

Procedure file

Basic information	
COS - Procedure on a strategy paper (historic)	2002/2151(COS)
Consumer protection: consequences on the future of the Union policy. Green paper	Procedure completed
Subject 4.60 Consumers' protection in general	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	ENVI Environment, Public Health, Consumer Policy	PSE PATRIE Béatrice	27/03/2002
Council of the European Union	Commission DG	Commissioner	
European Commission	Health and Food Safety		

Key events			
02/10/2001	Non-legislative basic document published	COM(2001)0531	Summary
01/07/2002	Committee referral announced in Parliament		
28/11/2002	Vote in committee		Summary
28/11/2002	Committee report tabled for plenary	A5-0423/2002	
13/03/2003	Decision by Parliament	T5-0101/2003	Summary
13/03/2003	End of procedure in Parliament		
10/03/2004	Final act published in Official Journal		

Technical information	
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Procedure type	COS - Procedure on a strategy paper (historic)
Procedure subtype	Commission strategy paper
Legal basis	Rules of Procedure EP 142
Stage reached in procedure	Procedure completed
Committee dossier	ENVI/5/16414

Documentation gateway					
Non-legislative basic document		COM(2001)0531	02/10/2001	EC	Summary
Document attached to the procedure		COM(2002)0289	11/06/2002	EC	Summary
Committee report tabled for plenary, single reading		A5-0423/2002	28/11/2002	EP	
Text adopted by Parliament, single reading		T5-0101/2003 OJ C 061 10.03.2004, p. 0319-0409 E	13/03/2003	EP	Summary

Consumer protection: consequences on the future of the Union policy. Green paper

PURPOSE : to present a Green Paper on European Union Consumer Protection which aims to open a public debate on the future direction of EU consumer protection. **CONTENT** : the European Commission has adopted a this Green Paper on fair trading practices, addressing the key issues of consumer protection. The Green Paper aims to stimulate a wide debate on options to improve the functioning of the business-to-consumer (B2C) Internal Market. It sets out two main strategic options for the future development of EU regulation of B2C commercial practices. The first option is a strategy based on further harmonisation addressing specific issues and to continue the approach of the last two decades. The second option is based on complementing specific legislative measures with a framework directive covering B2C commercial practices. The paper also seeks views on priority areas for harmonisation and on the various options for a possible framework directive. In addition, it equally sets out options for ensuring and improving enforcement of consumer protection rules. The Commission wants to stimulate a wide debate on options to improve the functioning of the "business-to-consumer" (B2C) Internal Market. While the business-to-business (B2B) Internal Market is fairly well-developed, the potential of B2C Internal Market is not fully realised as indicated by the large divergences in prices of consumer goods between Member States and the limited volume of cross-border shopping. In short, the cross-border offer of consumer goods is insufficient. Consumers lack the confidence to take up the offers that do exist and businesses hesitate to directly offer their goods EU-wide because of the wide differences in national consumer protection rules and the limited scope of EU consumer protection legislation. The existing EU rules are not adequate to the challenge. They cover only a limited number of commercial practices, are often out-dated and lagging behind new market developments, and often designed to address one specific problem consumers were confronted with, such as for example the package travel or timeshare directives. There are many national rules and a wealth of national jurisprudence to protect consumers. The problem lies in their diversity. Consumers do not necessarily have the same rights in one Member State than in another. In addition, there currently is no formal framework for co-operation between the bodies enforcing consumer rights in the Member States. The main choice in the Green Paper is between: - a strategy based on further harmonisation addressing specific issues - a continuation of the past strategy - and - a strategy based on setting out core principles of consumer protection in a framework directive to complement specific legislative measures. The paper also seeks views on priority areas for harmonisation and on the various aspects of the possible framework directive. It also sets out options for ensuring and improving enforcement of consumer protection rules. The Green Paper sets out some ideas for the use of self-regulatory codes, but within a legislative framework. A legal backup to codes of conduct is necessary so that firms who break the rules are punished and consumers can be more certain they are respected. Business organisations that have experience with codes of conduct have said so explicitly themselves. The aim of a framework would be to ensure good practice (either based on fairness or non-misleading practices) in B2C commercial practices. There may be reasons for wanting to regulate these commercial practices in further detail, but that would be outside the scope of a framework directive. For example, a framework directive would not include rules concerning health and safety (like tobacco or alcohol advertising) or decency. Equally it would not aim to cover pure social policy aspects, such as shop opening hours. Practices regulated by national contract law will not be covered, leaving national laws which invalidate a contract or establish rules on redress unaffected. The Commission's recent Green Paper on contract law addresses this. A framework directive would supplement sector specific provisions and apply to aspects which are not regulated by such legislation. This is the central question for consultation. The Green Paper offers a choice between the concepts of "fair commercial practices" or "misleading and deceptive practices". Both concepts have some basis in existing EU law, notably in the misleading advertising directive and the unfair contract terms directive. The concept of fair commercial practices, is broader than the misleading and deceptive practices concept. It covers the principle of good faith in the pre-contractual phase (e.g. disclosure of material information). For the post-contractual phase, it covers unfair and dishonest practices (e.g. those which unfairly deter consumers from switching suppliers would be targeted). The Green Paper on EU consumer protection presents new ideas for the use of self-regulatory codes within a legislative framework. A framework directive establishing EU-wide principles for fair trading practices would be adaptable and responsive to changes in market practices - allowing to tackle new unfair practices, such as those in the online world, quickly. It would however not include rules concerning health and safety (i.e. tobacco or alcohol advertising) or decency, or social policy issues such as shop opening hours. Although a framework could cover all commercial practices, specific legislation may still be needed to regulate specific practices or sectors in more detail. If the second option were chosen; one of the key questions for the consultation would be the scope of the directive. The Green Paper offers a choice between the concepts of "fair commercial practices" or "misleading and deceptive practices". Both concepts have some basis in existing EU law, notably in the misleading advertising Directive and the unfair contract terms Directive. The concept of fair commercial practices is broader than the concept of misleading and deceptive practices. It covers the principle of good faith in the pre-contractual phase, e.g. the disclosure of material information or high-pressure selling techniques. For the post-contractual phase, it covers unfair and dishonest practices, e.g. those practices which unfairly deter consumers from switching suppliers would be targeted. The Green paper also develops ideas for better enforcement of consumer rights in B2C transactions. Currently there is no formal framework for co-operation between the bodies enforcing consumer rights in Member States. Ideas are developed in some detail about setting up a system for co-operation between national consumer protection agencies and bodies to help consumers to get their rights respected abroad. The Commission will organise a hearing and an intensiveconsultation process with consumer and business organisations on the ideas put forward in the Green Paper on EU consumer protection. Further initiatives in this area will be decided in the light of the outcome of the debate.?

Consumer protection: consequences on the future of the Union policy. Green paper

The Green Paper set out a number of options and questions on the future of the regulation and enforcement of consumer protection. It suggested the idea of developing a framework directive on fair commercial practices. It also suggested the development of a legal instrument for cooperation between enforcement authorities. The Green Paper received a wide response from business, consumer organisations and national governments and agencies. The consultation identified a broad consensus along the following lines: -a majority of respondents accept the case for reform of EU consumer protection legislation. The current situation is holding back the internal market for consumers and for business. -a majority of respondents expressing a preference wish to proceed on the basis of a framework directive. -a large majority expressing a preference, endorsed the Commission's idea of developing a legal instrument for cooperation between national enforcement bodies. This communication sets out an action plan for further consultation with the Member States and stakeholders. As a first step, an outline of the issues to be covered in a framework directive is attached in an annex. The paper looks at possible contents of a directive and investigates codes of conduct, non-binding guidance and stakeholder participation. A framework directive should bring about, inter alia: -maximum harmonisation with a high level of consumer protection; -simplification and, where possible, deregulation of existing provisions should be prioritised; -application of the principle of mutual recognition and control by country of origin (Internal Market principles); -on the one hand, legal certainty. On the other, the legislation should be time-proof and technology-neutral as possible, avoiding overly prescriptive rules. -the scope of the legislation should be based on the wider concept of "fair commercial practices" and not only on the narrower concept of "misleading practices." It should also be phrased in terms of actions that are unfair - i.e, an obligation not to trade unfairly rather than a duty to trade fairly. -it should be based on a general clause, which could consist of two core elements: the unfairness of the practice; and a "consumer detriment test." The general clause would have to be substantiated by a number of specific rules (the "fairness/unfairness categories") concerning different stages of the business to consumer relationship. A non-exhaustive list of examples to illustrate the general clause would be drawn up. -possible elements of fairness/unfairness categories include a prohibition on business from engaging in misleading commercial practices, and a duty to disclose to the consumer all material information. The primary focus should be on unfair practices that cause detriment to the interests of consumers as a whole, rather than individual cases, in line with existing practice. Enforcement procedures are discussed. Reactions to the communication should be sent to the Commission no later than 30 September 2002.?

Consumer protection: consequences on the future of the Union policy. Green paper

The committee adopted the report by Béatrice PATRIE (PES, F) on the Green Paper on the future of the EU's consumer protection policy. It wanted common general rules guaranteeing a high level of consumer protection to be adopted as a matter of priority and endorsed the Commission's approach of a general framework directive dealing mainly with practices that cause detriment to consumers, followed by vertical legislation on specific sectors where necessary. It also pointed out that the harmonisation of legislation should not result in a lowering of the level of consumer protection achieved under certain national arrangements. The committee wanted to see a general clause on fairness vis-à-vis the consumer introduced into the framework directive, based on precise and objective criteria in order to avoid differing interpretations in the legislation or case-law of the Member States. These criteria should include the duty to provide consumers with prior information, clearly and visibly displayed, on such aspects as the nature of the goods and services provided, the exact content and origin in the case of foodstuffs, the price in euro (and in local currency in the non-euro zone) inclusive of all taxes, any delivery charges, conditions of withdrawal, exchange or refund, the identity and address and full contact details of the supplier, etc. MEPs also stressed that consumers should be able to request information on production processes, including workers' conditions, without prejudice to justified business secrets. The report also included a number of other recommendations: - certain provisions of existing directives, such as those covering misleading advertising, should be incorporated into the framework directive; - the directive should be accompanied by a non-exhaustive blacklist of practices considered detrimental to consumers' interests, which should be regularly updated with the help of consumer groups in the Member States; - a consumer detriment test should be introduced based on the individual circumstances of the consumer and not on average intelligence, giving particular consideration to the more vulnerable consumers; moreover, any such test should also be an economic test rather than one based on taste or decency; - there should be continuing discussions on new forms of regulation, especially co-regulation since this is based on consultation between business and consumers. However, co-regulation and self-regulation should always be subsidiary to Community rules; - the Community authorities should be responsible for approving any codes of conduct drawn up, and non-compliance with a voluntary commitment arising from membership of a code of conduct thus validated should be viewed as an unfair practice under the framework directive; - the Commission should assess the experience gained through voluntary cooperation (e.g. in the Nordic states) and establish a legal framework and effective scrutiny arrangements for cooperation between the authorities responsible for enforcement in the field of commercial practices; - the Commission should publish and distribute an easy-to-read consumer guide so that consumers can be informed of their rights. ?

Consumer protection: consequences on the future of the Union policy. Green paper

The European Parliament passed a resolution drafted by Beatrice PATRIE (PES, France) on the Commission's Green Paper. (Please refer to the document dated 28/11/02.) Parliament also made some remarks on the concept of unfair behaviour, stating that it should include any commercial behaviour aimed at exploiting temporary or permanent physical or mental vulnerability arising, for example, from the age, infirmity, mental state, or low level of literacy of a consumer or a consumer group. Any commercial behaviour constituting physical or psychological coercion, and in particular harassment or intimidation, the use of threats or force and obstructive behaviour (such as the practice of making it difficult for consumers to change service providers) should also be deemed unfair behaviour. ?