



COMMISSION OF THE EUROPEAN COMMUNITIES

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Amended proposal for a
EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE
**ON CONSUMER PROTECTION IN THE INDICATION OF THE
PRICES OF PRODUCTS OFFERED TO CONSUMERS**

(presented by the Commission pursuant to Article 189 a (2)
of the EC-Treaty)

Explanatory memorandum

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 the proposal of its rapporteur Mr Folias.

On 18 April 1996 the European Parliament adopted a legislative resolution embodying the opinion of the European Parliament, acting on the proposal of its rapporteur, Mrs Oomen-Ruitjen. In this resolution Parliament invites the Commission to modify its proposal on the basis of the proposed amendments.

The "Consumer Affairs" Council met on 23 April 1996 in Luxembourg under the Italian Presidency. It came to a unanimous political agreement on the common position concerning the above-mentioned proposal for a directive.

II COMMENTS ON THE MODIFICATIONS

The 22 amendments adopted by the European Parliament can be seen as a response to four main concerns. Firstly, in a certain number of amendments, Parliament pinpointed the remit of the text proposed by the Commission, notably the objective and the scope of the mechanism. These aspects do not substantially modify the Commission's proposal. Secondly, it took into account the supplementary costs which might be imposed on small retail businesses by providing for a permanent follow-up by the Commission and financial

support for information for programmes targeted at small businesses. However, instead of a permanent or temporary exemption for certain small businesses, Parliament opted for a longer adaptation period. Thirdly, Parliament also wanted to emphasise the importance of consumer information in the context of introducing the single currency by provided for dual price labelling and training of employees in businesses. Finally, Parliament jettisoned without ambiguity the link between the obligation to indicate the unit price and the exemption for products sold in ranges.

1. Clarification of the text

As regards Parliament's first concern, the Commission shares its viewpoint. Hence in its amended proposal the Commission has incorporated Amendments 1, 2 and 9 (in respect of letters (a) and)b) of former Article 2), 10, 11, 12, 13, 16, 20, 21 and 24 to clarify and pinpoint the proposed mechanism. In seven cases (Amendments 2, 3, 5, 11, 16, 20 and 24) the Commission has reformulated the text by making drafting changes or changes of a technical legislative nature, without, therefore, making any substantive modifications. The approval of amendment 16 made a modification of the recitals 15 and 16 necessary. Concerning the amendment 24 the Commission has in addition separated the amendment and has incorporated it into Articles 1(2) and 3(2). This implies that, in respect of the items referred to in Article 3(2), the obligation of mentioning the selling price, but not the unit price, will remain. The approval of amendment 24 made it also necessary to modify article 7. Amendment 9 (in respect of letter (c)) has not been taken up by the Commission, because its definition of the retail trade is too ambiguous and overbroad. Amendment 14 concerns labelling methods. The Commission considers that Member States are in a better position to lay down detailed procedures in this domain, as a function of local circumstances; hence this amendment has not been taken up.

2. Small retail businesses

The new mechanism imposes some additional burdens on trade. But the European Parliament is particularly concerned with this sector, and notably with small retail businesses.

As for the Commission, it has tried to find a solution which is not too heavy, while upholding the objective of providing the necessary information.

Amendments 6 and 22 propose a report on the situation of small retail businesses one year after the deadline for transposal. In the Commission's experience a period of one year is not long enough to acquire experience in the application of the Directive such as to draw up a report. Hence a minimum period of two years would be necessary. Such a period will allow the Commission to scrutinize in depth the economic impact of the Directive on small retail businesses.

Amendment 19 concerns financial support for certain small retail businesses. The Commission does not consider that financial support for information programmes targeted at small retail businesses is a realistic solution. Firstly, the problem of small retail businesses is too complex to be regulated definitively at Community level. More specifically, the nature of the aid depends entirely on factors which the Commission can neither know nor influence. In certain Member States, where the entire retail trade already

applies unit prices, such an aid would not be justified. Moreover, criteria would have to be laid down. It is also important for Member States to be in a position to fully assess the nature of the potential difficulties, particularly if these difficulties are directly bound up with the enforcement of the mechanism. After all, at least in the case of foodstuffs, many of the rules have already been in force for several years anyhow. Finally, investments in price indication technology make economic sense, because this technology constitutes a marketing and inventory management tool. The costs involved are not substantial, especially as small retail businesses enjoy an adjustment period allowing them to stagger the costs over an extended period.

For this reason the Commission welcomes the solution contained in Parliament's Amendment 18 on small retail businesses: a generous adaptation period of six additional years after the date of entry into effect of the provisions adopted under the Directive. Moreover, the Commission is willing to provide particulars pertaining to costs and hence has incorporated Amendment 5.

3. Introduction of the Single Currency

Parliament wanted to emphasise the importance of consumer information in the context of the move to the single currency. Hence it proposed Amendments 4, 15, 17 and 23 on the transitional period for the introduction of the single currency, so as to familiarise customers with the relative values of the currencies. While agreeing that price transparency is a priority on the road to Economic and Monetary Union, the Commission considers it premature to spell out the details at this stage and holds that accompanying measures should be the subject of an overall approach.

4. Abandonment of the link with ranges

The Commission has incorporated Amendment 3. This amendment specifies that the ranges have a distinct function and clearly abandons the link with ranges.

III OVERVIEW

OPINION OF THE COMMISSION CONCERNING THE PROPOSED PARLIAMENTARY AMENDMENTS

No of amendment	Provisions concerned	Commission	New numbering
1	recital - 1 (new)	accepted	Recital 1
2	recital 1	accepted	Recital 2
3	recital 6a (new)	accepted	Recital 8
4	recital 12a (new)	rejected	
5	recital 17a (new)	accepted	Recital 20
6	recital 19	rejected	
9	Article 2 a) and b)	accepted	Article 2
9	Article 2 c)	rejected	
10	Article 3, paragraph 2	accepted	Article 4 paragraph 3
11	Article 3, paragraph 2	accepted	Article 4 paragraph 4
12	Article 4, paragraph 2	accepted	Deleted
13	Article 4, paragraph 3	accepted	Article 4 paragraph 2
14	Article 5	rejected	
15	Article 5a (new)	rejected	
16	Article 6	accepted	Article 6
17	Article 6, paragraph 3a (new)	rejected	
18	Article 7, first sentence	accepted	Article 7, first sentence
19	Article 7a (new)	rejected	
20	Article 9	accepted	Article 9
21	Article 10 paragraph 1	accepted	Article 10
22	Article 11 paragraph 1	rejected	
23	Article 6 paragraph 3b (new)	rejected	
24	Article 1a (new)	accepted	Article 1, paragraph 2, and Article 3, paragraph 2

The above table shows that the Commission has accepted 14 out the 22 amendments voted by the European Parliament.

**AMENDED PROPOSAL FOR A
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ON CONSUMER PROTECTION IN THE INDICATION OF THE
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INITIAL PROPOSAL

The European Parliament and the Council
of the European Union

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

Having regard to the proposal from the
Commission¹

Having regard to the opinion of the
Economic and Social Committee²

Acting in conformity with the procedure
provided for in Article 189b of the Treaty
establishing the European Community,

AMENDED PROPOSAL

Unchanged

Unchanged

Unchanged

Unchanged

Unchanged

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

1 OJ No C 260, 5.10.1995, p.5.

2 OJ No C 82, 19.3.1996, p.32.

1. Whereas consumers must be guaranteed a high level of protection; whereas the Community should contribute thereto by specific actions which provide for adequate information of consumers on the prices of products offered to them;

2. Whereas the Community's programmes for a consumer protection and information policy³ provide for the establishment of common principles for indicating prices;

3. Whereas these principles have been established by Council Directive 79/581/EEC of 19 June 1979⁴ as amended by Council Directive 88/315/EEC of 7 June 1988⁵ and Council Directive 88/314/EEC of 7 June 1988⁶ concerning the indication of prices of foodstuffs and non-food products;

4. Whereas the obligation to indicate the selling price and the price per unit of measurement contributes substantially to improving consumer information by providing consumers with essential data in order to make reasoned choices;

5. Whereas, however, the mechanism adopted included a certain number of exceptions to the general obligation to indicate the unit price, notably when products are marketed in quantities or capacities corresponding to the values of the ranges adopted at Community level.

2. Whereas, consumers must therefore be guaranteed a high level of protection; whereas the Community should contribute thereto by specific actions which provide for precise, transparent and unambiguous

information of consumers on the prices of products offered to them;

3. Unchanged

4. Unchanged

5. Unchanged

6. Unchanged

3 OJ No C 92, 25.4.1975, p.2 and OJ No C 133, 3.6.1981, p.2.

4 OJ No L 158, 26.6.1979, p.19.

5 OJ No L 142, 9.6.1988, p.23.

6 OJ No L 142, 9.6.1988, p.19.

6. Whereas this link between indication of the unit price of products and standardisation of packaging introduced rigidities into the implementation of the mechanism adopted, which has proven overly complex to apply; whereas it is thus

necessary to abandon this link in the interests of simplification, without prejudice to the rules governing packaging standardization;

7. Whereas, therefore, account should be taken of all the difficulties encountered in implementing the mechanism provided for in the above-mentioned Directives and a new and simplified mechanism proposed which will enable the main objective to be achieved more easily, namely adequate information of consumers;

8. Whereas indicating the selling price and the unit price is the easiest way to enable consumers to evaluate and compare the nature and quality of products in an optimum manner and hence to make informed choices on the basis of simple comparisons;

9. Whereas, therefore, the general obligation to indicate both the selling price and the unit price for all products should be maintained except for products marketed in bulk, where the selling price cannot be determined until the final consumer indicates how much of the product he requires;

10. Whereas only 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

7. Unchanged

8. Whereas producers and traders having resort to ranges may retain and further develop them, provided, however, that they also indicate the unit price;

9. Unchanged

10. Unchanged

11. Unchanged

12. Unchanged

both necessary and sufficient to achieve this objective;

11. Whereas, moreover, price transparency is a priority in the run-up to Economic and Monetary Union, and must therefore be significantly improved and arrangements made for its entry into effect in good time for the transition to the single currency;

13. Unchanged

12. Whereas introduction of the single currency will be greatly facilitated by providing consumers with simple yardsticks for comparing the prices of products;

14. Unchanged

13. Whereas there is a need to take into account the fact that certain products are widely and customarily sold in quantities different from the values of the base quantity referred to in the Directive; whereas it is thus advisable to allow Member States, in certain cases, to authorise that the unit price be indicated in relation to the quantity value which custom has enshrined;

15. Unchanged

14. Whereas Member States must be free to adapt the obligation to indicate the unit price for certain trades of forms of trade, and also to determine that such indication is not necessary for a certain number of products, when it does not provide useful information for consumers;

16. Unchanged

15. 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; whereas this is the case notably when indication of the quantity is not a relevant particular for price comparison purposes, or when different products are marketed in the same packaging;

17. 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; whereas this is the case notably when indication of the quantity is not a relevant particular for price comparison purposes, or when different products are marketed in the same packaging;

16. 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;

17. Whereas trends in distribution methods must be taken into consideration; whereas solutions must be found to permit optimum information of consumers on product prices at the lowest possible marginal cost;

18. Whereas a variable adaptation period should be provided for depending on the economic operators concerned in order to enable them to make the detailed arrangements for indicating unit prices;

19. Whereas particular attention should be paid to the adaptations required in small retail businesses, notably taking into account technological trends and the envisaged timetable for the introduction of the single currency; whereas to this end the Commission shall present an evaluation report on the situation two years before the final deadline for the general application of the mechanism,

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

19. Unchanged

20. Whereas it is therefore essential that before the application of the mechanism, the Commission should draw up, in cooperation with the governments and competent national bodies, an accurate statement of the total costs of the Directive to retail businesses, especially in the small and medium-sized sector;

21. Unchanged

22. Unchanged

HAVE ADOPTED THIS DIRECTIVE

Article 1

The purpose of this Directive is to stipulate indication of the selling price and the price per unit of measurement of products offered by traders to final consumers, so as to improve consumer information and to allow easy comparison of prices, wherever such comparison is relevant.

1. Unchanged

2. The following are excluded from this directive:

- auctions
- private sales.

Article 2

For the purposes of this Directive:

a) "selling price" means the price for a given quantity of the product;

b) "unit price" means the price for one kilogram, one litre, one metre, one square metre or cubic metre 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" means products which are not pre-packaged and/or are not measured or weighed except in the presence of the final consumer.

For the purposes of this Directive:

a) "selling price" means the final price for a given quantity 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" means 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 kilogramme, 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" means products which are not pre-packaged and/or not measured or weighed except in the presence of the final consumer.

Article 3

1. The selling price and the unit price shall be indicated for all products referred to in Article 1, subject to the provisions of Article 6.

2. For products sold in bulk, the unit price must be indicated for all products referred to in Article 1, since the selling price cannot be determined prior to the request expressed by the final consumer.

Article 4

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

2. The selling price and the unit price 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 the quantity declared, in accordance with national and Community provisions, and notably net quantities of products.

1. Unchanged

2. The obligation to indicate the price per unit measurement shall not apply to:
– foodstuffs sold in hotels, cafes, restaurants, public houses, cinemas and theatres, teaching institutions, leisure centres, staff shops, hospitals, canteens and similar establishments,
– itinerant traders,
– products sold in means of transport,
– products sold in vending machines.

3. For products sold in bulk only the unit price must be indicated for all products referred to in Article 1.

4. The above paragraphs shall apply also to any type of advertising in which a price is mentioned.

1. Unchanged

2. Deleted

2. The unit price shall refer to the quantity declared, in accordance with national and Community provisions

Article 5

Member States shall lay down the detailed rules for indicating prices, notably as regards prices applying to quantities that are widely and customarily used, referred to in Article 2(b).

Unchanged

Article 6

1. Member States may waive the obligation to indicate the unit price of products for which such indication would not be meaningful because of the products' nature or purpose, and products for which such indication would not provide the consumer with adequate information or would be liable to create confusion.

1. Member States may waive the obligation to indicate the unit price of products for which such indication is not meaningful because of the products' nature or purpose.

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

2. Deleted

3. With a view to implementing the provisions set out in paragraphs 1 and 2 above, the 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.

2. In the case of non-food products, Member States shall establish a list of the products to which the obligation to indicate the unit price shall remain applicable. This list shall be drawn up in a practical way by using a common nomenclature. The Commission shall provide a framework so that the lists in the various Member States are as consistent as possible in terms of content.

Article 7

Member 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 by 6 June 2001, if the obligation to indicate the unit price from 7 June 1997

Member 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 by six years after publication of this Directive, if

– is likely to constitute a excessive burden for these businesses

or

– is impracticable because of the number of products on sale, the sales area, the nature of the place of sale or specific conditions applicable to certain forms of business, such as certain types of itinerant trade.

Article 8

Member States shall lay down penalties 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 9

Council Directive 79/581/EEC of 19 June 1979, as amended by Council Directive 88/315/EEC of 7 June 1988 and Directive 88/314/EEC of 7 June 1988 shall be repealed with effect from 7 June 1997.

the obligation to indicate the unit price by the date provided for in Article 10(1),

– is likely to constitute a excessive burden for these businesses

or

– is impracticable because of the number of products on sale, the sales area, the nature of the place of sale or specific conditions applicable to certain forms of business.

unchanged

1. In Article 10, first sentence, first line of the Council Directive 79/581/EEC of 19 June 1979, and in the article 10, first sentence, first line of the Council directive 88/314/CEE of 7 June 1988, the words "a period of 9 years" shall be replaced by the words "a period expiring on the date referred to in Article 10(1) of Directive 96/.../EC

2. Council Directive 79/581/EEC of 19 June 1979, as amended by Council Directive 88/315/EEC of 7 June 1988, Council Directive 88/314/EEC of 7 June 1988 and the European Parliament and Council Directive 95/58/EC of 29 November 1995⁷ shall be repealed with effect from the date referred to in Article 10(1).

⁷ OJ No L 299, 12.12.1995, p.11.

Article 10

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 6 June 1997 at the latest. They shall forthwith inform the Commission thereof. The provisions adopted shall be applicable as of 7 June 1997.

2. When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such a reference at the time of their official publication. The procedure for such reference shall be adopted by the Member States.

3. 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. In particular, they shall indicate the rules adopted pursuant to Articles 5, 6 and 7, and any later amendments thereto.

4. Member States shall communicate the provisions governing the penalties provided for in Article 8, and any later amendments thereto.

Article 11

1. The Commission shall, not more than two years after the date referred to in Article 10(1), submit to the European Parliament and the Council an initial report on the application of the provisions of Article 7.

2. The Commission shall, not more than four years after the date referred to in Article 10(1), submit to the European Parliament and the Council a global report on the application of this Directive.

Article 12

This Directive is addressed to the Member States.

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive two years after publication of the Directive at the latest. They shall forthwith inform the Commission thereof. The provisions adopted shall be applicable two years after application of the Directive.

2. Unchanged

3. Unchanged

4. Unchanged

1. Unchanged

2. Unchanged

Unchanged

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