CONSUMER PROTECTION: AIMS, METHODS, AND TRENDS IN SWEDISH CONSUMER LAW

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1. BACKGROUND

The new marketing and consumer legislation is one of the foremost expressions of pioneering legal development in our times. This applies generally in Western countries which are based on a market-economy system. As is well known, however, the development of law in this field has got under way earlier in some countries than in others, and differences in political set-up, in actual conditions and in national legislative traditions have meant that the development has not taken altogether the same course in all countries. Nevertheless it is probably no exaggeration to say that among the West European states the Scandinavian countries, and in particular Sweden, have to some extent taken the lead in the movement towards expanded consumer legislation. It would therefore seem that the ideas and guiding principles behind Scandinavian consumer law should be of some interest from a comparative point of view, especially as the Scandinavian countries have been actively concerned to press for the adoption of these ways of thought within the framework of international organizations such as the OECD and the Council of Europe and, in the case of Denmark, the Common Market.

In this paper it is not the intention to go into the details of Scandinavian consumer statutes but to deal with a selection of questions which in a general way concern lines of development, principles and problems in the field of consumer protection, attention being focused mainly on Swedish law. The *main topics to be discussed* are the guiding principles in the legal development, the juridical consumer concept, the tasks of consumer protection, the delimitation of the boundaries of what should be regarded as consumer protection, the responsibility for consumer protection and the role of the consumer organizations in this connection, as well as legislation as an instrument for consumer protection and the various types of legislation aimed at protecting the consumer.

The *background* of the new consumer legislation is much the same in the Nordic countries as in other states. Its salient features are generally recognized to be as follows: the increased purchasing power of the consumers; the marked expansion in the supply of goods and services accompanied by a diversification—both real and artificial—of products; the extensive advertising which skilfully exploits various methods of gov-

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erning the preferences of the consumers; the difficulties of the consumers in getting an overall view of the goods and services offered and in evaluating various alternatives in a market where the products tend to be increasingly complicated and diversified in materials and properties; the risks of hazardous products; the widespread use by sellers of unilaterally framed contract conditions which the consumers are in reality unable to influence; the very real difficulties that face consumers in asserting their rights in connection with complaints, etc.

If we probe more deeply, we find that the needs which have produced such a powerful response to the demands for expanded consumer protection are connected above all with changes in the structure of the economy and in the forms of production and distribution—in other words, the development towards large-scale enterprises and mass selling supported by intensive marketing procedures. The weakening of competition in terms of price, performance and quality which is undoubtedly taking place in industry and commerce as a result of the continuing concentration of enterprise has compelled governments to adopt not only legislation on prices and restraint of competition but also corrective legislation which aims at intervening directly for the protection of the consumers in other respects.

Social considerations, too, play a part in what is happening. Nowadays, at least in the Nordic countries, it is considered essential to support the weaker citizens in their capacity of consumers. There exist large groups of consumers who, owing to low incomes, deficient education and knowledge of the market, etc., are less well equipped than the average citizen for their role as consumers and are therefore in special need of protective rules. There is a good deal of truth in the saying that "the poor pay more".[1] They are, for example often dependent on expensive instalment credit, they often lack the means to take advantage of favourable purchase opportunities, they have often less knowledge about the goods offered on the market, and they can be presumed to be less able to see through deceptive or suggestive advertising arguments. In addition to this, they often have little or no knowledge of their private-law rights. It may be added parenthetically that a practical consequence of this state of affairs is that legal writers who discuss the need of various legislative methods for consumer protection should be on their guard against allowing their judgment to be governed directly or indirectly by their own experience and knowledge in their capacity as consumers.

Consumer protection is an area of great fascination from the legal point

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[1] The title of D. Caplovitz's well-known book of 1963.

of view. To a large extent it is virgin soil, inasmuch as uncertainty still prevails as to basic concepts and principles. Thus there would appear to be as yet no definition of the consumer concept that is generally accepted internationally, and there is no agreement as to the scope of the subject consumer protection. Legal scholars are being compelled to develop new principles and juridico-technical concepts and have occasion to view from new aspects many private-law problems which have long been looked upon as more or less traditional. Frequently the most suitable solutions are to be found in combinations of measures which tend to cut across the traditional division into the areas private law, penal law and public law. It is therefore not surprising that the subject is attracting rapidly increasing attention in Nordic legal writing.[2] It seems likely that within a few years market and consumer law[3] will develop into an area of jurisprudence just as popular as is, for example, labour law.

2. THE DEVELOPMENT

It is, of course, true that legislation of a kind that in present-day terminology would clearly be called "consumer-protective" is no novelty in Nordic countries. Thus, as early as the second decade of this century there were introduced mandatory private-law rules which aimed at safeguarding the buyers' interest in instalment transactions. These rules were a result of Nordic legislative cooperation, and the development as a whole was closely associated with the German legislation in this area in the 1890s. Later, mandatory private-law rules for the protection of the weaker party were introduced in many other areas in all of the Nordic countries, e.g. in rent law. Consumer-protective legislation for the control of medicines, food-

[2] Readers are particularly referred to Dahl, "A List of Publications in English, French, and German on Scandinavian Consumer Law", *Nordisk tidsskrift for international ret. Acta Scandinavica Juris Gentium,* 1974–75, pp. 282 ff., and the richly documented book von Hippel, *Verbraucherschutz,* Tübingen 1974. For a discussion in English of Swedish consumer law, see Bernitz in 17 *Sc.St.L.,* pp. 13 ff. (1973), Donald King, *Consumer Protection Experiments in Sweden,* N.J., USA, 1974, Sheldon in *American Journal of Comparative Law,* vol. 22, pp. 17 ff. (1974). For a general survey in English of Swedish consumer law, see *A Review of Consumer Policy in Sweden. 5 Lectures,* published by The National Swedish Board for Consumer Policies, 1975, *Consumer Protection Policy in Sweden,* published by The Federation of Swedish Industries, 1975, and the Swedish and other Scandinavian yearly contributions to the *Annual Reports on Consumer Policy in Member Countries,* published by OECD, Paris. Swedish market and consumer law is treated in my textbooks *Svensk och internationell marknadsrätt,* 2nd ed. Stockholm 1973, *Den nya marknadsföringslagen* (a supplement to the book just mentioned), Stockholm 1976, *Standardavtalsrätt,* 2nd ed. Stockholm 1975.

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[3] On the concept of market law, see footnote 9, p. 32, *infra.*

stuffs, poisons, etc., has also, of course, been in existence for many years. Nevertheless it is true to say that the conscious endeavour on the part of the legislative bodies to build up a body of specifically consumer-protective legislation is a very recent phenomenon, which in the main dates only from the end of the 1960s and the beginning of the 1970s. Earlier, during the 1950s and the greater part of the 1960s, the main interest was directed, in the Nordic region as in other parts of the world, to the type of consumer protection which attacks the problem indirectly through legislation promoting competition and through consumer information, not least in the form of comparative testing of goods and services.

It is marketing legislation which has played a particularly significant role in the development. This subject has attracted considerable attention from the point of view of legal policy, and the radically new concepts adopted in this area have been of importance for consumer protection as a whole. The starting point in this matter has been that for a long time all Nordic countries have had special legislation against unfair competition, modelled on the German statute Gesetz gegen den unlauteren Wettbewerb (UWG), which was adopted in 1909 and is still in force. The Nordic laws have contained rules against misleading advertising, impermissible combined offers, etc., but have mainly been concerned with protecting the interests of competing business enterprises; in practice they have essentially formed a framework within which the organizations of the business community could themselves undertake the necessary sanitary measures. By the end of the 1960s, legislative committees in Denmark, Finland, Norway, and Sweden had prepared in cooperation new legislation against unfair competition which represented a further development on the model of the earlier legislation.

In Sweden, however, it was decided to undertake a radical revision of this draft legislation. Those parts of the draft which concerned marketing were detached in order to form a special Marketing Practices Act. The main aim of this statute, which was introduced in 1970,[4] is to safeguard

[4] On the Marketing Practices Act and its administration, see in English Heurgren in *Consumer Policy in Sweden*, pp. 16 ff., 31 ff., Council of Europe, *Consumer Protection, Reports of the Working Party on Misleading Advertising*, Strasbourg 1972. The text of the Marketing Practices Act and abstracts of rulings given by the Market Court are published in *Marknadsdomstolens avgöranden* (The Decisions of the Market Court) *1971–1973*, Stockholm 1974. In French, see Bernitz in *Revue Internationale de Droit Comparé*, 1974, pp. 543 ff., Graetz in *Annales de la Faculté de Droit de Liège*, 1972, pp. 281 ff., Stenberg in *Revue Internationale de Droit Comparé*, 1974, pp. 577 ff. In German, see Bernitz in *Zeitschrift für das gesamte Handelsrecht und Wirtschaftsrecht* (*ZHR*) 1974, pp. 336 ff., Carsten in *Wirtschaft und Wettbewerb*, 1973, pp. 667 ff., F. Neumeyer in *Gewerblicher Rechtsschutz und Urheberrecht* (*GRUR*). *Internationaler Teil*, 1973, pp. 686 ff. In Swedish, see *Proposition* (Government Bill) 1970 no. 57, 1975/76 no. 34, Bernitz–Modig–Mallmén, *Otillbörlig marknadsföring*, Stockholm 1970, Svensson–Nordin–Stenlund–Ström, *Praktisk marknadsrätt*, Malmö 1975, Bernitz, *Svensk och internationell marknadsrätt*, 2nd ed. 1973, ch. 8, Heurgren in *Sv.J.T.* 1974, pp. 570 ff.

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the consumers' interest in effective protection against improper advertising and marketing measures. In order to ensure an efficient oversight and administration of the new act, a special post of commissioner for consumer affairs was created; this official, the Consumer Ombudsman (*konsumentombudsmannen*—KO), was to have his own staff. As a judicial body for trying cases under the act, as a rule instituted by the Consumer Ombudsman, there was established the Market Court, which also deals with anti-trust cases. The Market Court is a special court of first and last instance, where judges and laymen representing business and consumer interests sit together on the bench. Shortly afterwards the Marketing Practices Act was complemented by another statute, likewise to be implemented by the Consumer Ombudsman and the Market Court, namely the Act Prohibiting Improper Contract Terms (the Contract Terms Act). This act makes it possible to issue injunctions directly against the use of improper contract terms by firms dealing with consumers. The Act represents an interesting legal innovation. It has been dealt with in some detail in my paper "Consumer Protection and Standard Contracts" in *Scandinavian Studies in Law* 1973.[5]

When the Marketing Practices Act was introduced in Sweden in 1970 the other Nordic countries were not ready to take corresponding steps. In Denmark, Finland and Norway there were many who regarded Sweden's action as a defection from the work of Nordic legislative cooperation. Indeed, it cannot be denied that the adoption of the Marketing Practices Act marked the beginning of the scaling down that has been evident during the 1970s of the earlier ambitions of Nordic legislative cooperation to achieve statutes which would have broadly identical texts in all four countries. On the other hand, events have shown that it may also be of value if one of the Nordic countries takes a step before the others in a controversial legislative question and, by embarking on a pioneering statute, provides a body of experience. This has been the case in the field of marketing legislation. Marketing practices legislation similar to the Swedish one has now been introduced in Norway (1972) and Denmark (1975) and has been drafted in Finland (1975). In Norway and Denmark, too, the new statutes are administered in the main by a consumer ombudsman. One difference, however, is that the Norwegian and Danish statutes, unlike the Swedish one, have incorporated the earlier legislation on unfair competition (protection against improper use of trade secrets and against

[5] 17 *Sc.St.L.*, pp. 13 ff. (1973). See also Sheldon in *American Journal of Comparative Law*, vol. 22, pp. 17 ff. In Swedish, see *Proposition* 1971 no. 15, *Generalklausul i förmögenhetsrätten, S.O.U.* 1974: 83, Stockholm 1974 (with summary in English), *Proposition* 1975/76 no. 81, Bernitz, *Standardavtalsrätt*, 2nd ed. Stockholm 1975.

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improper imitation of the marks or products of a competitor, etc.). In Denmark, a control of contract terms corresponding to the Swedish Contract Terms Act has been embodied in the Marketing Practices Act. In Norway, the introduction of legislation on this subject corresponding to the Swedish is being considered. Further, there exist differences which are due to the widening of the scope of the Swedish Marketing Practices Act by rules, adopted in 1975, on the duty to give information and the possibility of prohibiting the marketing of hazardous or obviously unserviceable products (see section 6 below).

Another main feature of the movement to improve the consumer protection has been the introduction of mandatory private-law rules with the aim of securing the legal position of the consumer as purchaser of goods and services, recipient of credit, etc. In 1973 the Swedish Riksdag adopted a special Consumer Sales Act, which contains mandatory rules giving the consumer certain basic rights as a purchaser of which he cannot be deprived by terms of contract.[6] The act is intended as a complement to the general, wholly non-mandatory Sale of Goods Act of 1905. The principal aim of the Consumer Sales Act is to regulate the rights of the individual consumer in cases involving defective goods and goods not delivered at the time agreed. It is particularly directed against a number of types of exemption clauses which earlier were quite common, and in this connection it provides, *inter alia,* rules on the content and legal effects of warranties. It should also be noted that the Consumer Sales Act has been linked up with the Marketing Practices Act through rules which prescribe that sellers and in certain cases also manufacturers shall bear private-law responsibility in relation to the private consumer in respect of any deceptive statements on the nature or use of a commodity that are made on the packaging or in advertising and may be assumed to have influenced the consumer in his purchase. In such a case the commodity is considered to be defective. Side by side with the Consumer Sales Act is a separate Door-to-Door Sales Act of 1970,[7] the main provision of which is that the consumer shall have a week for reconsideration in the case of goods bought by him on credit otherwise than at a fixed selling point, such as a shop.

In Norway, mandatory rules which have more or less the same purport as the Swedish Consumer Sales Act have been introduced into the otherwise non-mandatory Sale of Goods Act as a result of amendments adopted

[6] *Konsumentköplag. S.O.U.* 1972: 28, Stockholm 1972 (committee report, with summary in English), *Proposition* 1973 no. 138, J. Hellner, *Köprätt,* 4th ed., Stockholm 1974, Korkisch in *Rabels Zeitschrift* vol. 37, pp. 755 ff. (1973), with German translation of the Consumer Sales Act.

[7] Council of Europe: *Door-to-Door Sales, Exchange of Information on Legislations and Legislative Activity in the field of door-to-door selling and house canvassing,* Strasbourg 1973.

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in 1974. The same country also has an act of 1972 providing for a period for reconsideration, which corresponds to the Swedish Door-to-Door Sales Act. In Denmark, preliminary proposals for mandatory rules on consumer purchases have been prepared. Door-to-door sales have long been very strictly regulated in Danish law. In Finland a comprehensive legislative proposal on consumer protection was presented in 1975; this will be dealt with later in this paper.

The Nordic legislation on consumer sales does not cover services. At present legislative committees in Sweden and Norway are engaged in drafting general statutes on consumer services, the contents of which will be largely mandatory. This statute, the proposal for which will in Sweden be presented during 1976, is in part a parallel measure to the Consumer Sales Act but aims at a more far-reaching statutory regulation. In the first instance the act will concern consumer contracts for repairs and other work on goods, as well as work on real property other than the erection of residential accommodation. In the somewhat longer run, special legislation on group travel and several other areas within the service sector can be expected. Special mandatory legislation on the building and sale of small residential houses is also being prepared in Sweden.

At present the Swedish Government is giving its consideration to extensive and relatively far-reaching proposals for a mandatory *Consumer Credit Act.*[8] The proposed statute would have a considerably wider scope than earlier legislation on instalment purchases, inasmuch as it would in principle cover all types of consumer credit, including the credit card business. In order to prevent evasion, a special act has been drafted for the regulation of long-term hiring of goods to consumers, e.g. television sets. Under the proposed consumer credit act the credit cost, expressed as effective interest, must always be stated in connection with the marketing of the goods. Reservation of ownership will in principle only be allowed in regard to goods that qualify for secured credit sale, e.g. in practice mainly cars. The idea is that only expensive consumer goods may be reclaimed. Thus in general the present form of instalment purchases with the right to take back the goods would disappear from the consumer scene. In the view of the commission the right to take back the goods acts mainly as an instrument of pressure on the part of the seller in order to extract continued payments, the seller often having very little real interest in getting back the used goods (e.g. used furniture). Other important new features in the

[8] *Konsumentkreditlag m. m., S.O.U.* 1975: 63, Stockholm 1975 (committee report, with summary in English). On present legislation, cf. Council of Europe, *Sales of Movables by Instalment and on Credit in the Member States of the Council of Europe*, Study in Comparative Law prepared by Unidroit, Strasbourg 1970.

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draft legislation are the limitation of the credit period to a maximum of two years and the requirement for a minimum down payment of 25% in the case of credit purchases above a certain amount; the purpose of the last-mentioned provision is to discourage over-hasty decisions to buy. In the business world and also in other quarters the draft legislation has, however, been criticized as being too far-reaching. Most likely some of the proposed provisions will be dropped in the final legislation. To some extent the preparatory work on the measure was a result of Nordic cooperation, but so far no legislative proposals have been produced in the other countries.

In other areas, too, extensive preparatory work is in progress in Sweden. The Insurance Contracts Act is being scrutinized by a special committee which is especially charged with taking into account the protection of consumers in insurance transactions.[9] Special legislation on strict product liability according to the principles governing the law of torts is being considered.[1] It should further be mentioned that in 1976 there has been introduced in the basic Contracts Act of 1915 a general provision concerning the power of courts to modify or set aside unreasonable contract terms in the particular case.[2] This provision is specially intended for application where one of the parties, as consumer or otherwise, occupies a position of inferiority in relation to the other. A similar provision has already been introduced into the Danish Contracts Act and is to be expected in the corresponding Norwegian statute.

In *Finland,* where efforts have been made in responsible quarters to achieve an overall solution that will be adequate from an organizational and a juridico-technical point of view, the Ministry of Justice presented in 1975 a comprehensive and extremely interesting draft of a unitary Consumer Protection Act.[3] The application as a whole is limited to the businessman–consumer relationship and the following areas are dealt with in separate chapters: marketing to the consumers, unreasonable contract terms, the conclusion and adjustment of door-to-door sales and certain other types of contracts, the seller's responsibility for defects in the goods, the manufacturer's product liability, and the handling of consumer complaints. It is proposed that there should be set up in a single connection a consumer ombudsman, a market court, and a council for consumer complaints, as well as a consumer-protection system at the municipal level. The

[9] Cf. J. Hellner in *Festgabe für Hans Möller,* Karlsruhe 1972, pp. 283 ff.

[1] On product liability in Scandinavian law, Dahl in 19 *Sc.St.L.,* pp. 59 ff. (1975).

[2] *Generalklausul i förmögenhetsrätten, S.O.U.* 1974:83, Stockholm 1974 (committee report, with summary in English), *Proposition* 1975/76 no. 81.

[3] *Förslag till konsumentskyddslagstiftning.* Lagstiftningsavdelningens vid justitieministeriet publikation 12/1974 (in Swedish; there exists a more comprehensive version in Finnish).

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drafters have set their sights high and the product of their efforts may be said to weld together counterparts of the various Swedish consumer protection statutes and reform proposals, with certain further additions, within the framework of a single statute. When the draft was circulated for comment, however, it was criticized—sometimes violently—in business circles as being too far-reaching, especially with regard to the rules concerning product liability. Pending the solution of the question of legislation, Finland has for the time being no counterpart to the consumer protection legislation which has emerged during the last few years in the rest of the Nordic region. The Finnish approach of trying to tackle all the problems in a single, all-embracing instrument stands out in clear contrast to the Swedish approach, which has shown a marked tendency to tread the path of partial reforms and has done so with some success.

Although the legislative work has so far gone furthest in Sweden, with Norway as runner-up, it is clear from a comparative point of view that a *Nordic model for consumer-protective legislation* is in process of being evolved. The supervision of marketing and contract terms through a consumer ombudsman, mandatory private-law legislation on selling, services and credits to consumers, as well as the resolving of the bulk of private disputes between businessmen and consumers by complaints tribunals of one kind or another—all these constitute basic common features for this model.

In a broader comparative perspective, one notes in particular a not inconsiderable parallelism with the development in British law. One recognizes especially the resemblances between, on the one hand, the Scandinavian marketing statutes, administered by a consumer ombudsman, and, on the other, the Trade Descriptions Act, the Fair Trading Act and the establishment of the office of a Director General of Fair Trading in the United Kingdom. There are also many similarities between the English Supply of Goods (Implied Terms Act) of 1973 and the Swedish and Norwegian consumer sales legislation, as well as between the Consumer Credit Act of 1974 and the new Swedish Bill on that subject.

3. THE CONSUMER CONCEPT

Like the term marketing, the term consumer is by origin an economic concept. Until recently it was foreign to legal linguistic usage and conceptualization. On the contrary, it was earlier a conscious effort in Nordic private-law legislation to give this legislation so far as possible a general scope. Thus the fundamental Sale of Goods Act of 1905, which has been

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mentioned above and is common to Denmark, Norway and Sweden, comprises all purchases, both commercial and non-commercial. In this respect the new consumer legislation is based on a different basic approach, namely that there is a need for special legislation for the protection of consumers and only consumers. It is therefore necessary to give the term consumer a fixed legal meaning.

From the economic point of view, businessmen, too, are consumers so far as their purchasing activities are concerned; but, having regard to the protective aim of consumer legislation, it has been accepted that the legal consumer concept must be confined to *private persons who acquire goods mainly for their own use* and not for resale or use in business. In other words, it is a matter of what in German is usually called the *Endverbraucher* (ultimate consumer).[4] A consumer concept so delimited is nowadays generally accepted internationally; to some extent it can be traced back to the American Uniform Commercial Code (UCC) which defines consumer goods as goods "used or bought for use primarily for personal, family, or household purposes" (sec. 9–109). In individual cases, however, variations are to be found between the definitions used. A consumer concept which appears surprising to a Nordic lawyer is to be found in the Consumer Protection Charter adopted by the Council of Europe in 1973 as a recommendation; according to this "a consumer is a physical or legal [!] person to whom goods are supplied and services provided for private use".[5]

In Swedish law the most elaborate definition of the term consumer is to be found in the Consumer Sales Act of 1973.[6] This act is, according to sec. 1, para. 1, applicable "where a consumer buys from an entrepreneur goods which are intended mainly for private use and which are sold in the course of the entrepreneur's professional activities". This definition can at present be regarded as providing a basis for the direction followed in Swedish private law. Where consumer services are concerned, it would seem better from a linguistic point of view to say that they are intended for private purposes instead of private use. In the Norwegian Sale of Goods Act, sec. 1 a, after the amendments of 1974 in a corresponding sense, we read of purchases "mainly for the personal use of the purchaser, his household or friends, or otherwise for their personal purposes". Consumer purchase is thus a narrower concept than non-commercial purchase and relates only to sales from an entrepreneur to a consumer. Outside this concept are all

[4] Cf. von Hippel, *Verbraucherschutz*, pp. 1 ff.

[5] On the Consumer Protection Charter, Wasserman in *Journal of World Trade Law*, vol. 8, pp. 112 ff. (1974).

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[6] See Bernitz in *Svensk rätt i omvandling*, Stockholm 1976, pp. 77 ff. with references to Scandinavian literature.

cases where the purchaser is an entrepreneur, a legal person or a person who mainly intends to use the article in his professional activities. Transactions between private persons also as a rule fall outside the concept. Having regard to the circumstances prevailing *inter alia* in the trade in second-hand cars, the Consumer Sales Act has, however, been made applicable where a consumer's purchase from a person other than an entrepreneur is mediated by an entrepreneur as a representative of the seller (sec. 1, para. 2).

A feature that is also of fundamental importance for the scope of consumer protection legislation is the broad unitary *entrepreneur concept* which has been developed in Swedish law. Here the point of departure is that the consumer-protective legislation is applicable in relation to all "undertakings". By entrepreneur is meant here—and also in other modern legislation—anyone who carries on by way of profession an activity of an economic nature, irrespective of whether the activity is directed towards profit or not. As is shown above all by the practice of the Market Court, the entrepreneur concept is a very broad one. It is not necessary that the activity shall be carried on regularly or be the main occupation of the person concerned. It is an important principle that central and local government bodies which carry on business activities are, as well as state and municipal companies, also regarded as entrepreneurs and thus come within the scope of the legislation. On the other hand, if in a certain case an entrepreneur acts as a private person, and thus clearly outside the framework of his professional activity, no entrepreneur–consumer relation exists and the Consumer Sales Act and other consumer legislation will then as a rule not be applicable.

Although a fairly clear consumer concept has thus been evolved, doubtful cases may nevertheless arise. The concept laid down in the Consumer Sales Act and in the explanatory statement introducing the Bill can also prove to be somewhat narrow in certain contexts—a view which was expressed from various quarters when the Bill was circulated for comment. In practice it may prove difficult for an entrepreneur to decide, within the framework of his ordinary rapid sales routines, whether a purchaser is a consumer or not—a matter which according to the Nordic approach depends on the purchaser's intention in buying the goods. The Nordic countries, however, have not thought fit to adopt the English method of delimiting the scope of the legislation on the basis of commodity groups, i.e. restricting its application to what can be regarded as typical consumer goods.[7] It is probable that such a delimitation has been regard-

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[7] For a discussion, see the Danish committee report *Forbrugerkommissionens betænkning III* (no. 738), Copenhagen 1975, pp. 11 ff.

ed as an undesirable curtailment of the scope of consumer protection. In reality, however, the sale to persons other than consumers of what appear to be typical consumer goods normally takes place on standard conditions which fulfil the requirements of consumer legislation. Such an arrangement is also in harmony with commercial realities. In other words, in practice a professional photographer may buy an ordinary camera on the same conditions as an amateur photographer and a carpenter who has set up on his own may buy an ordinary electric drill on the same terms as a "do-it-yourself" consumer. Thus the consumer legislation has *reflex effects* for small entrepreneurs.

In my opinion, however, it is dogmatic to accept only *one* consumer concept. There are differences between different consumer-protective statutes not only as regards their specific protective aim but also as regards their character from the point of view of legal systematics, and this may make it natural to define their areas of application somewhat differently. A parallel can be drawn with the employee concept, which in Swedish law, for example, has a scope which is diversified and which to some extent varies according to the type of legislation involved.[8]

4. THE TASKS OF CONSUMER PROTECTION

A more detailed treatment of the tasks of consumer protection would require considerably more space than is available here; in this paper we shall deal only with some central issues connected with delimitation, aims, priorities and essential subject areas. As already indicated, even as recently as the mid-1960s the main emphasis was still laid, in the Nordic countries as well as others, on supplying consumers directly with information on the quality of goods and services and on prices. However, the consumer information efforts then carried on seem never to have had either the extent or the effects on consumers and producers which in some quarters had, perhaps rather optimistically, been expected. Since the mid-1960s, however, there has been a reorientation towards a more active social consumer policy with broader aims and a broader structure. In Sweden, in connection with the establishment of the Swedish National Board for Consumer Policies in 1972, the Government gave its consideration to *guidelines for the community's consumer policy* and in so doing clarified the tasks of consumer protection in a number of respects.[9]

[8] Cf. F. Schmidt, *Arbetsrätt* II, 2nd ed. Stockholm 1974, pp. 43 ff.

[9] *Proposition* 1972 no. 33, Ag in *Consumer Policy in Sweden*, pp. 5 ff., *Konsumentpolitik – riktlinjer och organisation, S.O.U.* 1971: 37, Stockholm 1971 (committee report, with comprehensive summary in English).

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One of the main questions is what *subject areas* should be comprised in the concepts consumer policy and consumer protection. In this paper we mean by *consumer policy* primarily the active forward-directed policy in the area, whereas the results achieved or intended constitute *consumer protection*. Whether the matter is viewed from one side or the other, it is a problem when trying to draw a dividing line that the greater part of the community's activity and law-making ultimately is aimed at providing the individual citizens, i.e. the consumers, with protective support in various respects. As examples from different fields, we may mention housing, environmental protection, public health, social care and even the fire-fighting services. In the discussion on consumer policy, some have advocated that this policy should have a very wide scope, embracing the total economic situation of the individual households. But if the content of the consumer policy concept is stretched too far, so as to comprise, for example, environmental protection, there is a risk that it will be so weakened as to lose its cohesive function.

The use of the *concept of consumer protection* should be restricted to protection for private citizens, collectively and individually, whenever they appear on the demand side of the market as buyers, orderers or users of goods or services. Given this framework, it is natural that consumer protection should pay special attention to the situation of individual households. A delimitation in accordance with these principles is indeed made in the above-mentioned Swedish guidelines for consumer policy; this, however, as was pointed out, does not mean that consumer aspects cannot be taken into account in connection with other community issues such as environmental or regional policy. It is interesting that in the guidelines it is particularly emphasized that consumer policy should concern itself with various problems associated with the consumer's purchasing and use of goods and services that are offered on the private market or on markets which work along similar lines.[1] This distinction between the exercise of authority by official agencies and pure public service, e.g. the state educational system, on the one hand, and goods and services which are made available *on the market* by private, cooperative or community-owned undertakings, on the other hand, is fundamental for the delimitation of consumer-protective legislation. From a juridico-technical point of view this finds expression in the formulation of the entrepreneur concept touched upon in section 3 above.

Within the framework just indicated, consumer protection covers a broad spectrum of goods and services—everyday goods and consumer

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[1] *Proposition* 1972 no. 33, p. 62.

capital goods such as domestic appliances, cars and boats, repair and maintenance work, private houses and sports cottages, travel and insurance—as well as broader issues such as planning, alternatives and costs for housing, the household and the use of leisure. If we look at the questions which are usually comprised in consumer protection, the conception in Sweden and the other Nordic countries is seen to be close to what has been expressed in the consumer protection charter of the Council of Europe[2] and in the consumer policy programme adopted by the European Communities in April 1975.[3] The Nordic countries, however, have on the whole stopped short of proclaiming protective aims as fundamental rights as has been done in the two European documents referred to. The European approach appears to be somewhat bombastic and to depart to some extent from juridical realities.

As *central subject areas* for consumer protection, mention may be made in particular, apart from the general object of promoting the supply of satisfactory goods and services through investigatory and informational activities, of the following:

- protection against risks of physical injury (life and health) and against obviously unserviceable products,
- protection against improper marketing measures and deficient information,
- protection against one-sided contract terms and risks of economic damage, and
- the provision of effective and easily used possibilities for the consumer to safeguard his rights in the case of dispute.

In the practical consumer-protection work in these large subject areas, one can distinguish some central *bases for priority*, namely the importance of protection both in areas where there exist risks of physical injury or substantial economic risks for the consumers and, more generally, for consumer groups which are weak owing to their inferior economic status, defective education, etc.

Another basic question is the extent to which the *ambitions* of consumer policy intend to influence the economic system. Particularly since the end of the 1960s, critics have emphasized the powerlessness of consumers in today's consumer society and attacked the manipulation to which they are exposed through the product development and marketing techniques of the business world. In its extreme form, this criticism is directed against the

[2] Resolution no. 543, 1973, see *inter alia* Wasserman in *Journal of World Trade Law* 1974, pp. 112 ff.

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[3] Resolution by the Council April 14th, 1975, *Official Journal* no. C 92.

market-economy system as such.[4] The consumer legislation which is in force or is under preparation in Sweden and other Nordic countries and the consumer-protective measures which have been taken in other respects in those areas are not, however, based on such far-reaching ambitions. On the contrary, when for example the Swedish Marketing Practices Act was introduced, special care was devoted to ensuring that the act and its implementation would harmonize with the legislation on competition in general, among other things by making the Market Court an organ for trying cases on restrictive business practices as well as marketing cases.[5] In the Swedish guidelines for consumer policy referred to above, it is expressly stated that this policy is to be carried on in a market-economy system, where decisions concerning products, prices and consumer choice are made by a large number of individuals and under very varying conditions.[6]

However, as has already been pointed out in section 1 above, there are a number of features in the present-day market economy which put the consumer in a disadvantageous position. In line with this, the basic task of consumer protection may be said to be that of supporting the consumers and strengthening the position on the market both of the whole body of consumers and of the individual consumer. This task is accomplished above all through consumer-protective legislation, by setting up consumer bodies which act as spokesmen for the consumer interest in relation to producers and distributors, and by providing information for the consumers. The greater part of the task consists in rectifying undesirable occurrences in connection with the marketing and selling of goods and services to consumers. Thus consumer protection exercises a supervisory and corrective function *within the framework of the market-economy system.*

As a result of this, there exists a close connection with the legislation on prices and restraint of competition, which of course fulfils a corresponding function by combating excessive price rises and promoting competition of a kind favourable to the consumers. As I have explained in another context, there lies behind the legislation on restraint of competition not only a general socioeconomic protective aim but also a direct consumer-protective aim.[7] Consumer policy and competition policy are not opposing

[4] However, this hardly applies to the most observed critic, the American economist J. K. Galbraith, see in particular *The New Industrial State,* 1967.

[5] The Swedish system, with its partial merging of anti-trust and marketing questions and administrative control, has to some extent been inspired by the American Federal Trade Commission Act. Cf. the double functions of the British Director General of Fair Trading.

[6] *Proposition* 1972 no. 33, p. 60.

[7] Bernitz, *Konkurrens och priser i Norden,* Stockholm 1971, pp. 88 ff. On Swedish legislation against restrictive business practices, see e.g. *Guide to Legislation on Restrictive Business Practices,*

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forces; rather, these two aspects of social policy may be said to support each other. It is another matter that in taking up a position on individual legislative questions, for example combined offers in marketing, it may be necessary to weigh against each other general interests of promoting competition and more concrete interests of protection for the consumers. Every effort should, however, be made to ensure that the legislation is made neutral from the point of view of competition. Here it may be pointed out that it is important that consumer-protective legislation should try to prevent less reputable types of entrepreneurs from snatching quick profits or other competitive advantages by resorting to unscrupulous business methods which normally are not applied by respectable enterprises, e.g. obviously incorrect statements about the products in advertising material, reference to palpably unreasonable contract terms or disinclination to entertain justified complaints. The removal of such undesirable phenomena will lead to an increased degree of equality in the competitive conditions obtaining among enterprises.

5. THE RESPONSIBILITY FOR CONSUMER PROTECTION

A matter of fundamental importance for one's conception of the tasks of consumer protection is the question, Who bears the main responsibility? If we regard the issue from an international point of view, it is characteristic of the development in Sweden and the other Nordic countries that there has been such a marked tendency in that area to regard consumer protection as being mainly a *task for the state*. Thus behind the marketing practices legislation there is the principle that the state authorities, to quote the Swedish Bill, should have the primary responsibility for seeing that a good ethical standard is observed in advertising and marketing.[8] As a result of this legislation, a state system, applied in the first hand by the consumer ombudsman, wholly or partly replaced the earlier system whereby the business world itself, both in Sweden and in Norway and Denmark, exercised a disciplinary function in the advertising field.[9] The weakness of this earlier system was, as is often the case with internal control in industry and commerce, above all the difficulty of ensuring that the voluntary commit-

vol. 5, OECD, Paris (also French edition), Bernitz, *Swedish Anti-Trust Law and Resale Price Maintenance*, Stockholm 1964.

[8] *Proposition* 1970 no. 57, p. 59, cf. Strömholm in 15 *Sc.St.L.*, p. 239 f. (1971).

[9] On the former Swedish Council on Business Practice, Strömholm in 15 *Sc.St.L.*, pp. 277 f., 280 f. (1971), Tengelin in *Swedish National Reports to the VIII International Congress of Comparative Law*, Acta Instituti Upsaliensis Iurisprudentiae Comparativae XII, Uppsala 1970.

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ments were respected by the less reputable type of businessmen. The adoption by the public community of the main responsibility for consumer protection has been further marked in other recent legislation. As far as Sweden is concerned, one may point for example to a decision taken by the Riksdag in the spring of 1975 that the municipalities shall be responsible for the building up of local consumer-policy activities, directed towards information, counselling and reporting.[1]

Another feature which is characteristic of Scandinavian conditions is the modest role played by *independent interest organizations* especially concerned with watching over the interests of the citizens as consumers. In other countries one can find examples of relatively important consumer organizations, such as the Consumers Union in the USA and the Consumers' Association in Britain. There is also an international consumer organization, the IOCU (International Organization of Consumers Unions), which among other things arranges conferences and issues publications.[2] An example of other pressure groups is the organization built up by the American lawyer Ralph Nader—who first became known for his devastating criticism of the safety of American cars[3]—which operates on a voluntary basis within a broad spectrum of legal questions concerning consumer protection, environmental protection and the individual's need of legal protection.

As to consumer organizations in Sweden and other Nordic countries, the bodies first to mention in this connection are the consumer cooperative movement and the big trade union organizations, i.e. popular movements with activities going far beyond consumer protection. It is thus above all people attached to these organizations who represent the consumer side on boards, committees, etc., which seek to give special representation for consumers. However, the consumer cooperative movement, which is so strong in the Nordic countries, tends to end up in an intermediate position, inasmuch as it carries on extensive retailing activities in competition with privately-owned trade and, moreover, has a considerable production of certain consumer goods. Against this background, it is obvious that the Nordic countries do not provide fertile soil for the development of a private, all-embracing consumer organization independent of ideological and economic interests in general. On the other hand, it should—generally speaking—be possible for specialist organizations which represent the individual citizens in their capacities of, e.g., home owners, motorists, boat owners, cyclists or enthusiasts for sports or open-air activities to play an

[1] *Proposition* 1975 no. 40.
[2] There is at present no Swedish member of the IOCU.
[3] The well-known book *Unsafe at Any Speed,* 1965.

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active part as consumer organizations within their own special fields to a far greater extent than is usually the case. There are, however, exceptions. Thus in Norway the private organization "Aksjon for Sann Reklame" (Campaign for Truth in Advertising) has played a not insignificant role both in pressing for new legislation and in keeping a watchful eye on the Consumer Ombudsman's implementation of the marketing legislation. In Sweden, however, there is no counterpart to this organization.

6. LEGISLATION AND OTHER MEANS OF CONSUMER PROTECTION

For a lawyer it is natural to view consumer protection mainly from the point of view of legislation and the implementation thereof. It should therefore be emphasized that consumer protection must be seen in a wider perspective. For consumers can be given valuable support in many *other ways than through the making of legal rules,* e.g. through testing and advisory activities as well as through direct contacts between consumer bodies and producers. Nevertheless the part played by legislation appears to be growing increasingly important, as is shown by the development of the last few years in Sweden.

As already indicated, the state or semi-state consumer bodies were, up to the end of the 1960s, mainly concerned with testing, goods description and other forms of informational and advisory activities addressed directly to the consumers. The coming into existence in Sweden in 1970–71 of the Marketing Practices Act and the Credit Terms Act, as well as the creation of the post of Consumer Ombudsman for the implementation of this legislation, constituted the first significant step towards a more active consumer policy. A further step, however, was taken in 1972, when existing bodies for testing, goods description and advisory activities, etc., were merged into a single consumer office, an exclusively state body, the National Swedish Board for Consumer Policies.[4] At the same time there were laid down the guidelines for consumer policy and its implementation which have been touched on in section 4. It is noteworthy that the Board for Consumer Policies was established as an agency entirely independent from the Consumer Ombudsman. Whereas the Consumer Ombudsman was concerned essentially with implementation tasks, the Board was in the main not an organ for implementation. This did not, however, mean that

[4] In addition to the general surveys mentioned in footnote 2, p. 15, *supra,* see e.g. the survey in English in *Konsumentpolitik — riktlinjer och organisation, S.O.U.* 1971: 37, Stockholm 1971, pp. 25 ff.

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the tasks of the Consumer Board were confined to investigatory and informational activities and the like. It was added to the guidelines for the activities of the Board, as an important innovation, that it should actively approach the producer and distributor elements of the market. According to authoritative pronouncements, the Board was to "influence" producers and distributors to adapt their activities to the consumers' needs within the framework of voluntary cooperation in non-formal ways.[5] These pronouncements were formulated in such a manner as to indicate a threat of future legislative measures. Such efforts to put pressure on the producers have indeed occurred to a fairly considerable extent, and as a rule have been received in a compliant spirit by the business community.

At the turn of the years 1974–75, however, the Consumer Board presented to the Government a proposal for the introduction of a product safety act which would make the Board an implementing body and give it necessary means of compulsion with regard to products which are hazardous or unserviceable for their main purpose.[6] Shortly before this, the committee investigating advertising had put forward a proposal that the Consumer Board should be charged with applying new legislation on information in advertising and other kinds of marketing, whereby an entrepreneur could be compelled to give essential consumer information on the properties, use, etc., of goods and services offered by him.[7] This proposal was of great interest from the point of view of principle, above all because it departed from the traditional conception that there existed a built-in opposition between advertising and consumer information and sought to establish positive requirements concerning the contents of advertising with a view to making it more informative.

In the autumn of 1975 the Swedish Government introduced new legislation in the fields which were the subject of the above-mentioned proposals. The uncertainties which had existed in the distribution of jurisdiction between the Consumer Board and the Consumer Ombudsman, as well as the differing opinions of these authorities concerning the most suitable way of formulating new legislation in the area, have led to a decision to merge the two authorities as from July 1, 1976, into a single agency, in which the head of the new Consumer Board will at the same time be Consumer Ombudsman. The new substantive rules on the duty to give information in marketing and on product safety have been formulated as

[5] *Proposition* 1972 no. 33, p. 65.
[6] *Konsumentverkets rapport* 1974 no. 12, Stockholm 1974.
[7] *Reklam V. Information i reklamen. S.O.U.* 1974: 23, Stockholm 1974 (committee report, with comprehensive summary in English and also in French).

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provisions in general terms within the framework of an extended Marketing Act.[8]

Thus the Swedish development shows how legislation implemented by state agencies with access to sanctions against refractory entrepreneurs has increasingly become the primary instrument for consumer protection. In the other Nordic countries the development has not proceeded as far as this, but the main trend is in the same direction.

7. THE MAIN TYPES OF CONSUMER-PROTECTIVE LEGISLATION

It is not possible within the framework of the present paper to give details of the various consumer-protective statutes, beyond what will have emerged from the foregoing, above all the survey of the main lines of the development of the legislation in section 2. It will, however, be of some interest to point to some characteristic features of the construction of this legislation. In doing so we can start by observing that from a systematic point of view one can clearly distinguish three main types of consumer protective legislation, namely those which are of a market-law, a private-law and a procedural-law character.

By *market-law* legislation is to be understood, as I have explained in another connection, those rules *which regulate the carrying on of business activities and the actions of enterprises on the market.*[9] It is a matter of rules of a prohibitory or enjoining type which aim at giving directives for the conduct of firms. In Sweden the basic market-law statutes are the Restrictive Trade Practices Act, the Marketing Act and the Contract Terms Act. The term market law appears in this connection to be accepted by the agencies concerned; in *travaux préparatoires,* however, the term economic law is generally used. Side by side with the general market-law statutes just mentioned, which broadly speaking apply to the market as a whole irrespective of sector, there is also a body of special market-law legislation directed towards consumer protection, e.g. the Foodstuffs Act.

By *private-law* consumer-protective legislation is to be understood such

[8] An English translation of the Act with explanatory text is to be published as part of the Swedish report to the 1975 *Annual Reports on Consumer Policy in Member Countries,* OECD, Paris 1976. On the new Marketing Act, see particularly *Proposition* 1975/76 no. 34, Bernitz, *Den nya marknadsföringslagen,* Stockholm 1976.

[9] On the concept of market law in general, see Bernitz in *Revue Trimestrielle de Droit Commercial* 1971, pp. 1 ff. (also in *International Conference on Monopolies, Mergers, and Restrictive Practices. Papers and Reports,* Cambridge 1969, published 1971 by the Department of Trade and Industry, United Kingdom, pp. 71 ff.).

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purely private-law legislation as provides rules directly for *individual transactions* on the market (e.g. sales) between entrepreneurs and the individual consumer. Typical examples in Sweden are the Consumer Sales Act and the Door-to-Door Sales Act and the now awaited Consumer Services Act, all of which are dealt with in section 2. Here it is a question of rules which are mandatory in favour of the consumer and which above all regulate contract-law questions. Another technique is represented by the provision in general terms which has been introduced in the basic Contracts Act and which opens up a general possibility of adjusting contract terms which are unreasonable. The private-law consumer-protective legislation, which, of course, directly affects the rights and duties of individuals, is implemented by the ordinary courts.

The relationship between the market-law and the private-law legislation can be described by saying that the latter regulates the individual transactions which are undertaken within the general framework of the entrepreneurs' freedom of trading and the assumptions concerning competition which are set by the former. It is obvious, however, that there is a great deal of interplay between the two types of rules. For example, the Consumer Ombudsman can, with the aid of the Marketing Practices Act and the Contract Terms Act ensure that entrepreneurs are observing the Door-to-Door Sales Act.[1] The private-law responsibility for advertising which is regulated in the Consumer Sales Act is closely associated with the principles of the Marketing Practices Act. The standards of evaluation which are the foundation for the Contract Terms Act derive from the rules of private law. The recently submitted draft of a Consumer Credit Act, which essentially is of private-law character, embraces certain market-law rules, *inter alia* those concerning information about credit costs.

The *procedural-law* consumer-protective legislation has as yet a less clear profile in the Nordic countries. To this category belongs such legislation as is intended to make it easier on the procedural plane for the consumers to assert their rights. In Sweden we may mention above all the Act on Simplified Judicial Procedure, a statute of 1974 on procedure in cases concerning disputes involving small claims, as well as the new Legal Aid Act of 1972. Neither of these, however, is confined to the consumer area. On the other hand, a special connection exists inasmuch as the Act on Simplified Procedure is applicable, even where the value at issue exceeds the normal limit, if the dispute mainly concerns a question which has been dealt with by the Public Complaints Council.

The Public Complaints Council, which administratively is partly coordi-

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[1] Bernitz in 17 *Sc.St.L.*, pp. 45 ff. (1973).

nated with the Consumer Board, examines disputes between consumers and entrepreneurs concerning goods and services.[2] When the Council is considering a dispute, the chair is taken by a judge and in addition there are equal numbers of persons acting as general representatives of producer and consumer interests. Its decisions have the character of recommendations, but the Act on Simplified Procedure opens up a way for the consumer to secure an enforceable judgment on the basis of such a decision. The forms of activities carried on by the Complaints Council have, like its legal status, a provisional look, which in the long run seems scarcely compatible with the extent and importance of its activities (6,000 cases in 1974). On the other hand, the number of consumer cases tried in the courts is small. However, to deal with the disputes there would in many situations appear to offer advantages in comparison with the procedure in the Public Complaints Council, if one takes into account such factors as local connections, oral procedure and enforceability. The advantages of the Council, on the other hand, are, by reason of its access to technical expertise, especially evident in disputes where it is necessary to assess the quality or defects of a commodity or a service.

In Norway there exists a complaints machinery rather similar to that in Sweden. The same is also true of Denmark and, to some extent, of Finland. It is interesting that in Denmark in 1975 special legislation was adopted for the establishment of a general complaints council under state aegis.

The fact that so few consumer cases are heard in the courts is striking. Cases where the consumer is the original plaintiff are particularly rare. Thus in Sweden it is still scarcely possible to point to any case law with regard to the Door-to-Door Sales Act or the Consumer Sales Act. The whole system of consumer-protective legislation based on private law which has already been introduced or is being prepared runs the risk of being stultified unless it is developed further through judicial practice.

It is a disadvantage that Swedish judicial procedure is marked by rigidity when it comes to the handling of cases where many private persons wish to put forward claims against the same respondent, on the basis of similar circumstances. We lack a system for collective suing which could be compared to the American "class action". One possibility would seem to be to give the Consumer Ombudsman powers to sue on behalf of consumers in civil cases involving matters of principle.[3]

[2] Tranell in *Consumer Policy in Sweden*, pp. 42 ff. and in *Sv.J.T.* 1975, pp. 15 ff.

[3] A Swedish legislative committee, appointed in 1976, is now studying the future organization of the consumer complaints procedure, and also the possibility of giving the Consumer Ombudsman the powers mentioned.

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8. CONCLUSION

As will have appeared from the foregoing, consumer protection in the Nordic countries is increasingly looked upon as a task for the state and to some extent the municipalities, a task which is performed primarily through legislation. There seems no doubt that the consumer-protective legislation is on the whole well accepted. (A reservation must be made, however, in the case of Finland, where, as mentioned in section 2, ambitious legislative proposals exist but where no new consumer-protective legislation has yet reached the statute book.) A large part of this legislation is based on what had already come to be accepted as good practice or fundamental, albeit non-mandatory, legal principles. What is new in this connection is above all the creation of special agencies and the system of sanctions to carry through these principles. The legislation recently introduced in Sweden on product safety and the duty of information in advertising does, however, imply a definite advancing of consumer positions.

It is a mistake to regard consumer protection as being essentially directed only against "rogue enterprises" and other excrescences in industry and commerce. Consumer protection is of great and so far as can be judged increasing importance for well-conducted firms as well. Thus one can point to the fact that foreign enterprises with subsidiaries or agents in Nordic countries have been compelled to adapt their activities to Nordic standards—which from an international perspective are high—in the field of consumer protection, e.g. with regard to advertising and the framing of warranties. As a whole, consumer protection has rapidly acquired considerable strength. Broadly speaking, it is faithfully implemented in business circles. For this result it has undoubtedly been of importance that it has as a rule proved possible to carry through the legislative measures—even where these were at first received with scepticism in certain quarters—with a fairly high degree of consensus. It is, however, a problem to drive home to the *consumers,* by information activities, the existence and meaning of the legislation in such a way that they will be prepared to assert their rights.[4]

What has been said above about the attitude of the business world is of great importance for the implementation of the laws. It is characteristic that negotiations and agreements play a great part. Thus, where the implementation of the market-law legislation is concerned, the main emphasis, both in Sweden and Norway, is in practice laid on negotiations

[4] This problem was discussed at the 27 *Nordiska Juristmötet* (27th Conference of Scandinavian Lawyers), Reykjavik 1975 on the basis of the printed report by Ag, *Allmänhetens behov av rättsinformation.*

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with business firms and trade organizations as well as on the guidelines for evaluation which have been made public by the agencies concerned.[5] In many ways this works for smoothness, but it should always be remembered that so-called voluntary settlements in reality take place under the shadow of the legislation. A fact of great importance for the large measure of cooperation shown by firms in relation to the Consumer Board and the Consumer Ombudsman is undoubtedly the pressure exerted by a press which is as a rule favourable to consumer protection. The fear of negative publicity is an ever-present reality for business enterprises, not least perhaps in small countries with a homogeneous structure.

From a comparative point of view, it would further seem to be characteristic that those framing the consumer-protective legislation have set about their task in a rather unconventional way and have adapted the juridico-technical solutions to economic and social realities and to arguments about ends and means. According to traditional systematics, sales law, for example, has of course always been considered a central part of private law whereas rules on advertising, product control, etc., have been regarded as independent special legislation. Under the new approach, on the other hand, an overall view is taken, as in business economics, of product development, advertising, contract terms used, the actual selling to or ordering by an individual consumer and possible ensuing complaints as being closely connected and consecutive parts in a marketing process. The new approach leads forward to an integrated *market and consumer law,* where administrative control and purely private-law rules will be woven together into a system which functions as a whole.

[5] In *Proposition* 1975/76 no. 34 the responsible minister clearly states that the Consumer Board and the Consumer Ombudsman should primarily work through negotiations when applying the new Marketing Act.

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