

assumed that the Directive of 9 February 1976 concerning the implementation of the principle of equal treatment of men and women as regards access to employment, vocational training and promotion, and working conditions and this Directive will be seen as having to be taken in close conjunction with one another.

3. Specific comments

3.1. The following additions should be made to Article 1:

'The purpose of this Directive is to make a first step towards implementation in the Member States, in matters of social security, of the principle of equal treatment of men and women as set out in the Directive of the Council of 9 February 1976 concerning the implementation of the principle of equal treatment of men and women as regards access to employment, vocational training and promotion, and working conditions.'

3.2. The latter part of Article 2 (2) should read:

'... in so far as they supplement, extend or substitute for benefits in respect of any of the said contingencies.'

3.3. Article 6 (1) (b) should read:

'... (in particular as regards the reckoning for pension purposes of periods spent outside employment by reason of pregnancy or parenthood) ...'

3.4. The second line of Article 6 (1) should read:

'Member States to exclude from its field of application, for a limited period, ...'

3.5. The following sentence should be inserted after the first sentence of Article 6 (2):

'The first of these reviews shall be undertaken within two years after the entry into force of this Directive.'

3.6. New Article 8 (present Article 8 becomes Article 9):

'Member States shall enact the necessary measures in their national law to enable any employee who considers himself (herself) wronged by failure to apply to him (her) the principle of equal treatment, to obtain enforcement of his (her) rights by law after recourse to any other competent authorities.'

Done at Brussels, 22 June 1977.

*The Chairman
of the Economic and Social Committee*

Basil de FERRANTI

Opinion on the proposal for a Council Directive to protect the consumer in respect of contracts which have been negotiated away from business premises

The text referred to the Committee has been published in *Official Journal of the European Communities* No C 22 of 29 January 1977, page 6.

A. LEGAL BASIS FOR THE OPINION

On 27 January 1977, the Council referred the abovementioned proposal to the Economic and Social Committee in accordance with Article 100 of the Treaty establishing the European Economic Community.

B. OPINION OF THE ECONOMIC AND SOCIAL COMMITTEE

The Economic and Social Committee prepared its opinion on the above matter at its 150th plenary session, held in Brussels on 22 and 23 June 1977.

The full text of the opinion is as follows:

THE ECONOMIC AND SOCIAL COMMITTEE,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 thereof,

Having regard to the request for an opinion made by the Council of the European Communities on 27 January 1977,

Having regard to the decision taken by its Bureau on 25 January 1977 in anticipation of the Council's request, instructing the Section for Protection of the Environment, Public Health and Consumer Affairs to draw up an opinion and a report on the matter,

Having regard to the opinion delivered by the Section for Protection of the Environment, Public Health and Consumer Affairs on 7 June 1977,

Having regard to the report submitted by the rapporteur, Miss Roberts,

Having regard to the discussions at its 150th plenary session on 22 and 23 June 1977 (meeting of 22 June),

HAS ADOPTED THE FOLLOWING OPINION

by 56 votes to 16, with 15 abstentions:

The Committee approves the proposed Directive, subject to the following comments.

1. General comments

1.1. The proposed Directive ought to approximate the laws of the different Member States in such a way as to afford the utmost possible protection to the consumer without interfering in the legitimate business of trade.

1.2. The Committee therefore particularly approves the points concerning the following:

- (a) the cooling-off period of at least seven days for all contracts negotiated away from business premises;
- (b) the provision that contracts must be in writing, and signed by the customer;
- (c) the exemption from the proposed Directive of contracts below a certain value;
- (d) the granting to the Member States of the right to pass laws, more stringent than the requirements of the proposed Directive.

However, the Committee would still like to make the following comments.

1.3. Scope

1.3.1. The Committee finds that Articles 1 and 2 are somewhat hazy about the exact scope of the draft directive and there is some uncertainty as to whether or not Article 2 covers mail-order business.

1.3.2. The Committee would point out that some types of mail-order selling, involving as they do the element of surprise and the use of representatives, run against the very principles on which the Directive is based, namely the protection of consumers from any sort of psychological pressure when contracts are drawn up at or in their homes. With this type of selling, consumers have no time either to give proper thought to whether they want to acquire the particular goods or services being offered, or to talk the matter over with another person.

1.3.3. It may therefore be considered that such selling amounts to doorstep selling and thus comes within the scope of the proposed Directive.

1.3.4. But mail-order selling carried out solely in writing has special features which should be dealt with in a separate Directive. The Committee therefore calls upon the Commission to draft such a Directive as soon as possible.

1.3.5. As far as doorstep selling is concerned, the Committee believes that it would have been better to have introduced a licence system for door-to-door salesmen so as to prevent flagrant abuse, e.g., situations where a salesman uses surveys as a pretext for attempting to sell a given product. The licence could then be withdrawn if consumers lodged complaints against the same salesman on several occasions.

2. Specific comments**2.1. Article 1 (1)**

2.1.1. The Committee considers that properly authorized representatives should also be included in the definition of a 'trader'. The Committee therefore proposes that Article 1 (1) be amended to read as follows:

'This Directive shall apply to contracts between a consumer and a trader, or any person acting on behalf of the latter, and to unilateral ...'

2.2. *Article 1 (2) — first indent*

2.2.1. Sometimes transactions are concluded not by single persons but by groups, so the Committee suggests that this indent be amended to read as follows:

‘— consumer means a natural person or persons ...’

2.3. *Article 2 (c)*

2.3.1. The Committee proposes that the French version should read ‘un notaire ou toute autre personne’ in line with the English rendering.

2.4. *Article 2 (d)*

2.4.1. The Committee regrets that contracts relating to immovables are not covered by the proposed Directive.

2.4.2. Although the consumer does not go in for this kind of property lightly, it is nonetheless true that he is legally bound once the ‘compromis de vente’ has been signed, and this act generally takes place in the absence of a notary or legal adviser. With such contracts, the cooling-off period — which can, under the new Directive, lead to cancellation of the contract — might be used by the consumer for the purposes of calling in an expert.

2.4.3. The Committee therefore proposes that Article 2 (d) be deleted.

2.5. *Article 2 (e)*

2.5.1. With regard to the provision whereby contracts worth less than 25 European units of account are excluded from the scope of the Directive, the Committee feels that this level should be lowered to 15 European units of account to protect the least well-off consumers. It therefore proposes that Article 2 (e) should read as follows:

‘(e)... contracts under which the price payable by the consumer does not exceed 15 European units of account.

European unit of account means the unit of account as defined by Commission Decision 3289/75/ECSC of 18 December 1975.

The conversion value in national currency shall be determined in accordance with purchasing power.

The Council shall, on a proposal from the Commission, annually, examine and, if necessary, revise this amount, having regard to economic and monetary movement in the Community’.

2.6. *Article 2 — new point (f)*

2.6.1. The Committee considers that a further waiver should be added, this time based on the type of trade:

‘(f)... contracts irrespective of their value relating to deliveries to the door of foodstuffs, including beverages, by traders making regular rounds among their customers.’

2.7. *Article 2 bis*

2.7.1. The Committee remarks that great confusion would ensue if this Directive were to apply temporarily to the four types of contract listed in this Article with the possibility of the legal requirements being altered by new Directives.

2.7.2. The Committee further considers that this Article does not add anything to the Directive in any legal sense and suggests therefore that it should be deleted.

2.8. *Article 3*

2.8.1. The Committee suggests that the trader must be obliged to abide by the total price given in the contract.

2.8.2. It also suggests that the contract should state the date by which it may be cancelled.

2.9. *Article 4 (2)*

2.9.1. The Committee proposes that in the French version of Article 4 (2) the word ‘conclusion’ should be replaced by ‘signature’. Article 4 (2) should also be amended as follows:

‘A copy of the doorstep contract must be given to the consumer on the signing thereof by the parties.’

The aim of the amendment to the French version is to remove the word ‘conclusion’ on the ground that it could be ambiguous.

2.9.2. The Committee proposes the deletion of the remainder of the sentence (‘or forwarded to him immediately thereafter’) on the ground that it is impossible to be certain that the trader will actually send off the contract.

2.10. *Article 6*

2.10.1. With regard to the question of notifying the trader of the consumer's decision to cancel the contract, the Committee considers that a new paragraph should be added to this Article stating that a standard cancellation form must be contained in each doorstep contract.

2.11. *Article 6 bis*

2.11.1. The Committee asks that the words 'other than a life insurance' be deleted from this Article. It also urges the Commission to make rapid provision for a specific Directive on insurance, which should cover doorstep selling of insurance.

2.11.2. In any event the Committee considers that people should be able to enjoy the same cooling-off period in respect of insurance contracts negotiated away from business premises as is proposed for other contracts. In the case of insurance contracts, however, the policy would continue to be valid up to the first annual due date, and the premium would have to be paid and cover provided for that year.

2.12. *Article 8*

2.12.1. The Committee suggests that a sentence should be added to paragraph 2 requiring the customer to keep the goods in essentially the same condition as they were received.

2.12.2. In fact, the customer's right to use the goods must not allow any deterioration in the product.

Done at Brussels, 22 June 1977.

2.13. *Article 9*

2.13.1. The Committee proposes that Article 9 should be amended to read:

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

- (a) full or partial payment of the contract price or any other kind of payment or any surety; or
- (b) a bill of exchange, cheque or other kind of negotiable instrument, or, as a trader, to accept such a document.'

The present wording obliges the consumer to prove that the trader has made such a demand, which is impossible.

2.14. *Article 12*

2.14.1. The Committee suggests that Article 12 (2) (a) should stipulate that the contract must contain the date of signature, so that the consumer cannot lose his right to cancel the contract through his signature being backdated. Article 12 (2) (a) should be changed to read:

- '(a) the doorstep contract be dated by the consumer in his own hand and the date mentioned must be the same as the date on which the contract was signed.'

The Chairman
of the Economic and Social Committee
Basil de FERRANTI

ANNEX

to the opinion of the Economic and Social Committee

The following amendment was rejected during discussions.

Replace paragraph 1.3.4 by:

'But mail-order selling has special features which should be dealt in a separate Directive. The Section therefore calls upon the Commission to draft such a Directive as soon as possible.'

Reasons

In point of fact, paragraphs 1.3.1, 1.3.2, 1.3.3 and 1.3.4 make a distinction between mail-order selling carried out solely by mail, which — it is proposed — should be covered by a specific Directive, and types of mail-order selling which involve the element of surprise and the use of representatives and, hence, the possibility of psychological pressure being put on consumers.

The criterion on which this distinction is based is imprecise and unsatisfactory.

We are dealing here with commercial techniques which are: (a) varied; (b) fluid. It seems beyond question that the properly conceived interests of consumers require that an in-depth examination of this sector be carried out and that a Directive be drawn up to cover the whole sector of mail-order selling. In this way, better account will be taken of consumers' interests, having regard to the various kinds of mail-order selling. Also, the risk of making certain types of mail-order selling impossible will be obviated, since after a detailed study, the necessary steps can be planned.

Mail-order selling is a very active sector, and its very activity testifies to the fact that large numbers of consumers are interested in it.

This amendment does not aim to liberalize mail-order selling of whatever kind, bearing in mind the idea underlying the proposed Directive; rather it seeks a way of achieving an economically-sound adaptation which takes account of the mutual interests of both sides.

These are the reasons for proposing a slightly more general attitude than the draft opinion takes at present.

Voting

For: 34, against: 36, abstentions: 10.

Opinion on the proposal for a Council Decision modifying the Decision of 22 July 1975 concerning a programme of pilot schemes and pilot studies to combat poverty

The text referred to the Committee has not yet been published in the *Official Journal of the European Communities*.

A. LEGAL BASIS FOR THE OPINION

On 21 June 1977, the Council referred the abovementioned proposal to the Economic and Social Committee in accordance with Article 100 of the Treaty establishing the European Economic Community.

B. OPINION OF THE ECONOMIC AND SOCIAL COMMITTEE

The Economic and Social Committee prepared its opinion on the above matter at its 150th plenary session, held in Brussels on 22 and 23 June 1977.

The full text of the opinion is as follows:

THE ECONOMIC AND SOCIAL COMMITTEE,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 thereof,

Having regard to the referral of 21 June 1977 by the Decision of the Council of the European Communities,

Having regard to its decision taken during its plenary session of 22 and 23 June 1977 according to Article 18 of the Rules of Procedure whereby the Economic and Social Committee may appoint a rapporteur-general,

Having regard to the oral report by the rapporteur-general, Mr Carrol,