II

(Preparatory Acts)

ECONOMIC AND SOCIAL COMMITTEE

401st PLENARY SESSION, 16 AND 17 JULY 2003


(COM(2002) 443 final — 2002/0222 (COD))

(2003/C 234/01)

On 8 October 2002 the Council decided to consult the European Economic and Social Committee, under Article 95 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 25 June 2003. The rapporteur was Mr Pegado Liz.

At its 401st Plenary Session of 16 and 17 July 2003 (meeting of 17 July), the European Economic and Social Committee adopted the following opinion by 91 votes to one with one abstention.

SUMMARY

While recognising that a Commission initiative to review the directive on consumer credit is appropriate — and, indeed, overdue — and while agreeing that it is necessary, given the changes which have occurred in the fields it sets out to regulate and in the objectives set, the European Economic and Social Committee cannot support adoption of the proposal as it stands: it must firstly be radically amended, principally on account of the need to:

— ensure it is compatible with the provisions of other Community legislative instruments dealing with related matters;

— carry out a detailed simulation of the impact of every aspect of the proposed measures, especially regarding progress in completing the single market in financial services and boosting consumer confidence;

— fine-tune several of the suggested provisions in the light of the principles of proportionality and necessity, ensuring that opting for total harmonisation does not lead to a potential fall in the level of consumer protection, presently guarded against by retaining a minimum clause.

The most important aspects which, in the EESC’s view, need to be adjusted to meet the proposal’s aims, concern:

— the legal basis on which the directive is to be adopted;

— its scope, with regard both to what is included and what is excluded;

— the way in which the total harmonisation method is used without guaranteeing maintenance of a high level of consumer protection;

— the failure to take account of over-indebtedness, assuming that matters can be resolved with an inappropriate and at times disproportionate list of information obligations, leaving aside others which are effectively essential;
the need to flesh out the structure, functioning and guarantees concerning the use of centralised databases;
as well as a series of technical legal issues which are examined (albeit non-exhaustively) in the relevant points below.

1. Introduction: purpose of the directive


1.1.1. Civil society and the Member State authorities have long pointed to a series of reasons by the 1987 directive needs to be revised (1). Some of these reasons are acknowledged in the explanatory memorandum of the proposal itself, while others have been set out in a number of ESC reports and opinions (2).

(1) Occasions on which the need for revision were stated include:
— Hearings with government experts and with consumer organisations on 4 and 5 July 2001 respectively, Brussels (Borschette Centre);
— Hearing promoted by the ESC, Stockholm, 18 July 2001;
— Conference held by the Italian Consiglio Nazionale dei Consumatori e degli Utenti, Milan, 2 July 2001;
— Colloquium on Consumer Credit and Community Harmonisation held by the Belgian EU Presidency, Charleroi, 13 and 14 November 2001.

(2) Among the most important:
— Information Report on Household over-indebtedness;
— Opinion on Household over-indebtedness, (OJ C 149 of 21.6.2002);
— Opinion on the Green Paper — Financial services: meeting consumers’ expectations (OJ C 56 of 24.2.1997);
— Opinion on the Proposal for a Directive on certain legal aspects of electronic commerce (OJ C 169 of 16.6.1999);

1.1.2. The Commission points, in particular, to the following:

a) the need to include new forms of consumer credit which did not exist in 1987;
b) the need for a realignment of the rights and obligations of both consumers and credit providers;
c) technical problems in penetrating other markets.

1.1.3. The Committee, for its part, has identified:

a) the increase in the volume of consumer credit;
b) the rising level of over-indebtedness;
c) discrepancies between national regulations and practices in applying the 1987 directive and its modifications;
d) the inability of the directive's provisions to ensure that real consumer credit costs (APR) can be effectively compared;
e) the lack of Community-level definition of parameters for identifying usury and possible means of preventing and combating it on a uniform basis;

1.1.4. These shortcomings, together with others in the Community arrangements for consumer credit, have been considered as giving grounds for concern by the Member States and civil society, because they:

a) result in glaring differences in the level of consumer protection, and undermine consumer confidence in the single market in financial services;
b) distort competition and destabilise the European credit market;
c) are an obstacle to the smooth operation of the internal market in financial services.

1.2. The EESC therefore agrees with the proposal's primary aim of 'paving the way for a more transparent market, a more effective market and to offer such a degree of protection that the free movement of offers of credit can occur under the best possible conditions both for those who offer credit and those who require it'.

Consumer credit’s importance to developing the internal market requires firstly, that rules of conduct for the various players be devised, based on fairness and transparency and secondly, that correct and full mutual information requirements be introduced for both sellers and consumers.

1.3. The Committee also agrees with the fundamental guidelines set out in the initiative, which can be summarised as follows:

a) better definition of the directive’s scope;

b) minimisation of risk for credit providers;

c) better information for consumers and their guarantors;

d) fair sharing of responsibilities between consumers and professionals;

e) establishment of common rules on recovery of unpaid debts.

1.4. The Commission proposes that the following principal innovations, reflecting the above guidelines, be introduced to the existing arrangements with a view to achieving the objective set:

a) the aim of total harmonisation guaranteeing a high level of protection for consumers and ensuring an identical scheme in the different Member States (Articles 1 and 30);

b) an extension of the scope of the provisions to guarantors and credit intermediaries (Article 2(d) and (f) and Articles 10, 23, 28 and 29);

c) an extension of the scope to include all forms of consumer credit and surety, whether personal or real, including agreements promising to grant credit and credit for the supply of services, but excepting mortgage credit for the purchase of private housing (Article 2(b) and (e) and Articles 3 and 5);

d) the concept of ‘responsible lending’ (Article 9) to make financial institutions responsible for assessing the consumer-borrower’s ability to meet their commitments, and for informing consumers, or their guarantors, of the assessment;

e) an explicit ban on negotiating credit agreements outside business premises (Article 5);

f) a new formula for calculating the APR (Article 12), fully covering the total cost of the credit, in order to ensure transparency and comparability;

g) more detailed information for consumers both prior to, and at the time of, concluding a contract, bringing it into line with the provisions of Directives 2000/31/EC of 8 June 2000 on electronic commerce and 2002/65/EC of 23 September 2002 on distance marketing of consumer financial services (Articles 6, 10 and 21);

h) a ban on the use of securities (bills of exchange, promissory notes or pre-dated cheques) to underpin the credit (Article 18);

i) a duty to provide advice to consumers on the different types of credit available (Article 6(3));

j) a right of withdrawal within fourteen days, from the day on which a copy of the credit agreement is transmitted to the consumer (Article 11);

k) compulsory existence of, and access to, a central database in all the Member States recording payment defaults, and the subsequent obligation upon credit institutions to consult the database before granting credit (Article 8);

l) liability on the part of the creditor for non-supply, partial supply or failure to supply in conformity with the relevant contract, whenever the supplier of goods is also a credit intermediary (Article 19);

m) the establishment of a list of unfair terms specific to consumer credit agreements (Article 15), as previously recommended by the EESC (1).

2. General comments

2.1. The Committee agrees with the innovations to the consumer credit system in the areas listed above, which represent:

2.1.1. progress in comparison with the arrangements under Directive 87/102/EEC, even following the amendments made by Directives 90/88/EEC and 98/7/EC;

2.1.2. a significant improvement in the way instruments and means of conveying information to creditors, borrowers and guarantors are defined;

2.1.3. special care taken in identifying and incorporating the different types of credit now available to consumers, although these could be improved;

2.1.4. great accuracy with which key concepts such as 'total lending rate', 'borrowing rate' and 'sums levied by the creditor' have been defined, although the large number of concepts may confuse consumers and be detrimental to transparency of information;

2.1.5. efforts made to establish a method for calculating the APR making it effectively transparent and comparable between all the Member States;

2.1.6. a curb on exclusions from the established scheme;

2.1.7. clearer establishment of a duty on the part of the creditor to provide information for the consumer and guarantor;

2.1.8. a decision to completely ban the use of bills of exchange, promissory notes or cheques as a form of surety in credit agreements.

2.2. However, the Committee regrets that the Commission has failed to take the opportunity to go further in achieving its objective and implementing its own guidelines, in areas which it considers to be equally vital, such as:

2.2.1. more detailed definition of the nature and operating methods of the databases for payment defaults, establishing uniform rules guaranteeing consumers' rights — right of consultation, right of correction, clear and unequivocal individual authorisation, limitations on the scope for the use of data, etc.;

2.2.2. an explicit obligation for all forms of commercial communication regarding consumer credit to indicate the APR and other essential features defining the type of credit granted;

2.2.3. an attempt to classify some consumer credit agreements, harmonising all the different arrangements for granting credit, and covering certain methods such as the direct debit system, combining consumer credit with authorisation for standing orders;

2.2.4. determining EU-level criteria for defining maximum interest rates and what constitutes usury, using identical variables but not necessarily the same absolute amounts.

This is an important question which merits further examination, for the reasons set out below.

2.2.4.1. Usury means an interest rate which is abnormally higher than the legally established rate, or is incompatible with the principles of honesty and fairness in commercial affairs or of public policy and good practice, or which is imposed by exploiting the difficult situation of the person requesting the loan.

2.2.4.2. As a constituent part of the legal structures governing the organisation of the market economy, regulation of usury is considered to be a matter of public policy by the Member States. It also forms an integral part of the general Community interest. Ultimately, creditors must comply with the current law of usury of the country where the consumer resides, particularly in the case of cross-border contracts. In view of the public policy nature of rules governing usury, conflicts between the law of the various Member States could arise.

2.2.4.3. Opponents of moves to harmonise the rules governing usury argue that compliance with the duty of information on the part of creditors, particularly regarding information on the rate of interest actually applied, is adequate since it puts consumers in a position to make a choice. In practice, however, usury occurs in cases where consumers do not enjoy freedom of choice. It is also argued that regulating usury may constitute a market restriction, depriving those consumers who most require it of credit. Nevertheless, consumers in difficulty must be protected from dishonest creditors.

2.2.4.4. Moreover, the gap between different interest rates has tended to narrow with the introduction of the single currency, facilitating harmonisation of legislation in this area.

2.2.4.5. The EESC therefore believes that this aspect of the market should be regulated through action at Community level, in order to prevent distortions and restrictions affecting competition. It considers that setting interest rates ceilings for the various types of consumer credit may be the most effective means of achieving this.

2.2.5. Lastly, the EESC recalls the need for special conditions to be provided for disabled consumers in an integrated fashion.

2.3. The EESC would take this opportunity to alert the Commission to the need to introduce robust consumer protection measures in the area of mortgage credit for the purchase of private housing for long-term residence, which accounts for more than 70 % of the volume of consumer credit.
2.4. In addition, the EESC must voice its disagreement with the form in which certain solutions are presented and situations are envisaged, as these do not match the original objective.

This applies in the following cases.

2.4.1. Firstly, the legal basis for the adoption of the proposal (Treaty Article 95). The proposal, by its nature, is not exclusively concerned with the completion of the single market, and the basis should rather be the current Article 153 of the Treaty which, while including measures for the completion of the internal market, extends to the protection of consumers' economic interests.

2.4.2. Also the way in which complete — meaning full and binding — harmonisation is to be achieved, without use of a regulation and without ensuring the highest possible level of protection for consumers, leaving the Member States the option of whether or not to take implementing measures in key areas such as:

(a) inversion of the burden of proof (Articles 30(1)(b) and 33);

(b) inclusion in advertising material of borrowing rates, total lending rates and APR (Article 4);

(c) penalty provisions (Article 31);

(d) the content of the central databases (Articles 8(4) and 30(1)(a));

(e) compulsory provision of a copy of the credit agreement for the consumer as a condition of its validity (Article 10(1));

thereby creating the conditions for real disparities between national legal systems, which could lead to market distortions and varying levels of consumer protection.

2.4.3. Moreover, the general thinking behind the proposal is that 'consumer protection' is the same thing as 'consumer information', in contrast with the EESC's consistent view that while consumer information is essential, it must be accompanied by active forms of protection and defence for consumers. This means that unless such measures are explicitly included, proper consumer protection can only be achieved by retaining minimum clauses, possibly in relation to certain as yet unspecified aspects of the directive.

2.4.4. More robust advice measures are needed, providing proper means for less literate or financially-astute consumers.

2.4.5. There is also insufficient mention of over-indebtedness (1), as if it was entirely unconnected with consumer credit and could be resolved purely by fulfilling the information requirements imposed by the proposal. However, it is known that the Commission's persistent unwillingness to press forward with proposals for legislative harmonisation in this field is aggravating disparities between national systems, and this hampers effective completion of the internal market. Such disparities will become all the more obvious with the accession of new Member States, where the phenomenon is on the rise.

2.4.6. The continued possibility of imposing an early repayment indemnity is similarly unacceptable, with no precise definition of the terms under which such an indemnity may be determined, and the Member States left to specify what constitutes a 'fair and objective [indemnity] calculated on the basis of actuarial principles' (Article 16). As well as widely differing treatment of consumers, this may even result in a distorted credit market between different countries.

2.4.7. The EESC cannot accept the definition in general of parameters which, since total harmonisation is involved, cannot be exceeded by the Member States, and which set levels of consumer protection lower than those already practised by certain Member States — as, for example, with the obligation to return the sum with interest in the event of exercise of the right of withdrawal, or with the lifting of the obligation to mention the APR in advertising material.

2.4.8. Furthermore, the proposal contains some provisions aiming at making credit intermediaries liable in certain situations: it does so, however, in a haphazard and unsystematic manner.

2.4.8.1. The EESC considers that regulation of credit intermediaries is a priority, and should be accomplished in the same way as has been done for insurance intermediaries (2).

(1) The subject of the EESC opinions referred to in footnote 2.
2.4.8.2. There are a number of reasons for this position. The first is the fact that intermediaries occupy an important place in the consumption process, since they mediate relations between the creditor and the consumer. Another is that the way credit intermediaries are regulated varies widely between the Member States' legal systems.

Moreover, there is no consensus in the case-law of Europe's national courts regarding the liability of intermediaries, particularly in the area of electronic commerce and distance sales.

2.4.9. Turning to the scope of the directive, the removal of the minimum threshold below which credit would not be subject to the proposed rules is unacceptable, since this could act as a deterrent to granting consumer micro-credit for essential goods or services. The directive's requirements are out of proportion to the interests involved.

2.4.9.1. The Committee therefore suggests that the principle set out in Article 1(2) of the previous directive be reinstated, establishing EUR 500 as the limit below which the directive would not apply.

2.4.10. If the contractual arrangements governing some types of consumer credit, such as leasing contracts, are to be retained in the directive, they require a provision enabling certain effects flowing from the proposed regime to be adjusted in line with their specific legal nature. This concerns areas such as the right of withdrawal, calculation of the APR, the amortisation table, early repayment or repossession in the event of non-compliance with the contract.

2.5. Lastly, there are solid grounds for believing that some of the proposal's provisions, or at least possible interpretations of them, may be incompatible with the provisions of other directives, particularly those concerning data protection, distance selling, electronic commerce, distance marketing of financial services and unfair terms. This aspect requires detailed and specialist legal analysis.

3. Specific comments

3.1. Definitions

3.1.1. Definition of credit intermediary (Article 2(d))

The definition of a credit intermediary under this article should be worded as follows:

"credit intermediary" means a natural or legal person who, for a fee, habitually acts as an intermediary by presenting or offering credit agreements, undertaking other preparatory work for such agreements, or concluding such agreements'.

3.1.2. Definition of surety agreement (Article 2(e))

It should be made clear that the surety agreement may be incorporated into the credit agreement itself. This is not at present clear.

3.1.3. Definition of drawdown (Article 2(m))

The concept of drawdown should apply to the moment at which the amount of credit is actually drawn down, not the moment the credit is made available to the consumer.

3.2. Scope (agreements excluded)

3.2.1. Delete the expression 'in a single payment' from Article 2(2)(c).

3.2.2. Article 3(2)(d) should be deleted, or should state explicitly that the conditions set out under (i), (ii) and (iii) are cumulative.

3.3. Information prior to the agreement

3.3.1. Advertising (Article 4)

This should include an obligation to indicate the APR and total lending rate in all forms of commercial communication regarding consumer credit.

3.3.2. Ban on negotiation of credit agreements outside business premises (Article 5)

This should specify that the prohibition refers exclusively to unsolicited offers.

3.3.3. Prior information (Article 6)

3.3.3.1. The exception contained in Article 6(4) should be deleted. At the very least, the ambiguous expression 'in an ancillary capacity' should be clarified.
3.3.3.2. In Article 6(1) and (2), replace 'se necessário' with 'se for caso disso' (applies to the Portuguese version, not to the English version).

3.3.3.3. In the second paragraph of Article 6(2), replace the expression 'its advantages, and any drawbacks' with 'and its important and characteristic aspects'.

3.3.3.4. In Article 6(3), replace 'eventualmente' with 'se for caso disso' (applies to the Portuguese version, not to the English version).

3.3.3.5. The words 'advantages and disadvantages associated with the product' should be replaced with 'relevant aspects and characteristics of the product' (Article 6(3)).

3.4. Consultation of the central database (Article 8)

3.4.1. The directive must clearly set out the consequences of failure to consult or take account of the data contained in the database, in terms of the creditor's liability (1), in order to guarantee that the consultation is effectively compulsory.

3.4.2. The existence of micro-credit should also be acknowledged by defining a minimum threshold for compulsory consultation of the database as an alternative in the event that the minimum threshold recommended in point 2.4.9.1 above is not accepted.

3.4.3. The obligation to inform the consumer of the result of any consultation should be accompanied by the right of correction by the consumer, with appropriate sanctions in the event of non-compliance.

3.4.4. Immediate and automatic destruction of the data received may hamper the definition of customer profiles and make it impossible to suggest the most appropriate products.

3.4.4.1. The EESC suggests that this provision be brought into line with the revised Basle Agreement, setting down a time-limit for keeping data, except where the consumer expresses a wish for data to be destroyed immediately.

3.5. Responsible lending (Article 9)

3.5.1. The expression 'parte-se do principio de' is not legally precise and should be replaced with 'presume-se', reversing the burden of proof (applies to the Portuguese version, not to the English version).

3.5.2. The following sentence should be added:

'It is also assumed that both the consumer and the guarantor have accurately portrayed their financial situation'.

3.6. Information that must be included in credit and surety agreements (Article 10)

3.6.1. Compulsory supply of a copy of the contract to the consumer should be established as a condition for the contract's validity.

3.7. Right of withdrawal (Article 11)

3.7.1. In Article 11(1), the expression 'transmitted to the consumer' should be replaced with 'received by the consumer'. The period should only be counted from the confirmed date of receipt.

3.7.2. The wording of Article 11(3) must be clarified, particularly regarding the possibility of returning the goods: this only seems to make sense in terms of credit linked to the sale of goods.

3.7.2.1. The rule under which the purchase contract must not be subject to the effects of withdrawal from the credit agreement is accepted in principle, but there must be safeguards against fraud by bogus consumers.

3.7.2.2. The decision to retain ownership of the goods being financed until the withdrawal period has elapsed, regardless of the transfer of physical possession to the consumer, is prejudicial to the rule of transfer of ownership because of the bilateral nature of the contract and is not in keeping with the principle of subsidiarity which governs this matter.

It would be preferable to make exercise of the right of withdrawal from the credit agreement subject to proof of prior payment of the object in question or of effective reimbursement of the credit if it was provided directly to the purchaser-consumer of the object.

3.8. Early repayment (Article 16)

3.8.1. Under the proposal, consumers may still be required to pay an indemnity, which is not defined with the necessary clarity and objectivity.

3.8.1.1. The Committee’s preferred solution is to remove the possibility of demanding any indemnity whatsoever.

3.8.1.2. If this does not occur, it must be stipulated that the possibility of demanding an indemnity for early repayment be stated in advance in the credit contract, and must relate exclusively to the cost of setting up and management credit, spread over all the repayments, the risks on the lender’s refinancing rate and the risk of having to reinvest capital at a lower rate, in addition to stipulating only low penalties where a new credit is drawn up for the purposes of repaying a previous credit.

3.9. Joint and several liability (Article 19)

3.9.1. The provisions of the article should be supplemented with those of the current Article 11(2) of Directive 87/102/EEC (1).


3.10. Performance of a surety agreement (Article 23)

3.10.1. It is necessary to make it clearer that the expression ‘take action’ means to request a court order. The deadline should also be reduced to 30 days.

3.10.2. Neither are there grounds in the third paragraph for limiting the amount guaranteed to the outstanding balance and arrears; it should be possible for the surety to cover any amount which the consumer may have to face as a consequence of failure to comply with the contract (e.g. costs of enforcing an order).

3.11. Total harmonisation (Article 30)

3.11.1. The issue of total harmonisation and the conditions under which the EESC could agree to this approach were addressed in the general comments above.

3.11.2. The Committee would simply point out that, in accordance with point 3.13 below regarding Article 33, Article 30(1)(b) should be deleted.

3.12. Penalties (Article 31)

3.12.1. The question of penalties was discussed in the general comments above.

3.12.2. However, the following:

These penalties must be effective, proportionate and constitute a deterrent. They may provide for the loss of interest and charges ...

should be replaced with the following:

These penalties must be effective, proportionate and constitute a deterrent, and they must provide for the loss of interest and charges ...

3.13. Burden of proof (Article 33)

3.13.1. In Article 33,

‘Member States may provide that the burden of proof ...’

should be replaced with

‘Member States must provide that the burden of proof ...’

(1) ‘2 The consumer shall have the right to pursue remedies against the grantor of credit where:

a) in order to buy goods or obtain services the consumer enters into a credit agreement with a person other than the supplier of them; and

b) the grantor of the credit and the supplier of the goods or services have a pre-existing agreement whereunder credit is made available exclusively by that grantor of credit to customers of that supplier for the acquisition of goods or services from that supplier; and

c) the consumer referred to in subparagraph (a) obtains his credit pursuant to that pre-existing agreement; and

d) the goods or services covered by the credit agreement are not supplied, or are supplied only in part, or are not in conformity with the contract for supply of them;

e) the consumer has pursued his remedies against the supplier but has failed to obtain the satisfaction to which he is entitled.'
4. Conclusions

4.1. The proposal for a directive comes in response to a series of expectations and needs relating to consumer protection, including an extension of the scope to cover surety agreements, the supply of new forms of credit, together with clarification of key concepts in credit, which it is believed can help boost consumer confidence in the single financial services market.

4.2. The EESC regrets, however, that the revision was not preceded by a simulation to gauge its impact in market terms (volume of transactions, amounts and types of credit, etc.), on both the demand and supply sides.

4.3. Neither does the EESC agree that the proposal, like Directive 87/102/EEC, should view the completion of the single market as its main concern, envisaging consumer protection only insofar as it can foster free movement of credit supply, and not taking it as an end in itself but merely a means of developing the internal market.

4.3.1. The EESC therefore suggests that Treaty Article 153 be taken as the legal basis for the proposal.

4.4. At the same time, a number of individual measures are welcomed. They concern over-indebtedness, particularly the principle of responsible lending, the duty to provide advice, regulation of the right of withdrawal, the duty to provide an amortisation table, and regulation of out-of-court recovery procedures.

4.5. An opportunity has, however, been missed to go further: practical measures could have been introduced to handle declared cases of over-indebtedness.

4.6. The proposal continues to leave a large area of credit unregulated; it lays down no rules on usury, leaves types of contract undefined, and credit intermediaries remain free of liability.

4.7. Certain aspects even represent a step back from the previous arrangements, particularly the lifting of the obligation to state the APR in advertising, which prevents consumers from comparing credit costs before beginning negotiations. Moreover, many aspects of the proposed arrangements as a whole offer less protection than current practice in some Member States.

4.8. It is unacceptable that the information obligations imposed upon credit providers should relieve them of liability towards consumers: the duty of information does not represent the full extent of consumer protection.

4.9. The EESC recommends that implementation in the single market of the arrangements contained in the draft directive be backed by a commitment to training, specially geared to credit intermediaries in general and traders in particular. However, it should also relate to consumers, especially those with a lower level of awareness; here, personalised advice and education from the earliest school years are crucial to understanding the mechanisms and consequences of using consumer credit, especially in terms of prudent management of household budgets.

4.10. It also recommends that the impact study outlined in point 4.2 above be extended to the accession countries. It suggests that the study, to be carried by the Commission and submitted to the EESC and the European Parliament, comprise the following aspects:

— the economic impact of the proposed arrangements on the banking sector, trade and industry;

— the impact on consumers, especially from disadvantaged groups;

— an examination of the impact of the proposal on the possible development of cross-border trade.

4.11. The decision to seek full harmonisation only merits support if it entails effective alignment with the highest possible level of consumer protection and does not lead to a real reduction in consumer safeguards; in other words, in contrast to the present proposal.

4.12. The EESC also suggests that the minimum clause be retained, accompanied by a precise definition of the areas where the Member States can provide more effective protection of consumers in credit agreements.

4.13. In brief, it is recommended that the Council and the Member States do not accept the proposal for a directive as it currently stands. The Commission must firstly respond adequately to the suggested solutions, and especially in the light of the EESC’s comments, ensure that the provisions
contained in the proposal are compatible with those of other Community instruments dealing with related matters, and assess in detail the impact of every aspect of the proposed measures. This applies in particular to progress in completing the single market in financial services and to significantly boosting consumer confidence in cross-border transactions.


The President
of the European Economic and Social Committee
Roger BRIESCH


(2003/C 234/02)

On 7 March 2003 the Council decided to consult the European Economic and Social Committee, under Article 95 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 25 June 2003. The rapporteur was Mr Levaux.

At its 401st Plenary Session, held on 16 and 17 July 2003 (meeting of 16 July), the European Economic and Social Committee adopted the following opinion by 109 votes to four.

1. Introduction

1.1. Aim of the proposal

1.1.1. This proposal aims to reduce the number of deaths and injuries that occur in accidents involving pedestrians and cyclists, through changes to the front of passenger cars and light vans of less than 2.5 tonnes.

1.1.2. The need for the directive can be seen from the sheer number of accidents — 8 000 pedestrians and cyclists killed and a further 300 000 injured in the Community each year in road accidents — and from the fact that the harmonised technical requirements for the type-approval of motor vehicles laid down in Directive 70/156/EEC are in need of modification.

1.1.3. In 2001 the Commission successfully concluded negotiations with the associations representing the European car manufacturers (including American vehicles sold in Europe) and Japanese and Korean car manufacturers (ACEA, JAMA and KAMA) obtaining a commitment by the industry to introduce measures to increase pedestrian protection. This commitment was the subject of a Communication to the Council and the Parliament on 11 July 2001. In the light of the opinions received, the Commission proposed either to accept the manufacturers’ commitment by means of a recommendation, or to put forward a directive based on the contents of the commitment. The latter option was selected in the end.

1.1.4. Thus the proposed directive gives a formal framework to the relevant parts of the commitment undertaken by the industry, thereby ensuring legal certainty concerning the implementation of the relevant measures. In addition, the new requirements will be part of the EC type-approval system, thus involving the Member States in the application of the legal provisions.