

Consumer Legislation in the EC Countries

Consumer Legislation in France

J. Calais-Auloy H. Bricks

M.-T. Calais-Auloy J. Maury

F. Steinmetz H. Temple

Consumer Legislation in France

A study prepared for the EC Commission

by

J. Calais-Auloy, *Professor*

with the collaboration of

H. Bricks, *Lecturer*

M.-Th. Calais-Auloy, *Senior Lecturer*

J. Maury, *Professor*

F. Steinmetz, *Senior Lecturer*

H. Temple, *Senior Lecturer*

Centre for Consumer Law, Montpellier University

Translated from the French by

Michael Corkery

Solicitor of the Irish Courts Cork, Ireland



VAN NOSTRAND REINHOLD COMPANY

New York — Cincinnati — Toronto — London — Melbourne

© 1981, Van Nostrand Reinhold Co. Ltd.

All rights reserved. No part of this work covered by the copyright hereon may be reproduced or used in any form or by any means — graphic, electronic, or mechanical, including photocopying, recording, taping, or information storage or retrieval systems — without the written permission of the publishers

**Published by Van Nostrand Reinhold Company Ltd.,
Molly Millars Lane, Wokingham, Berkshire, England**

in association with

*Hermann Luchterhand Verlag, 5450 Neuwied 1, Heddesdorfer Strasse 31, Postfach 1780,
W. Germany*

*Samson Uitgeverij bv, Wilhelminalaan 12, Postbus 4, 2400 MA Alphen aan den Rijn,
The Netherlands*

*Published in 1981 by Van Nostrand Reinhold Company,
135 West 50th Street, New York, NY 10020, USA*

*Van Nostrand Reinhold Limited,
1410 Birchmount Road, Scarborough, Ontario, M1P 2E7,
Canada*

*Van Nostrand Reinhold Australia Pty. Limited,
17 Queen Street, Mitcham, Victoria 3132, Australia*

Library of Congress Cataloging in Publication Data

Calais-Auloy, Jean.

Consumer legislation in France.

Includes bibliographical references and index.

1. Consumer protection—Law and legislation—France.

I. Commission of the European Communities.

II. Title. Law 343.44'071 80-22473

ISBN 0-442-30415-3

Printed and bound in Great Britain
at The Pitman Press, Bath

Contents

Chapter 1	General Remarks on Consumer Protection	<i>J. Calais-Auloy</i>	1
I	Consumer protection bodies		2
1	Private (civil) law bodies		2
(a)	Consumer cooperatives		2
(b)	Consumer associations		2
(aa)	List of associations		3
(bb)	Structure of associations		3
(cc)	Sources of finance		4
2	Agencies in public law		4
(a)	Governmental		4
(b)	Consultative		5
(c)	The National Institute for Consumer Affairs		6
II	Consumer law		6
1	Existing rules		7
(a)	The main sources		7
(b)	Definition of consumer		8
2	Concerted practices		9
(a)	Initiatives within professional bodies		9
(b)	Cooperation between professional bodies and consumers		10
Notes			10
Chapter 2	Goods and Services	<i>H. Temple</i>	12
I	Supervision of enterprises providing goods or services		12
1	Private control		13
2	Public control		13
(a)	The system of the compulsory advance notice		14
(b)	The system of advance authorisation		15
II	Quality and safety of goods and services		16
1	Rules common to goods and services		16
(a)	Standardisation		16
(b)	Binding provisions		17
2	Rules relating to products only		19
(a)	Rules relating to all goods		19
(b)	Rules relating to food products		20
(c)	Rules relating to products other than food products		22
3	Rules relating to services only		23

	(a) Concerted action	23
	(b) Binding rules	24
III	Common law remedies	25
	1 Avoidance of an agreement	26
	(a) Nullity	26
	(b) Rescission	26
	(c) Termination	26
	2 Performance of the contract	27
	(a) Performance of a contract by the supplier of goods and services	27
	(b) Performance by a third party	28
	3 The responsibility of the enterprise	28
	(a) Responsibility in the case of goods	28
	(b) Liability for services	30
Notes		30

Chapter 3	Prices	<i>F. Steinmetz</i>	40
I	Direct action on prices: price control		40
	1 The scope of price control		41
	(a) The principle		41
	(aa) Ratione loci		41
	(bb) Ratione materiae		41
	(b) Exceptions		42
	(aa) The price of buildings		42
	(bb) Other exceptions		43
	2 Controlled procedures		44
	(a) Form		44
	(aa) Competent authorities		44
	(bb) Procedure		44
	(cc) Litigation arising out of decisions on prices		45
	(b) Substance		46
	(aa) Price fixing		46
	(bb) Official notice of prices		47
	3 Sanctions in price regulations		48
	(a) Criminal law sanctions		49
	(aa) Offences: Arts. 35 and 36 of Ordinance 1483		49
	(bb) Proceedings and penalties		49
	(b) Civil sanctions		50
	(aa) The contract		50
	(bb) Civil action		51
II	Indirect action on prices		51
	1 Prohibition of minimum price		51
	(a) Constituent elements of the offence		51
	(aa) The imposition of minimum price or minimum profit margin		51
	(bb) The use of a prohibited price fixing mechanism		52
	2 The offence of altering prices and illegal speculation		53
	(a) Prohibited practices		53

(aa)	Sought after ends	53
(bb)	The means of committing the offence	54
(b)	Proceedings and penalties	54
3	Prohibited agreements, abuse of a dominant position and unlawful concentrations	55
(a)	Prohibited agreements and abuse of dominant positions	55
(aa)	Prohibited practices	55
(bb)	Proceedings and sanctions	56
(b)	The control of economic concentration	57
(aa)	Controlled operations	57
(bb)	Proceedings and sanctions	57
	Conclusion	58
Notes		58

Chapter 4	Advertising	<i>J. Calais-Auloy</i>	61
I	Internal discipline in advertising		61
1	Codes of conduct		61
2	Professional bodies		62
(a)	Bureau de vérification de la publicité (BVP)		62
(b)	Régie française de publicité (RFP)		63
(c)	Other bodies		63
II	False and damaging advertising		63
1	Action taken by competitors		63
2	Action taken by consumers		65
II	Deceptive advertising		65
1	Constituents of deceitful advertising		66
(a)	The existence of advertising		66
(b)	Falsity in advertising		66
(c)	Subject matter of the deceit		67
(d)	Intent of the advertiser		68
2	Prohibiting misleading advertising		69
(a)	Offenders		69
(b)	Prosecutions		70
(c)	Sanctions		70
3	Conclusion		71
IV	Specially regulated advertising		71
1	Specific regulations to avoid deceit		72
(a)	Deceitful advertising of prices		72
(b)	Deceitful advertising of some products		72
(c)	Deceitful advertising of certain services		73
2	Special regulations to reduce consumption		74
(a)	Reasons of public health		74
(b)	Economic reasons		75
Notes			75

Chapter 5	Consumer Information	<i>J. Calais-Auloy</i>	81
I	Information provided by suppliers		81
1	Obligatory information		81

(a)	Information made obligatory by general principles of law	82
(b)	Information made obligatory by particular laws	83
2	Information freely given	85
(a)	Voluntary information in the private sector	86
(b)	Voluntary information in the public sector	88
II	Information provided by consumer organisations	88
1	Methods of providing information	88
(a)	Collective information	89
(b)	Information to individuals	90
2	Information checks	90
(a)	Checks preceding dissemination	90
(b)	Post-publication checks	91

Notes		93
-------	--	----

Chapter 6	Marketing Methods	<i>J. Calais-Auloy</i>	98
I	Regulations protecting mainly the consumer		98
1	Pyramid selling		98
(a)	Definition of the offence of pyramid selling		99
(b)	Prohibition of pyramid selling		100
2	Unsolicited postal sales		100
(a)	Definition of the offence		100
(b)	Prohibition of the offence		101
3	Door to door sales		101
(a)	Door to door sales regulated by the Act of 22 December 1972		102
(aa)	Definition of such sales		102
(bb)	Contents of the regulation		102
(cc)	Sanctions		103
(dd)	Assessment of the 1972 Act		103
(b)	Door to door sales not governed by the Act of 22 December 1972		104
(aa)	Door to door sales governed by specific regulations		104
(bb)	Unregulated door to door selling		104
(c)	The offence of 'taking advantage'		105
II	Regulations mainly for the protection of competitors		105
1	Price reduction		106
(a)	Clearance sales, winding up sales and displays		106
(aa)	Scope of application of the regulation		106
(bb)	Provisions of the regulation		107
(b)	Loss leaders		107
(c)	Direct sales		108
2	Benefits in kind		108
(a)	Free bonuses		109
(aa)	Prohibited bonuses		109
(bb)	Permitted bonuses		110
(b)	Presents		110

(c)	Lotteries	110
3	Large outlets	111
(a)	Growth of large outlets	112
(b)	Maintenance of competition	112

Notes		113
-------	--	-----

Chapter 7	Offending Clauses	<i>H. Bricks</i>	117
(a)	Offending clauses at the drafting stage of contract		117
(aa)	The drafting of the contract		117
(bb)	Terms of the contract		117
(cc)	Price		117
(b)	Terms relating to performance		118
(aa)	Delivery		118
(bb)	Guarantee against hidden vices		118
(c)	Terms regarding non-performance and disputes		118
I	Inadequacy of general principles of law to protect against offending terms		119
1	Protection against all offending terms		119
(a)	Assessment of consent		120
(aa)	Existence of consent		120
(bb)	Validity of consent		120
(b)	French positive law and the content of contracts		121
(aa)	The power of the courts to assess the content of agreements		122
(bb)	No general principle governing assessment of consideration in contract		122
(cc)	The case for a system of assessment of contractual obligations		122
2	Protection relative to particular abusive clauses		123
(a)	Contractual terms allocating obligations		123
(aa)	Terms designed to reduce the supplier's obligations		123
(bb)	Terms having the effect of increasing consumer obligation		125
(b)	Terms providing for nonperformance by one party		127
(aa)	Nonperformance and rescission provided for in contract		127
(bb)	Penalty for nonperformance provided by contract		128
(cc)	Terms discouraging recourse to the courts		129
II	The need for specific protective measures		130
1	Regulation		131
(a)	Existing legislation on specific contracts		131
(aa)	Door to door sales		131
(bb)	Credit transactions		132
(b)	Information and protection of consumers of goods and services		133
2	Consultation		135

(a)	Existing consultation	135
(aa)	Standard form contracts of motor car manufacturers	135
(bb)	The X 50 contract	136
(b)	The way forward	137

Notes		138
-------	--	-----

Chapter 8 Consumer Credit *M.-T. Calais-Auloy* 140

I	General rules on credit agreements	142
1	Advance information for the consumer	142
(a)	Advertising	143
(b)	Advance offer	143
2	Execution of the contract	144
(a)	Mutual consent	145
(b)	The borrower's right of withdrawal	146
3	Performance of the contract	147
(a)	Prohibition of bills of exchange and promissory notes	148
(b)	The option to grant a period of grace	148
(c)	Limitation of penalty clauses	149
(d)	Competence of the lower courts regarding disputes and summary proceedings	151
II	Interdependence of contracts for sale and loan agreement in a tied loan	151
1	The loan conditional upon the sale	152
(a)	Borrower's obligations suspended pending delivery	152
(b)	Litigation and the loan agreement	153
2	The contract for sale conditional upon the loan	154
(a)	Prior to acceptance of the advance offer	155
(b)	After acceptance of the advance offer	155
III	The cost of credit	157
1	The concept of comprehensive rate	157
2	The offence of usury	158
IV	Special rules governing credit transactions	159
1	Content of the regulation	159
(a)	Criminal sanctions	160
(b)	Civil sanctions	161
2	Scope of the regulation	161
Notes		162

Chapter 9 Judicial and Extrajudicial Consumer Protection *J. Maury* 166

I	Extrajudicial procedures	167
1	Boite postale 5000	167
2	Conciliation bodies	169
(a)	Conciliation commissions	169
(b)	The conciliators	172
(c)	The mediator	173
II	The setting up of judicial protections	174
1	Use of existing procedures	174

(a)	Civil action within the criminal jurisdiction	174
(b)	New rules on territorial competence	175
(c)	Summary proceedings	176
2	Civil action by consumer associations	177
(a)	The conferring of capacity	178
(b)	Institution of legal proceedings	179
(c)	Effective use of civil action by consumer associations	181
(aa)	The lodgement requirement and the cost of proceedings	182
(bb)	The relative inadequacy of sanctions	183
(cc)	The secretiveness of officialdom	183

<i>Index</i>		188
--------------	--	-----

General Remarks on Consumer Protection

Consumers are not a social class. When we speak of consumerism, we speak of an activity in which we engage as when we provide ourselves with food, clothing and shelter, when we furnish a house, buy a car, insure it, travel: these and a host of other acts are consumer acts. They are at the end of the economic line, where wealth ceases to produce more wealth and is used instead to satisfy personal needs.

Until the mid-20th century, the production and distribution of wealth alone were deemed worthy of study and both lawyers and economists left consumption to languish in the shade. Was it not enough to be aware that the economic system, based on free competition, guaranteed the consumer all he could possibly want, giving him top quality at keenest prices? Man the producer and man the distributor — the shopkeeper, the artisan, the farmer, the wage earner — was, by and large, well protected while man the consumer was for the most part left to his own devices.

Only in the 1950s, were the hazards to which the consumer is prey catalogued in France for the first time and one must remember that this was at a time of unprecedented economic development, providing an ever increasing array of goods and services for the consumer. But the period was also marked by the growth of the size of enterprises, the increasing sophistication of their products and the growing effectiveness of advertising. Hence the roots of inequality between the economic partners: the enterprises and suppliers gaining the upper hand with the consumer in a position of weakness. In fact, the consumer, while admittedly a beneficiary of economic development, tended more and more to become a puppet manipulated by the marketing experts. He was, at once, master and slave in the 'consumer society' which populated the developed countries, the problem being at its most serious for those making up the weaker sections of the community.

There were those who took the view that the system was fundamentally evil and that only a revolution, a radical upheaval, could better the lot of its victims. The French however are, for the most part, reformists and, rather than discard the system completely, their purpose was to eradicate the inequalities to which the system gave rise. Just as the wrongs from which wage earners suffered were remedied, from the 19th century onwards, by the growth of trade unionism and labour law, so now the wrongs inflicted on consumers are, since the 1950s, giving rise to the development of defence mechanisms.

Consumer protection is guaranteed mainly in two ways. On the one hand,

more and more consumer bodies are coming to the aid of the consumer and on the other a new branch of law, consumer law, is growing apace.

I CONSUMER PROTECTION BODIES

These owe their origins primarily to the consumers themselves, who, in their own defence, came together and so created bodies recognised in private (civil) law. Later the State set up protected bodies in the public law section.

1 Private (civil) law bodies

The private (civil) law body, which exists to protect the interests of consumers, is divided into two categories: cooperatives and associations.

(a) Consumer cooperatives

These are groups of consumers who have come together to serve a purpose normally served by capitalist enterprises. The cooperative sells to its members the goods which it buys, and, being non-profit making, generally sells at a keener price. The cooperatives are, in a sense, the forerunners of the consumer protection movement in that they were to be found in France from the second half of the 19th century onwards. Their role in the retail trade, although very much more restricted than that of capitalist enterprises, was none the less a force to be reckoned with. The highest turnover among consumer cooperatives was realised in the 'COOP' shops.

The cooperatives are registered as companies, generally public companies with variable capital. Their position in law is complex, since they are governed by a veritable welter of statutes which at times contradict one another¹.

Consumer cooperatives in France have lost their pristine purity, and, in two ways in particular, have taken on some of the characteristics of capitalist enterprises. First the 'coop' shops sell to all comers, members or not. This fact, which is recognised by law, is a watering down of the exclusivity principle which is a hallmark of the cooperative system and leads cooperatives towards the employment of marketing techniques which, to all intents and purposes, are identical with those used by capitalist enterprises. Then, in addition, cooperatives have for the most part grown to such dimensions that the general meeting has no longer any meaningful role to play and all power lies in the hands of a small number of directors, just as is the case with large joint stock companies.

Hence consumer cooperatives find themselves in an ambiguous situation: being simultaneously consumer protection bodies and enterprises against which the consumer must protect himself. Cooperatives in France are not endowed with representative capacity such as is accorded to consumer associations, particularly in the matter of taking court actions (see Chapter 9). Only those associations formed by consumer cooperatives are akin to consumer associations.

(b) Consumer associations

Associations enjoy enormous popularity in France, being adapted, as they

are, to the defence of all kinds of collective interests, from those of rod fishermen to those of the captains of the steel industry. There is, in fact, in recent years, evidence of a strong movement towards associating on the part of individual citizens, a movement which underlines their need to participate in the social, economic and cultural life of their country, through channels other than those of impersonal State agencies².

It is in this atmosphere that consumer associations grew up.

(aa) *List of associations.* Consumer associations in France are many and varied. However, from among their number, the Union fédérale des Consommateurs (UFC) deserves special mention in that it stands alone, above and beyond the blandishments and threats of outside influences whether from politicians or trade unionists and exists solely for the defence of consumers. Founded in 1951, it is now established virtually all over the country. The magazine *Que Choisir?* is its official organ.

There are other associations which are concerned with the protection of consumer interests but only as part of a wider range of purposes, among them the following:

- Union féminine civique et sociale (UFCS) which sets itself the task of 'studying common problems of a social, civil, cultural, familial and economic nature, particularly those affecting the lives of consumers'.

- Various family associations, grouped together at provincial (UDAF) and national (UNAF) level: these take the view that consumer affairs are inextricably intertwined with all facets of daily and family life;

- The Confederation syndicale du cadre de vie (CSCV), being a grouping founded in 1976 and based on the Association populaires familiales (APF). The purpose of this grouping is to defend the worker outside the work context. It is frankly political and sees its role as part of the class struggle.

Finally, there are those associations which, although consumer protection is their sole purpose, nonetheless are heavily dependent on other organizations: offshoots of cooperatives such as the Fédération nationale des coopératives de consommation (FNCC) and the Laboratoire opérative (Labocoop); offshoots of trade unions: the Organisation générale des Consommateurs (ORGECO) and the Association force ouvrière Consommateurs (AFOC). The Union des jeunes consommateurs, being an offshoot of the political party Jeunes Giscardiens, also comes within this classification.

(bb) *Structure of associations.* Associations are governed by the law of 1 July 1901, which describes an association as 'an agreement whereby two or more persons pool their knowledge and activity, on a permanent basis, for a purpose other than the sharing of rewards', and differs from a company which exists to generate and share in rewards.

Virtually all consumer associations are 'declared' associations. The formality of preliminary declaration at the prefecture does not involve any administrative check apart from formal conformity. Once it is declared, an association enjoys juridical personality: and can be a party to legal proceedings (see Chapter 9), purchase for valuable consideration, except subscriptions and contributions, and own buildings necessary for its objects. However a simple declared

association is not empowered to receive gifts or to benefit under a will.

To enjoy full capacity, an association must be recognised, by decree of the Council of State, as being of public utility and upon being so recognized, can receive gifts and benefit under wills. The Union féminine civique et sociale is the only consumer association which enjoys this status.

These associations in isolation are of little effect and for that reason tend to come together in larger groups of associations and these follow two patterns:

- Groupings based on ideological compatibility. The object is to create a vertical structure, as is the case with Union fédérale des Consommateurs, which is an association made up of local associations. The same holds good for all the federations mentioned earlier.

- Groupings based on geographical proximity. Throughout France, in almost every region, there can be found the Union régionale des organisations des Consommateurs (UROC) which sets out to 'make available to consumer organizations the means adapted to the development of their own activities'. These regional unions are by no means universally successful and some of them are in visible decline, due largely to the difficulty of fusing different ideologies in one group.

(cc) *Sources of finance.* One thing stands out from a study of the sources of finance of French consumer associations, to wit their impecuniousness.

- Members subscriptions account for a large part of their budget. Even so, these do not add up to sums of any great consequence, first because individual subscriptions are, of necessity, modest in their amount, and second because membership tends to be small.

- State aid is the single greatest source of support of many associations and takes different forms such as grants, reimbursements for television broadcasts, etc. Still the level of assistance is low and in fact dare not rise much higher lest the independence of the association be imperilled.

- Some revenue is derived from the sale of publications. This is true particularly in the case of the Union fédérale des consommateurs, whose magazine *Que Choisir?* is very popular. But the costs involved are very considerable and it is a moot point whether the exercise is profitable or not.

- Finally, the associations benefit to some extent from court actions instituted in the collective interest of consumers (see Chapter 9) but French courts to date have shown little appetite for awarding large amounts by way of compensation.

2 Agencies in public law

This category includes on the one hand agencies charged with the protection of consumers and on the other various agencies with a consultative function in consumer affairs. In addition there is the National Institute for Consumer Affairs.

(a) Governmental

France has never had a Ministry devoted entirely to consumer affairs.

However between 1976 and 1978, the Government set up a junior Ministry for Consumer Affairs³, responsible to the Minister for the Economy and Finance. This put forward several propositions whose purpose was the protection of consumer interests (see Section II) and its disappearance in 1978 has never been fully explained.

Consumer protection at Government level at the moment is mainly the responsibility of one section of the Ministry for the Economy namely the Directorate General for competition and consumer affairs (see Chapter 3). Up to 1978, this service, which was set up at the end of the war to enforce the 1945 price regulations was known as the Directorate General for Competition and Prices, the subsequent change of name being in response to the Government's wish to associate consumer protection with the maintenance and development of competition. Within this Directorate General, to which regional and departmental directorates are responsible, a special section was set up in 1978 to deal specifically with consumer affairs.

Another country-wide service which plays an important part in consumer protection is the Department of Quality Control and Repression of Frauds (see Chapter 2) supervising the implementation of the law of 1 August 1905 as amended, checking goods and services for quality. Since most of the goods checked are foodstuffs, this service is responsible to the Ministry of Agriculture. It should be added however that this attribution is held by many today to be less than satisfactory.

Other services with the same object are:

- The Office of Pharmaceutical Control which is responsible to the Ministry of Health.
- The Directorate of Customs, which is responsible to the Ministry of Finance.
- The Veterinary Service which is responsible to the Ministry of Agriculture.
- The Office of Weights and Measures which is responsible to the Ministry of Industry.

The fact that these agencies are so scattered and responsible to so many different authorities has tended to dissipate their effectiveness and there is growing support for the creation of a Ministry of Consumer Affairs to which all these groups and services would be responsible. However, bearing in mind the inertia of the French Civil Service, there is little cause for undue optimism.

(b) Consultative

Public authorities in France have discovered that it pays to consult with interested parties before making decisions and to that end have fostered the growth of consultative bodies, generally called committees or commissions, representing the State on one hand and other interested parties on the other. Of a sizeable number of such bodies, three merit mention.

Pride of place goes to the Comité national de la consommation (CNC) (National Committee for Consumer Affairs) because of the extent of its competence. Founded by Decree of 19 December 1960, its purpose is 'to facilitate ongoing discussions between representatives of the public authorities and representatives of the collective interests of consumers on the entire range of

consumer problems'. Both sides are equally represented on the CNC⁴ and it gives its opinion on bills, draft Decrees or Orders dealing with consumer affairs and is further empowered to suggest reforms of its own initiative⁵.

Then there are the Prices Committees, which owe their origin to the Order of 30 June 1945 and whose competence is more specific. All draft Orders relating to prices are submitted either to the National Prices Committee, as is the case for Ministerial Orders, or to the departmental committees in the case of prefectorial Orders. Consumers, suppliers and wage earners are represented on these committees but their role is likely to diminish in consequence of the removal of price controls in 1978.

Finally, the Commission on Offending Contractual Terms also has a well-defined competence but in an area very different from the last. It was in fact set up by statute number 78-23 of 10 January 1978 to look into standard form contracts provided by suppliers in their dealings with consumers and to recommend the removal of any offending clauses found (see Chapter 7). It is composed in the main of representatives of consumers and suppliers.

(c) *The National Institute for Consumer Affairs*

This body, commonly referred to as the INC, differs from the foregoing in that it has legal personality and stands in the van of consumer protection. A hybrid by nature, it came into existence under the law of 22 December 1966 and owes its internal organization to a Decree of 5 December 1967.

From one aspect, it is a public entity, deriving as it does its finances from the State and being effectively governed and run by a State appointed Director⁶. Yet from another aspect, it works like a company or an association, with a Board of Directors, which elects its own Chairman from among its number and which comprises twelve consumer representatives, six supplier representatives and six representatives of the State⁷. The activities of the Institute are channelled in the main in three directions, corresponding to three different areas:

- A technical service, which devotes itself principally to the carrying out of comparative tests.
- An information service, which publishes a number of magazines, of which *Cinquante Millions de Consommateurs*, is one.
- An economic and legal service, which publishes studies and deals with particular enquiries.

Consumer associations are not fully convinced that either the organization or working of the INC is ideal, because of what they see as exaggerated State influence and would prefer to see a technical institute for consumer affairs, run by consumer representatives, in its place⁸.

II CONSUMER LAW

In the narrow sense consumer law is a collection of rules drawn up for the protection of consumers. However, in a broader sense, it also includes the study of concerted practices which work to the advantage of the consumer.

1 Existing rules

To begin with let us draw up a list of the main sources of consumer protection law, after which we will trace the outlines of a definition of 'consumer' as it emanates from these sources.

(a) *The main sources*

The consumer movement as such can be said to have come into existence in France round about the year 1960. However, there is a considerable body of consumer protection law which goes back further. Promulgated long before consumer law became a recognised body of law in its own right, these sources are now part and parcel of that body and the following are the most important among them.

— The Code civil, Arts. 1641 to 1649, imposes in a seller, selling under guarantee, certain obligations in regard to hidden vices. From the early years of this century, the courts have been in favour of the buyer in interpreting these provisions (see Chapter 2).

— The law of 1 August 1905 provides for penal sanctions against fraud and misrepresentation. Though initially designed to deal, in the main, with food-stuffs, this law, as amended time and time again, now covers all kinds of goods and services (see Chapter 2).

— The Orders of 30 June 1945 enabled the Government to propose price increases by edict (see Chapter 3). The announcement in 1978 by the Prime Minister, Raymond Barré, of the removal of price control ought to have diminished the usefulness of these Orders. However, to the extent that they also contain rules designed to foster the development of competition they retain their full vigour in that regard.

Since 1960 and even more so since 1970, a great volume of consumer law has been added to the older body, the later measures directly influenced by the consumer movement and more especially by the requirements of consumer associations⁹. Suffice it here to set out in chronological order the most important of these sources.

— The law of 2 July 1963 providing penal sanctions for false advertising fell so far short at expectations that it was replaced by a more effective provision in the Royer Act.

— A Decree of 12 October 1972 made labelling of pre-packed foodstuffs obligatory (see Chapter 4).

— The law of 22 December 1972 regulates door-to-door sales, in particular allowing the customer time for thought (see Chapter 6).

— The law of 27 December 1973, whose official title is 'A Law for the Guidance of Traders and Craftsmen' but which is better known by the name 'The Royer Law', has some unusual provisions designed, by and large, for the protection of the small trader against the supermarket/department store. However, it also contains provisions for the protection of the consumer as at Art. 44 which is directed against false advertising (see Chapter 5) and Arts. 45 and 46 which enable recognized associations to institute civil proceedings on behalf of the collective interest of consumers (see Chapter 9).