸ Since then other accessions have included Greece, Portugal and Spain, followed by Austria, Finland and Sweden. Further accessions by central and eastern European states such as Cyprus and Malta are planned.

⁹ OJ No C 92, 25 April 1975 at 1.

¹⁰ See Recital.

¹¹ *Ibid*.

agricultural, social, environment, transport and energy policies as well as by the approximation of laws, all of which affect the consumer's position.

Such action falls within the context of a policy for improving the conditions of life in the Community.

The aims of such a policy are thus to secure:

- (1) effective protection against hazards to consumer health and safety;
- (2) effective protection against damage to consumers' economic interests;
- (3) adequate facilities for advice, help and redress;
- (4) consumer information and education; and
- (5) consultation with and representation of consumers in the framing of decisions affecting their interests.¹²

With regard to protection against hazards to consumer health and safety, several departments of the Commission have produced regulatory programmes on foodstuffs, cosmetics and detergents, cars, textiles, toys, dangerous substances, medicines, fertilizers, pesticides and herbicides.¹³ Whilst many of these programmes are grounded in other community policies such as agricultural and environmental policies, they also contain important consumer protection provisions.

In relation to the protection of consumers' economic interests, the Preliminary Program identified priority subjects upon which the Commission would make proposals to the Council, namely:

- (1) consumer credit;
- (2) false and misleading advertising;
- (3) unfair commercial practices;
- (4) product liability;
- (5) improvement of the range and quality of services provided for consumers; and
- (6) promotion of the more general economic interests of consumers (for

¹² Preliminary Programmes of the European Economic Community for a Consumer Protection and Information Policy, Part A, Paragraph 4.

¹³ See for example 28 May 1969, OJ No C 76, 17 June 1969 at 1 and 21 May 1973, OJ No C 38, 5 June 1973 at 1.

example, how the individual may obtain better value for money for goods and services and the prevention of waste).¹⁴

It is largely in these subject areas that the Commission's Consumer Department has obtained "hard law" in the form of directives that member states are required to adopt and implement, typically by passing national legislation. And indeed, they have done so. At present, following proposals by the Commission, there are now detailed directives on:

- (1) misleading advertising;¹⁵
- (2) product liability;¹⁶
- (3) doorstep sales;¹⁷
- (4) consumer credit (three of them);¹⁸
- (5) package travel contracts;¹⁹
- (6) general product safety;²⁰
- (7) unfair terms in consumer contracts;²¹
- (8) timeshare contracts;²²
- (9) distance selling;²³ and
- (10) access to justice.²⁴

The misleading advertising directive of 10 September 1984 has been extended by directive 97/55/EC of 6 October 1997 to incorporate comparative advertising.²⁵ Meanwhile, the Council is examining a Commission proposal on sellers' warranties and guarantees on the sale of consumer goods. On 24 September 1998, the Council adopted a Common Position²⁶ in relation to this matter.²⁷

¹⁴ Preliminary Programmes of the European Economic Community for a Consumer Protection and Information policy, Part B.

¹⁵ 84/450/EEC, 10 September 1984, OJ No L 250, 19 September 1984 at 17.

¹⁶ 85/374/EEC, 25 July 1985, OJ No L 210, 7 August 1985 at 29.

¹⁷ 85/577/EEC, 20 December 1985, OJ No L 372, 21 December 1985 at 31.

¹⁸ 87/102/EEC, 22 December 1986, OJ No L 42, 12 February 1987 at 48; 90/88/EEC, 22 February 1990, OJ L 61, 10 October 1990 at 14; and 98/7/EEC, 16 February 1998, OJ No L 101, 1 April 1998 at 17.

¹⁹ 90/314/EEC, 13 June 1990, OJ No L 158, 23 June 1990 at 59.

²⁰ 92/59/EEC, 29 June 1992, OJ No L 228, 11 August 1992 at 24.

²¹ 93/13/EEC, 5 April 1993, OJ No L 95, 21 April 1993 at 29.

²² 94/47/EC, 26 October 1994, OJ No L 280, 29 October 1994 at 83.

²³ 97/7/EC, 20 May 1997, OJ No L 144, 4 June 1997 at 19.

²⁴ 98/27/EC, 19 May 1998, OJ No L 166, 11 June 1998 at 51.

²⁵ See OJ No L 290, 23 October 1997 at 18.

²⁶ Reference No 51/98.

Also, the Commission proposed a directive on the liability of providers of services. The proposed directive was pursuant to the 1985 product liability directive, and as such, was based on the concept of strict liability of the provider of all or any services. However, it was soon recognised that this was an unsatisfactory approach and the proposal was redrafted on the basis of fault, rather than strict liability. It was assumed that in this new format, the proposal would have a better chance of success.

IMPLEMENTATION OF PROGRAMS OF ACTION

The product liability directive of 1985 was originally aimed at law approximation on various important aspects that dealt with the strict liability of manufacturers for defects in their products. Although this was not favourably received by most member states, in effect, it brought the states together in accepting the principle of strict liability on the part of the manufacturer of a defective product. From a practical viewpoint, this may be considered to be a "hard-won" victory.

The many hours spent on the negotiation of the product liability directive and the first two directives on consumer credit,²⁸ reveal the resistance that member states evince when invited to change their national rules of law in a particular field.²⁹ The directive on general product safety that was finally adopted by the Council in 1992,³⁰ after considerable amendment of the Commission's proposal, puts suppliers of products to consumers under an obligation to supply safe products.³¹ Further, it provides for interstate exchanges of information concerning products that, although unsafe, are in circulation in the EC.³²

The four-year Preliminary Program launched in 1975 remained largely unimplemented during its four-year period, notwithstanding considerable research and negotiation by the Commission. A second program was

²⁷ See OJ No C 333, 30 October 1998 at 46.

²⁸ It was the first directive on consumer credit that led to the establishment of what came to be called the "Cooperation Procedure" of Article 100a, set up by the 1986 Single European Act which entered into force on 1 July 1987.

²⁹ The Commission has presented reports to the Council concerning the operation of the product liability directive: see document COM (95) 617 Final, 11 December 1995.

³⁰ 92/59/EEC, 29 June 1992, OJ L 228, 11 August 1992 at 24.

³¹ Article 3.

³² Article 7.

adopted by resolution of the Council on 19 May 1981, which confirmed the first program and its unfinished work. In addition, new topics were added to the list of matters that the Commission had to address. For example, greater emphasis was given to the provision of services. The first "consumer directive" on misleading advertising appeared in 1984, followed by the product liability and doorstep sales directives in 1985 and the first of the consumer credit directives in 1986.

Instead of a new third program, in 1985 the Commission produced a plan entitled "A new impetus for consumer protection policy" that was duly received by the Council. This new plan contained a specific timetable for the execution of proposed actions. They include proposals for directives on matters such as counterfeit products, unfair contract terms, the calculation of the rate of charge for consumer credit, unfair and comparative advertising, electronic funds transfer, guarantees and after-sale service, package tours and package travel, and price indications for services.

Several of these areas have consequently been dealt with by directives duly adopted, like the consumer credit rate of charge calculation;³³ package tours and package travel;³⁴ and electronic funds transfer.³⁵ Other directives have become the subject of Commission proposals, such as those on sellers' warranties on the sale of goods.³⁶ The Commission is examining other topics like mortgage credit with a view to presenting more proposals.

In May 1990, the Commission issued a "Three year action plan of consumer policy in the EEC (1990-1992)" which contained little that was new. One exception related to consumer representation, which was to be reorganised. Consumer information and education received some attention but the important matter of access to justice made little progress in spite of useful discussions by experts from member states. Although directive 98/27/EC of 19 May 1998, on injunctions for the protection of consumers' interests, is available and designed to allow consumer associations to have

³³ A further report and proposal for legislation have been issued: Doc COM(96) 79 Final, 12 April 1996. A third directive has been adopted (refer note 14 above) while a fourth is planned.

³⁴ Refer note 15 above.

³⁵ This subject matter was covered by a Commission recommendation in November 1988, rather than by a formal directive.

³⁶ For the proposal on a European Parliament and Council directive on the sale of consumer goods and associated guarantees, see OJ No C 307, 16 October 1996.

access to the courts and bring representative actions, in practical terms this directive merely scratches the surface.

THE 1986 SINGLE EUROPEAN ACT

The 1986 Single European Act achieved a breakthrough by enabling the Council to adopt by qualified majority, rather than unanimous vote, measures for the approximation of laws that have *inter alia* "as their object the establishment and function of the internal market."³⁷ The Commission shall propose such measures in cooperation with the European Parliament, following consultation with the Economic and Social Committee.³⁸

In theory, this approach should make the task of the Consumer Policy Service easier, but in practice, there seems to be little or no evidence of this. Member states remain just as guarded when the issues concern changes to their national laws. Article 100a(3) of the EEC Treaty uses strong words, such as "[t]he Commission, in its proposals envisaged in paragraph 1 concerning health, safety, environmental protection and consumer protection, will take as a base *a high level of protection*"³⁹, but this has not had the desired effect where the Consumer Policy Service is concerned.

THE 1992 MAASTRICHT TREATY

The Maastricht Treaty contains a provision that includes consumer protection among those topics that member states have to regard as matters of community policy, as opposed to matters of national policy only.⁴⁰ However, the wording that has been adopted is such that the competence conferred by the Maastricht Treaty may be less than that available under existing programs and plans. The following describes the insertions made by the Maastricht Treaty in the EC Treaty:

- (1) Article 3 of the EC Treaty sets out the "activities", namely, the fields or spheres, that the EC has to work on in order to achieve the purposes as set out in Article 2. The Maastricht Treaty added Paragraph S to Article 3 that provides for "a contribution to the strengthening of consumer protection".

³⁷ Article 100a(1) EEC Treaty.

³⁸ *Ibid.*

³⁹ *Italics added.*

- (2) A new article, Article 129a, constituting a new Title XI, was added and reads:
1. The community shall contribute to the attainment of a high level of consumer protection through:
 - (a) measures adopted pursuant to Article 100a in the context of the completion of the internal market;
 - (b) specific action which supports and supplements the policy pursued by the Member States to protect the health, safety and economic interests of consumers and to provide adequate information to consumers.
 2. The Council, acting in accordance with the procedure referred to in Article 189b and after consulting the Economic and Social Committee, shall adopt the specific action referred to in paragraph 1(b).
 3. Action adopted pursuant to paragraph 2 shall not prevent any Member State from maintaining or introducing more stringent protective measures. Such measures must be compatible with this Treaty. The Commission shall be notified of them.⁴¹

In addition, after the Maastricht Treaty was signed, but before ratification was effective, the Commission issued a second three-year plan of action for consumer policy.⁴² Paragraph 46 of this new policy states:

The second action plan for consumer policy envisages concentrating the Commission's initiatives during 1993-1995 on certain domains, which are crucial for consumer confidence in the internal market, such as consumer information, access to justice, consumer health and safety. However, the progress of Community consumer policy is not limited to actions undertaken solely in the context of consumer protection. This progress also means considering consumer interests in the definition of other Community policies and decisions in so far as they concern consumers. The Commission thus intends to pursue its efforts to

⁴¹ The Amsterdam Treaty expands the content of Article 129a. This Treaty came into force on 1 May 1999. The 15 EU Member States completed their ratification procedures on 30 March 1999.

⁴² COM (93)378 Final, 28 July 1998.

integrate consumer policy in other common policies. This objective is an integral part of the second action plan on consumer policy.

This was followed by an action plan for 1996-1998 issued by the Commission. Under this plan, the Commission undertook several initiatives. For instance, in 1996 it initiated priority measures to restructure consumer representation arrangements. It adopted proposals for new directives, particularly on access to justice, consumer credit and the sale of consumer goods and associated guarantees. It strove for the better integration of consumer policy with other Community policies, especially in relation to foodstuffs and product safety. In the international arena, it participated in the African Conference on Consumer Protection held in Harare on 28 April to 2 May 1996.⁴³

The 1999-2001 consumer policy action plan, issued by the Commission on 4 December 1998, aims to enable consumers to play a full role in the single European market. To achieve this, the action plan gives consumers a more powerful voice, by establishing a high level of health and safety, and accords full respect to the economic interests of consumers.

Support for consumer representatives is envisaged, including procedures for ensuring that the interests of consumers are taken into account automatically at EU level. A Green Paper on food law is to be followed up.⁴⁴ This law addresses the problems associated with labeling, hygiene and inspection. Enforcement and monitoring of health and safety measures in cooperation with member states are to be improved. Finally, there shall be steps to promote a consumer-friendly financial services market.

A CASE STUDY – MAD COW DISEASE IN THE UNITED KINGDOM

The discussion above illustrates that a great deal still remains to be done for the consumers in the EC. Nevertheless, since the spring of 1995, consumer affairs have been given the distinction of being dealt with at the Commission level by a fully-fledged Directorate-General.⁴⁵ Previously, the portfolio was the bailiwick of a Directorate or Service. It is arguable,

⁴³ European Commission, 1996 General Report at Section 26(614).

⁴⁴ COM (97) 176.

⁴⁵ This portfolio has been designated Number XXIV, more commonly known as "DG XXIV".

however, that this elevation in status has not yet brought greater clout to consumer affairs at the EC/EU level.

The appearance of “mad cow disease” in 1996 in the United Kingdom resulted in the sudden recognition of the need for involvement by veterinary experts on the quality surveillance of foodstuffs, notably in determining whether foodstuffs were fit for human consumption. This led to a re-organisation of the Commission’s department’s, namely, the transfer of the veterinary inspection function and responsibility for management of the scientific veterinary committees from DG VI to DG XXIV. The latter portfolio now spends much of its time on these matters, for two main reasons:

- (i) the United Kingdom has requested the European Court of Justice to decide whether the EC importation ban on British beef products is lawful; and
- (ii) ten member states are being pursued by the Commission for their failure to comply with the EC rules on meat quality.

In 1998, some farmers from the United Kingdom, especially from Northern Ireland, were declared exempt by the Commission from the importation ban, as a result of detailed record keeping on the part of the farmers in relation to cattle and their movements, such as birth, death and illnesses. On 10 June 1998 the Commission resolved to recommend that the ban be lifted in respect of all other British cattle born after August 1996, and aged between six and thirty months. On 23 November 1998, the importation ban was lifted, subject to conditions.

PROPOSALS

In January 1998, the Commission decided to adopt the initiative of a member of the Commission, Mrs Emma Bonino, on its consumer policy as a whole. As a result, the Commission proposed the creation of a legal framework for the financing of Community actions and activities regarding consumer policy. This included a budget allocation of 114 million European Currency Units (ECU) for five years from 1999-2003. The policy enables activities to be planned during this period and increases transparency, while simultaneously boosting consumer confidence.

The following four priority areas have been identified:

- (i) the health and safety of consumers;
- (ii) the protection of the economic interests of consumers, particularly in relation to international transactions, advertising and settlement of disputes;
- (iii) the education and information of consumers regarding their protection and rights; and
- (iv) the promotion, strengthening and development of the representation of consumer interests, that in turn will assist the EU to establish its policies.

The Commission proposed that the costs and fees connected with the preparation of opinions by experts, including scientific and other committees, should be charged to this budget. The European Home and Accident Surveillance System ("EHLASS") information program on domestic and leisure accidents is also to be financed from this budget⁴⁶, pending the integration of the prevention of injury, within the context of action in the public health field, into the program.

The legal framework proposed by the Commission was forwarded to the European Parliament and the Council of the EU, for a Decision or approval. This move reflected the response of the Commission to its growing volume of work in consumer matters, especially since the mad cow crisis in Europe.

THE DECISION

On 25 January 1999 the European Parliament and the EU Council jointly decided to establish a general framework for Community activities to promote the interests of consumers and provide them with a high level of protection.⁴⁷ This Decision was effective as of 9 February 1999.

The various grounds on which the Decision was based, its *raison d'être*, are stated in 22 recitals, including the following:

Recital 1

Community action contributes to achieving a high level of consumer protection and thus also contributes to promoting economic and social

⁴⁶ The indicative allocation is 7.5 million ECUs.

⁴⁷ See Decision No 283/1999/EC published in OJ No L 34, 9 February 1999 at 1.

cohesion in the Community and to strengthening consumer confidence, which is essential for the smooth functioning of the internal market.

Recital 3

[T]he Community is committed in particular to giving new impetus to its action in favour of consumers and their health in order to enable them to become a driving and innovatory force.

Recital 4

[T]he statement of the European Council...on 12 and 13 December 1997 on food safety recognises that everything must be done to restore public confidence, severely shaken by the BSE crisis; ...activities to be undertaken within a general framework are essential for achieving this aim.

Recital 11

[A] harmonious approach to matters related to the protection of consumers and their health is indispensable and...this general framework is to provide the necessary financial support to ensure the provision of high-quality independent scientific advice, globally-recognised risk-assessment methods and effective control and inspection methods; ...the Community also has at its disposal the expertise of the Joint Research Centre.

Recital 12

[T]his general framework is open to the participation of the associated countries of Central and Eastern Europe in accordance with the relevant European Agreements or their Additional Protocols, and also to Cyprus in accordance with procedures to be agreed, as well as to the EFTA/EEA countries on the basis of additional appropriations in accordance with the rules set out in the Agreement on the European Economic Area.

Recital 17

[I]t is therefore necessary to set out the arrangements for the financial support provided by the Community to the organisations and bodies that are representative of consumer interests, out of a constant concern for maximum transparency and for effectiveness in the use of the funds allocated by the Community.

Article 1 of the Decision establishes for the five-year period from 1 January 1999 to 31 December 2003, the general framework. It consists of what are described in paragraph (2) as “actions designed to help protect the health, safety and economic interests of consumers and to promote their right to information and education and their right to join forces in order to protect their interests”.

The financial provision for 1999 to 2003 is fixed at 112.5 million ECU⁴⁸, this does not include the appropriations earmarked for funding EHLASS, amounting to 7.5 million ECU.

Its proper objects, namely, the activities that support and supplement the consumer policy of Member States, are set forth in Article 2 as follows:

- (a) actions taken by the Commission;
- (b) actions providing financial support for the activities of European consumer organisations (such support being subject to conditions set out in Article 5 and described below);
- (c) actions providing financial support for specific projects to promote the interests of consumers in the Member States presented under the conditions set out in Article 6, in particular by consumer organisations and appropriate independent public bodies.

The two key tasks given to the Commission in Article 3 are:

- (a) to ensure that the Community activities and projects covered by this general framework are consistent with the other Community programmes and initiatives (such as the various triennial action programmes) and actually complement them; and
- (b) to determine, in function of its own three-year action plan 1999-2001, the order of priority applicable to the activities to be undertaken in pursuance of the general framework, which activities relate to areas of work that are indicated in their grand lines in Article 4 and in detail in the Annex, namely:
 - (i) the health and safety of consumers as regards products and services;
 - (ii) protecting the economic and legal interests of

⁴⁸ Article 1(4).

- (iii) consumers, including access to dispute resolution; as regards products and services, taking into account horizontal aspects;
- (iv) educating and informing consumers about their protection rights; and
- (v) promotion and representation of the interests of consumers.

The conditions under which financial support pursuant to Article 2(b) may be granted to European consumer organisations are outlined in Article 5:

- (a) the organisations must be non-governmental and non-profit-making, whose main objectives are to promote and protect the interests and health of consumers; and
- (b) the organisations must hold mandates to represent the interests of consumers, at European level, from national organisations of not less than half of the EC Member States, being national organisations that in accordance with national rules or practice are representative of consumers and are active at national or regional level;
- (c) the organisations are required to have planned in their annual programme the activities for which the finance is wanted, and those activities must relate to one or more of the four areas of activity identified in Article 4 and described above.

The financial support available under Article 2(c) may be granted to:

- (i) any natural or legal person; ...or
- (iii) any association of natural persons that acts independently of industry and commerce and is actually responsible for the implementation of projects whose main objectives are to promote and protect the interests and health of consumers.

Financial support under Article 2(c) will be granted on the basis of the project description and if the project relates to at least one of four areas of activity identified in Article 4, described above. In principle, the grant is 50% or less of the expenditure needed for implementing the project.⁴⁹

⁴⁹ This excludes all operating expenses but includes expenses related directly to the proposed project.

In determining if financial support is granted under Article 2(b) or 2(c), the variety of consumer organisations in the Member States is relevant, to ensure a proper balance of consumer interests in the EC. Various criteria listed in Article 7 will be also applied. They are:

- (a) cost-effectiveness;
- (b) whether there will result a lasting multiplier effect at national or European level;
- (c) the need for effective and balanced cooperation between the various parties for planning and carrying out activities and for financial participation;
- (d) whether lasting transnational cooperation will be fostered; and
- (e) whether the results of the activities and projects supported can be disseminated widely.

According to the publicity rules found in Article 8, the Commission is required to publish annually in the Official Journal of the European Communities a notice that:

- (a) describes the kinds of action that are to be funded;
- (b) sets out the selection and award criteria; and
- (c) fixes the procedures for application and approval.

The Commission will assess the proposals and decide what activities and projects shall receive financial support within five months of the notice's publication. Contracts will be concluded thereafter with recipients. The Commission will publish each year in the Official Journal the names of the recipients, the actions funded and the amount of support for each project.

An advisory committee, chaired by a representative of the Commission and made up of representatives of member states shall assist the Commission.⁵⁰

It will also fall to the Commission to:

- (a) monitor the actions taken and supervise the implementation of the work by means of a system of reports, plus sample checks *in situ*,⁵¹ and

⁵⁰ Article 9.

⁵¹ Article 10.

- (b) regularly evaluate the actions funded by the Community or have them evaluated by independent experts.⁵²

Financial support may be reduced, suspended or recovered if things go wrong, as for example, where a supported activity has been significantly modified without approval, or irregularities appear, or deadlines are not met, or progress is unwarrantedly slow.⁵³

As usual, the Commission is to report annually to both the Parliament and the Council on the implementation of this general framework, showing the results of the evaluation of the actions, activities and projects carried out in pursuance of it and of other budgetary frameworks. Moreover, not later than 30 June 2002, the Commission is required to present to both bodies an evaluation report covering work in the first three years.⁵⁴

CONCLUSION

This paper highlights the fact that consumer protection law and policy has been slow to develop in the EC and that a good deal still remains to be done for consumers in Europe. It will be interesting to observe whether the elevation of consumer affairs at the Commission level, to a fully-fledged Directorate General, eventually, translates in practice to greater action for consumers and a high priority for consumer protection in the EC.

⁵² Article 11.

⁵³ Article 12.

⁵⁴ Article 13.