

SWITZERLAND

Annual Report on Consumer Policy Developments 2000

I. Preliminary comments

In 1965, the Federal Council (government) created the Federal Office for Consumer Affairs. This body acts as a link between the federal administration and consumer organisations, business and industry. It is also in charge of the secretariat of the Federal Consumer Affairs Commission, made up of 20 members. The Office analyses consumer policy in Switzerland and abroad, advises on all matters related to consumer policy and provides the public and the media with information on consumer protection.

For more information on the Federal Office for Consumer Affairs, the Federal Consumer Affairs Commission and consumer organisations in Switzerland, please consult Internet site www.consommation.admin.ch (also accessible at www.konsum.admin.ch or www.consumo.admin.ch).

II. Federal acts and orders

- a) Order of 12 April 2000 on electronic certification services (RS 784.103)
http://www.bk.admin.ch/ch/f/rs/c784_103.html

By adopting the order on electronic certification services, the Federal Council took a first step towards recognising digital signatures in Switzerland. As from 1 May 2000, providers of electronic certification services may be accredited to show that they can provide all the necessary technical, administrative and financial guarantees. In a second stage, the Federal Council plans to amend the legislation on the written form so that digital signatures will have the same legal value as written signatures.

- b) The Federal Act of 18 December 1998 on betting games and gaming establishments (RS 935.52)
http://www.bk.admin.ch/ch/f/rs/c935_52.html

This act entered into force on 1 April 2000. It amended the Code of Obligations (<http://www.bk.admin.ch/ch/f/rs/c220.html>) by adding a new Article 515a laying down that debts incurred in betting games in gaming establishments are legally valid provided that they were contracted in a gaming establishment authorised by the competent authorities. This is an exception to the principle laid down in Article 513, which states that debts incurred in games and betting are not legally valid.

- c) The Federal Act of 24 March 2000 on jurisdiction in civil cases (RS 272)
<http://www.bk.admin.ch/ch/f/rs/c272.html>

The referendum deadline having expired without a referendum being requested, the Federal Council decided that this act would enter into force on 1 January 2001. Article 22 of this law lays down that in the event of a dispute concerning a contract concluded with a consumer, the jurisdiction is that in which the domicile or headquarters of one of the parties is located when the action is brought by the consumer, and that in which the domicile of the defendant is located when the action is brought by the supplier. Consumer contracts are defined as contracts involving an ordinary consumer service intended to meet the consumer's personal or family needs and provided by the other party in the course of a professional or commercial activity. Under Article 21, consumers may not waive through prior or

tacit consent their jurisdiction rights provided for under Article 22, as the choice of a jurisdiction may only be decided after the dispute has arisen.

III. The Information Society in Switzerland

The Federal Council has set up an Information Society Co-ordination Group (GCSI) responsible for studying the strategies to be adopted in order to define and respond concretely to the implications of the information revolution in Switzerland. The Office for Consumer Affairs is participating in this initiative and is studying in particular the impact of business-to-business electronic commerce (“B2B”) on consumers. It is drafting a report on the behaviour of Swiss consumers in the field of electronic commerce for the beginning of 2001.

At present, i.e. at the end of 2000, empirical research shows that approximately 20% of the Swiss population have already made an on-line purchase. Most purchases are made from national suppliers. Consumers mainly buy books, musical products and computer tools (software and hardware). Nevertheless, there is still considerable uncertainty regarding the security of transactions and legal protection. Consumer confidence is essential to the development of electronic commerce and must be strengthened through targeted information and recommendations. At the national level, much is being done to achieve this goal, both by promoting voluntary codes of conduct and adopting legislative amendments.

Also see Internet site www.isps.ch.

IV. Federal Consumer Affairs Commission

The Federal Consumer Affairs Commission did not issue any recommendations in 2000.

In a communiqué dated 19 May 2000, the Federal Consumer Affairs Commission supported the liberalisation of the opening hours of stores, subject to the provisions of labour legislation in order to protect the rights of sales staff. It wishes to act as a spokesman for many consumers who would like to have the option of shopping in their favourite stores.

The Commission members reached the conclusion that the opening hours of stores admittedly vary quite considerably across communes and cantons, but that this federalist approach is best suited to taking into account regional particularities. Consequently, for the time being there is no need to seek a solution at the federal level. A growing number of cantons and communes are liberalising opening hours in order to meet the requirements of competition by ensuring that all suppliers are subject to the same conditions, and to adapt to the needs of present-day customers. The problems arising from having workers on call or employing poorly paid auxiliaries are well known and the Commission is not neglecting them, but they can only be solved in the framework of labour legislation.

In a communiqué dated 7 November 2000, the Federal Consumer Affairs Commission expressed its concern over the problems of illness related to “mad cow” disease (BSE). It asked the Federal Council to take the necessary steps to protect consumer health by stepping up information and monitoring. With regard to the prohibition of meat and bone meal, it thought that it would be advisable under the precautionary principle. Nevertheless, it was aware that prohibition might not ensure full security and that Switzerland could not act alone.

The Commission asked the government to require that consumers’ rights to information be enforced. Consumer choice and confidence can only be based on transparency. Lastly, the Commission asked that monitoring be reinforced. Although zero risk is impossible, zero tolerance of abuse in the production,

processing and marketing stages is possible. It is urgent to provide increased resources to reinforce monitoring and hold producers accountable. After the scandals of dioxin and meat treated with growth-promoting hormones, this new episode shows that serious thought should be given to creating an office responsible for investigating fraudulent activities in Switzerland.

V. Issues addressed in 2000

- a) The Federal Consumer Affairs Commission has addressed many issues, such as declarations on the origin of meats, genetic engineering, medicines, sickness insurance, private insurance, energy and electricity, consumer credit, telecommunications and electronic commerce.
- b) At the session of 28 June 2000, the Federal Council examined the final report on the general safety of consumer products and adopted the recommendations of the working group. In its conclusions, the working group stated that the transposition of European Directive 92/59 EEC was not justified at this time since the improvements which it would bring were not proportionate to the actual needs.

The recommendations of the working group steered by the Federal Consumer Affairs Commission were as follows: to extend the scope of existing legislation as required, to create a co-ordinating authority on consumer product safety, to compile data on hazardous consumer products and to create a database on legislation on consumer product safety.

The Federal Council instructed the Federal Department of Economic Affairs (DEA) to co-ordinate the implementation of the proposed recommendations and to report back on the follow-up to its work by the end of 2001.

- c) The Swiss people accepted the bilateral agreements with the European Union on 21 May 2000. These agreements concern the free movement of persons, land transport, air transport, research, agricultural products, government procurement and technical barriers to trade. These agreements must still be ratified by the European Union.
- d) The Federal Council adopted a report on the sale of rights to time-share property on 31 May 2000. This document was prepared in response to a request filed at the end of 1998 asking the Federal Council to provide information on abuses in this field and to indicate the measures that legislators should take to combat them.

In its report, the Federal Council stated that thus far there has been little development of these time-share rights in Switzerland. The best known instance involves companies that, instead of dividends, grant their shareholders the right to spend holidays in a building owned by the company.

The Federal Council is not in a position to confirm whether the complaints so often mentioned by the media, which suggest that this type of use of a building is frequently the source of problems and disputes, are well-founded. The Federal Council considers that criminal law and the federal legislation on unfair competition currently provide sufficient means to combat the few "black sheep" operating in this market.

In its report, the Federal Council also rejected the idea of transposing into Swiss law the EU directive on the purchase of time-share rights. In doing so it reaffirmed its policy, approved by Parliament, of not transposing European consumer protection directives automatically or unnecessarily. However, this does not mean that Swiss nationals who purchase time-share rights in the European Union may not avail themselves of this directive, which in particular gives purchasers the right to withdraw from agreements within 10 days.

Bern, 27 April 2001

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