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- page **1** **EDITORIAL**
What type of future is there for consumer law?
Geraint Howells
- page **3** **CONSUMERISM AND THE CITIZEN'S CHARTER**
Philip Rawlings and Chris Willett
This paper argues that the rhetoric of improved standards, information and redress in the *Citizen's Charter* can, when seen in the context of general consumerist concerns, be seen as "empowering"; but that it is much more difficult to establish the more precise levels of empowerment which are intended and will result.
- page **9** **PARALLEL IMPORTS, "FREE RIDERS" AND THE DISTRIBUTION OF MOTOR VEHICLES IN THE EEC: THE ECO SYSTEM/PEUGEOT CASE**
Stavros Petropoulos
This article describes the impact of European competition law on the practice of parallel importing of cars following the *ECO System/Peugeot* case. It notes the privileged position of the parallel importer under European law, but also notes the subtle distinction between the "intermediary" who is protected and the "non-authorized reseller" who is not granted the same protection.
- page **17** **CONSUMER PROTECTION AND ITS INTEGRATION IN COMMUNITY POLICY ON FOOD: GENERAL APPROACH, PRINCIPLES AND EVALUATION**
Nadine Fraselle
One of the most important areas of European Community activity related to the consumer is in the area of food law. However, the technicalities of this area mean that it is frequently an area ignored by many consumer lawyers. Nadine Fraselle outlines the contours of European food law and policy before setting down some principles which she believes should govern this area of Community policy.
- page **27** **REVIEW**
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Citizens Charter Conference at Warwick Law School.
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CONSUMER POLICY
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- page **CS2** European Union: Consumer's Consultative Committee *ALAN DAVIS*
- page **CS2** Malta: Government publishes White Paper on Fair Trading incorporating proposed legislation on consumer affairs and competition *DAVID FABRI*

Time limits are set on all the stages of the procedure. A proposal can be adopted if the Commission, the Council and the Parliament are all in agreement; where there is no agreement, the procedure lasts a maximum of 13 months, calculated from the date of the common position in the Council.

While the Maastricht Treaty has not changed the voting rules, it has extended the use of qualified majority voting to all consumer protection legislation proposed either under Article 100a or the new Article 129a. With this form of voting, Member States have a total of 76 votes between them. Votes are allocated to each country on the basis of their population, but with some adjustment to protect smaller Member States from being dominated by the larger countries.

France	10	Greece	5
Germany	10	Netherlands	5
Italy	10	Portugal	5
United Kingdom	10	Denmark	3
Spain	8	Ireland	3
Belgium	5	Luxembourg	2

Legislation cannot be adopted by a majority of 39 votes but requires at least 54 votes in favour of a proposal. The likely impact of qualified majority voting on consumer policy is not clear, but it will put pressure on Member States to actively seek compromises where previously they might have held out, safe in the knowledge that they could block legislation desired by a majority of Member States.

The first European Consumer Council following the entry into force of the Treaty on European Union was held on November 19. Political agreement on a common position was reached on the proposed directive relating to timeshare contracts (see CS6). The proposed directive on distance selling contracts was discussed informally, and the Commission presented the European Council with a study on cross border payment systems; a Green Paper on guarantees and after sales service; the three year action plan for consumer protection; the two Communications on product labelling; and a Green Paper on access to justice.

Consumer's Consultative Committee

Alan Davis

The Consumers Consultative Committee is comprised of 17 delegates from E.U. Member States and four representatives from each of the European associations: COFACE (family organisations), ETUC (European Trade Union Confederation), BEUC (European Consumers' Organisation) and Euroco-op (co-operatives organisation). The Committee was established to give opinions on Community policy and proposals on behalf of consumers. While 14 opinions were handed down by the Committee last year, only three or four have been produced by December 13 in 1993, due to disagreements between the participating associations. BEUC alleges that the trade union representative and Euroco-op members are more interested in protecting jobs than consumers. ETUC states that consumer-related problems cannot be separated from employment since access to consumer goods is dependent on wages.

The European Commission has decided to introduce proposals to reform the Consumer's Consultative Committee, replacing trade union delegates with representatives of consumer associations linked to trade unions. The Commission is also interested in establishing a new forum for consumers where interested parties, including sectors of industry, can meet and discuss issues and proposals, perhaps under the auspices of the Economic and Social Committee.

MALTA

Government publishes White Paper on Fair Trading, incorporating proposed legislation on consumer affairs and competition

November 1993

**David Fabri
Advocate**

Fair Trading—the next step forward... was the title chosen for a brief and mainly explanatory White Paper published in early November 1993 in which the Government discloses its specific intention to pass two separate bills through Parliament early in the new year. A draft Consumer Affairs Act and a draft Competition Act were appended to the White Paper.

The Consumer Affairs Act shall be the first set of legislative measures to follow the comprehensive legislative proposals contained in a previous White Paper issued in August 1991 under the title Rights for the Consumer. The Bill proposes to introduce the following measures:

- To extend the statutory warranty against hidden defects on the sale of movable items from one month to six months, thereby changing one of the oldest rules emanating from the old Roman law. A purchaser shall now enjoy a longer time in which to try to amicably resolve a dispute with

a seller of a movable item, including cars and domestic appliances, which are a source of numerous complaints. The notion of hidden, or latent, defect remains however unchanged.

- To provide for a Director of Consumer Affairs, whose functions include informing and guiding the public on consumer matters, keeping under review trading practices which directly affect the interests of consumers, suppressing practices detrimental to consumers, and handling and investigating complaints from the public. The Director is empowered to issue public statements and warnings in respect of unfair or detrimental consumer practices without fear of incurring liability.
- To set up a Consumer Affairs Council with responsibility to advise the Minister on the formulation of consumer policy, to monitor the workings of relevant legislation and to register and regulate consumer associations.
- To allow a consumer association registered in accordance with the Act to appear as complainant and to assist in the prosecution of criminal charges instituted against offending traders. A registered association shall be exempted from liability for any public statement or other communication issued to consumers in good faith (defined as meaning not done "recklessly or maliciously").
- To enable the criminal courts which deal with offences under specified consumer legislation to condemn a guilty trader to pay material damages up to 250 Maltese liri (approx. £425) and moral damages up to 100 Maltese liri to the complaining consumer who can prove that he suffered the relevant loss. These represent quite radical changes as moral damages for pain, distress, etc. are unknown to the general private law of Malta; while in strict adherence to the distinction between criminal and civil proceedings, criminal courts are not usually empowered to order the payment of compensation.
- To establish Consumer Claims Tribunals, with competence (only at the consumer's option) in regard to civil claims against traders of up to 250 Maltese liri, and which determine cases brought before them in accordance with equity and "the substantive merits and justice of the case."
- To hold employers (including companies) vicariously responsible for breaches of consumer-related criminal laws and regulations committed by their employees. Again, this is a radical departure from the restrictive *culpa in eligendo* principle enshrined in the Civil Code.

The Competition Act shall seek to promote fair and efficient competitive practices, free from restrictive practices and other distortions. With an eye to Malta's eventual accession to the European Union, the proposals largely reproduce articles 85, 86 and 90 of the Treaty of Rome. The features of the Bill include:

- The regulation of restrictive practices in competition and of abuses of dominant position, with provisions for relative sanctions and remedies.
- The setting up of a new Government department to be called the Competition Office to provide an advisory service to undertakings, to the public and to the Minister in regard to matters dealt with in the Act, and to investigate cases of alleged anti-competitive practices contrary to the Act, which defines the powers to be enjoyed by the Office and its authorised agents in carrying out this role.
- The establishment of a Tribunal of Fair Trading, presided over by a judge, which may determine the existence of restrictive practices, impose penalties for breach of the Act and consider requests for exemptions.

INFORMATION

EUROPEAN UNION

~~Labelling languages: references for the Commission Communications referred to in [1993] Consum. LJ: CS68.~~

~~Alan Davis~~

~~(1) The interpretative Commission communication concerning the use of languages in the marketing of foodstuffs in the light of the judgment in the Peeters case: COM(93) 532 final, November 10, 1993.~~
~~(2) Communication from the Commission to the Council and the European Parliament concerning language use in the information of consumers in the Community: COM(93) 456 final, November 10, 1993.~~