III

(Preparatory Acts)

COUNCIL

COMMON POSITION (EC) No 14/2007
adopted by the Council on 20 September 2007
with a view to adopting Directive 2007/.../EC of the European Parliament and of the Council of ...


(2007/C 270 E/01)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission,

Acting in accordance with the procedure laid down in Article 251 of the Treaty (3),

Whereas:


(3) Those reports and consultations revealed substantial differences between the laws of the various Member States in the field of credit for natural persons in general and consumer credit in particular. An analysis of the national laws transposing Directive 87/102/EEC shows that Member States use a variety of consumer protection mechanisms, in addition to Directive 87/102/EEC, on account of differences in the legal or economic situation at national level.

(4) The de facto and de jure situation resulting from those national differences in some cases leads to distortions of competition among creditors in the Community and creates obstacles to the internal market where Member States have adopted different mandatory provisions more stringent than those provided for in Directive 87/102/EEC. It restricts consumers’ ability to make direct use of the gradually increasing availability of cross-border credit. Those distortions and restrictions may in turn have consequences in terms of the demand for goods and services.

(5) In recent years the types of credit offered to and used by consumers have evolved considerably. New credit instruments have appeared, and their use continues to develop. It is therefore necessary to amend existing provisions and to extend their scope, where appropriate.

(6) In accordance with the Treaty, the internal market comprises an area without internal frontiers in which the free movement of goods and services and freedom of establishment are ensured. The development of a more transparent and efficient credit market within the area without internal frontiers is vital in order to promote the development of cross-border activities.
The definitions contained in this Directive determine the scope of harmonisation. The obligation on Member States to implement the provisions of this Directive should therefore be limited to its scope as determined by those definitions. However, this Directive should be without prejudice to the application by Member States, in accordance with Community law, of the provisions of this Directive to areas not covered by its scope. A Member State could thereby maintain or introduce national legislation corresponding to the provisions of this Directive or certain of its provisions on credit agreements outside the scope of this Directive, for instance on credit agreements involving amounts less than EUR 200 or more than EUR 100 000. Furthermore, Member States could also apply the provisions of this Directive to linked credit which does not fall within the definition of a linked credit agreement as contained in this Directive. Thus, the provisions on linked credit agreements could be applied to credit agreements that serve only partially to finance a contract for the supply of goods or provision of a service.

It is important that the market should offer a sufficient degree of consumer protection to ensure consumer confidence. Thus, it should be possible for the free movement of credit offers to take place under optimum conditions for both those who offer credit and those who require it, with due regard to specific situations in the individual Member States.

Full harmonisation is necessary in order to ensure that all consumers in the Community enjoy a high and equivalent level of protection of their interests and to create a genuine internal market. Member States should therefore not be allowed to maintain or introduce national provisions other than those laid down in this Directive. However, such restriction should only apply where there are provisions harmonised in this Directive. Where no such harmonised provisions exist, Member States should remain free to maintain or introduce national legislation. Accordingly, Member States may, for instance, maintain or introduce national provisions on joint and several liability of the seller or supplier of services and the creditor. Another example of this possibility for Member States could be the maintenance or introduction of national provisions on the cancellation of a contract for the sale of goods or supply of services if the consumer exercises his right of withdrawal from the credit agreement. In this respect Member States, in the case of open-end credit agreements, should be allowed to fix a minimum period needing to elapse between the time when the creditor asks for reimbursement and the day on which the credit has to be reimbursed.

In the case of specific credit agreements to which only some provisions of this Directive are applicable, Member States should not be allowed to adopt national legislation implementing other provisions of this Directive. However, Member States should remain free to regulate, in their national legislation, such types of credit agreements as regards other aspects not harmonised by this Directive.

Agreements for the provision on a continuing basis of services or for the supply of goods of the same kind, where the consumer pays for them for the duration of their provision by means of instalments, may differ considerably, in terms of the interests of the contractual parties involved, and the modalities and performance of the transactions, from credit agreements covered by this Directive. Therefore, it should be clarified that such agreements are not regarded as credit agreements for the purposes of this Directive. Such types of agreement include, for example, an insurance contract where the insurance is paid for in monthly instalments.

Credit agreements covering the granting of credit secured by real estate should be excluded from the scope of this Directive. That type of credit is of a very specific nature. Also, credit agreements the purpose of which is to finance the acquisition or retention of property rights in land or in an existing or projected building should be excluded from the scope of this Directive. However, credit agreements should not be excluded from the scope of this Directive only because their purpose is the renovation or increase of value of an existing building.

The provisions of this Directive apply irrespective of whether the creditor is a legal person or a natural person. However, this Directive does not affect the right of Member States to limit, in conformity with Community law, the provision of credit for consumers to legal persons only or to certain legal persons.

Certain provisions of this Directive should apply to natural and legal persons (credit intermediaries) who, in the course of their trade, business or profession, for a fee, present or offer credit agreements to consumers, assist consumers by undertaking preparatory work in respect of credit agreements or conclude credit agreements with
consumers on behalf of the creditor. Organisations which allow their identity to be used in promoting credit products, such as credit cards, and which may also recommend those products to their members should not be regarded as credit intermediaries for the purposes of this Directive.

(16) This Directive regulates only certain obligations of credit intermediaries in relation to consumers. Member States should therefore remain free to maintain or introduce additional obligations incumbent on credit intermediaries.

(17) Consumers should be protected against unfair or misleading practices, in particular with respect to the disclosure of information by the creditor, in line with Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market (‘Unfair Commercial Practices Directive’) (1). However, this Directive should contain specific provisions on advertising concerning credit agreements as well as certain items of standard information to be provided to consumers in order to enable them, in particular, to compare different offers. Such information should be given in a clear, concise and prominent way. In addition, Member States should remain free to regulate information requirements in their national law regarding advertising which does not contain information on the cost of the credit.

(18) In order to enable consumers to make their decisions in full knowledge of the facts, they should receive adequate information, prior to the conclusion of the credit agreement, on the conditions and cost of the credit and on their obligations. To ensure the fullest possible transparency and comparability of offers, such information should, in particular, include the annual percentage rate of charge applicable to the credit, determined in the same way throughout the Community. As the annual percentage rate of charge can at this stage be indicated only through an example, such example should be representative. Therefore, it should correspond, for instance, to the average duration and total amount of credit granted for the type of credit agreement under consideration and, if applicable, to the goods purchased. When determining the representative example, the frequency of certain types of credit agreement in a specific market should also be taken into account. As regards the borrowing rate, the frequency of instalments and the capitalisation of interest, creditors should use their conventional method of calculation for the consumer credit concerned.

(19) The total cost of the credit to the consumer should comprise all the costs, including interest, commissions, taxes, fees for credit intermediaries and any other fees which the consumer has to pay in connection with the credit agreement, except for notarial costs. Creditors’ actual knowledge of the costs should be assessed objectively, taking into account the requirements of professional diligence.

(20) Credit agreements in which a borrowing rate is periodically revised in line with changes occurring in a reference rate referred to in the credit agreement should not be regarded as credit agreements with a fixed borrowing rate.

(21) Member States should remain free to maintain or introduce national provisions prohibiting the creditor from requiring the consumer, in connection with the credit agreement, to open a bank account or conclude an agreement in respect of another ancillary service, or to pay the expenses or fees for such bank accounts or other ancillary services. In those Member States where such combined offers are allowed, consumers should be informed before the conclusion of the credit agreement about any ancillary services which are compulsory in order for the credit to be obtained in the first place or on the terms and conditions marketed. The costs payable in respect of those ancillary services should be included in the total cost of the credit; alternatively, if the amount of such costs cannot be determined in advance, consumers should receive adequate information about the existence of costs at a pre-contractual stage. The creditor must be presumed to have knowledge of the costs of the ancillary services which he offers to the consumer himself, or on behalf of a third party, unless the price thereof depends on the specific characteristics or situation of the consumer.

(22) For specific types of credit agreements, however, it is appropriate, in order to ensure an adequate level of consumer protection without placing an excessive burden on creditors or, where applicable, credit intermediaries, to restrict the pre-contractual information requirements of this Directive, taking into account the specific character of such types of agreements.

(23) The consumer needs to be given comprehensive information before he concludes the credit agreement, regardless of whether or not a credit intermediary is involved in the marketing of the credit. Therefore, in general, the pre-contractual information requirements should also apply to credit intermediaries. However, where suppliers of goods and services act as credit intermediaries in an ancillary capacity, it is not appropriate to burden them with the legal obligation to provide the pre-contractual information in accordance with this Directive. Suppliers of goods and services may be deemed, for example, to be acting as credit intermediaries in an ancillary capacity if their activity as credit intermediaries is not the main purpose of their trade, business or profession. In those cases, a sufficient level of consumer protection is still achieved since the creditor is responsible for ensuring that the consumer receives the full pre-contractual information, either from the intermediary, if the creditor and the intermediary so agree, or in some other appropriate manner.

The potentially binding character of the information to be provided to the consumer prior to the conclusion of the credit agreement and the period of time during which the creditor is to be bound by it may be regulated by the Member States.

Member States should take appropriate measures to promote responsible practices during all phases of the credit relationship, taking into account the specific features of their credit market. Those measures may include, for instance, the provision of information to, and the education of, consumers, including warnings about the risks attaching to default on payment and to over-indebtedness. In the expanding credit market, in particular, it is important that creditors should not engage in irresponsible lending, and the Member States should be allowed to determine the sanctions applicable in the event of their doing so. Without prejudice to the credit risk provisions of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (1), creditors should bear the responsibility of checking individually the creditworthiness of the consumer. To that end, they should be allowed to use information provided by the consumer not only during the preparation of the credit agreement in question, but also during a long-standing commercial relationship. The Member States' authorities could also give appropriate instructions and guidelines to creditors. Consumers should also act with prudence and respect their contractual obligations.

Despite the pre-contractual information to be provided, the consumer may still need additional assistance in order to decide which credit agreement, within the range of products proposed, is the most appropriate for his needs and financial situation. Therefore, Member States should ensure that creditors provide such assistance in relation to the credit products which they offer to the consumer. Where appropriate, the relevant pre-contractual information, as well as the essential characteristics of the products proposed, should be explained to the consumer in a personalised manner so that the consumer can understand the effects which they may have on his economic situation. Where applicable, this duty to assist the consumer should also apply to credit intermediaries. Member States could determine when and to what extent such explanations are to be given to the consumer, taking into account the particular circumstances in which the credit is offered, the consumer’s need for assistance and the nature of individual credit products.

To assess the credit status of a consumer, the creditor should also consult relevant databases; the legal and actual circumstances may require that such consultations vary in scope. To prevent any distortion of competition among creditors, it should be ensured that creditors have access to private or public databases concerning consumers in a Member State where they are not established under non-discriminatory conditions compared with creditors in that Member State.

Where a decision to reject an application for credit is based on the consultation of a database, the creditor should inform the consumer of this fact and of the particulars of the database consulted. However, the creditor should not be obliged to give such information when this is prohibited by other Community legislation, for example legislation on money laundering or the financing of terrorism. Furthermore, such information should not be given if this would be contrary to objectives of public policy or public security, such as the prevention, investigation, detection or prosecution of criminal offences.

This Directive does not regulate contract law issues related to the validity of credit agreements. Therefore, in that area, the Member States may maintain or introduce national provisions which are in conformity with Community law. Member States may regulate the legal regime governing the offer to conclude the credit agreement, in particular when it is to be given and the period during which it is to be binding on the creditor. If such an offer is made at the same time as the pre-contractual information provided for by this Directive is given, it should, like any additional information the creditor may wish to give to the consumer, be provided in a separate document which may be annexed to the Standard European Consumer Credit Information.

In order to enable the consumer to know his rights and obligations under the credit agreement, it should contain all necessary information in a clear and concise manner. In order to ensure full transparency, the consumer should be provided with information concerning the borrowing rate, both at a pre-contractual stage and when the credit agreement is concluded. During the contractual relationship, the consumer should further be informed of changes to the variable borrowing rate and changes to the payments caused thereby. This is without prejudice to provisions of national law not related to consumer information which lay down conditions for, or prescribe the consequences of, changes, other than changes concerning payments, in borrowing rates and other economic conditions governing the credit, for instance rules providing that the creditor may change the borrowing rate only where there is a valid reason for such change or that the consumer may terminate the contract should there be a change in the borrowing rate or in some other economic condition concerning the credit.

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The contracting parties should have the right to effect a standard termination of an open-end credit agreement. In addition, if agreed in the credit agreement, the creditor should have the right to suspend the consumer's right to draw down on an open-end credit agreement for objectively justified reasons. Such reasons may include, for instance, suspicion of an unauthorised or fraudulent use of the credit or a significantly increased risk of the consumer being unable to fulfil his obligation to repay the credit. This Directive does not affect national law in the area of contract law regulating the rights of the contracting parties to terminate the credit agreement on the basis of a breach of contract.

In order to approximate the procedures for exercising the right of withdrawal in similar areas, it is necessary to make provision for a right of withdrawal without penalty and with no obligation to provide justification, under conditions similar to those provided for by Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services (1).

Where a consumer withdraws from a credit agreement in connection with which he has received goods, in particular from a purchase in instalments or from a hiring or leasing agreement providing for an obligation to purchase, this Directive should be without prejudice to any regulation by Member States of questions concerning the return of the goods or any related questions.

In the case of linked credit agreements, a relationship of interdependence exists between the purchase of goods or services and the credit agreement concluded for that purpose. Therefore, where the consumer exercises his right of withdrawal in respect of the purchase agreement, based on Community law, he should no longer be bound by the linked credit agreement. This should not affect national law applicable to linked credit agreements in cases where a purchase agreement has been voided or where the consumer has exercised his right of withdrawal based on national law. Nor should this affect the rights of consumers granted by national provisions according to which no commitment may be entered into between the consumer and a supplier of goods or services, nor any payment made between those persons, as long as the consumer has not signed the credit agreement to finance the purchase of the goods or services.

Under certain conditions, the consumer should be allowed to pursue remedies against the creditor in the event of problems related to the purchase agreement. However, Member States should determine to what extent and under what conditions the consumer is required to pursue his remedies against the supplier, in particular by bringing an action against the latter, before being in a position to pursue them against the creditor. This Directive should not deprive consumers of their rights under national provisions attaching joint and several liability to the seller or supplier of services and to the creditor.

The consumer should have the right to discharge his obligations before the date agreed in the credit agreement. In the case of early repayment, either in part or in full, the creditor should be entitled to compensation for the costs directly linked to the early repayment, taking into account also any savings thereby made by the creditor. However, in order to determine the method of calculating the compensation, it is important to respect several principles. The calculation of the compensation due to the creditor should be transparent and comprehensible to consumers already at the pre-contractual stage and in any case during the performance of the credit agreement. In addition, the calculation method should be easy for creditors to apply, and supervisory control of the compensation by the responsible authorities should be facilitated. Therefore, and due to the fact that consumer credit is, given its duration and volume, not financed by long-term funding mechanisms, the ceiling for the compensation should be fixed in terms of a flat-rate amount. This approach reflects the special nature of credits for consumers and should not prejudice the possibly different approach in respect of other products which are financed by long-term funding mechanisms, such as fixed-rate mortgage loans.

Member States should have the right to provide that compensation for early repayment may be claimed by the creditor only on condition that the amount repaid over a twelve-month period exceeds a threshold defined by Member States. When fixing that threshold, which should not exceed EUR 10 000, Member States should for instance take into account the average amount of consumer credits in their market.

Assignment of the creditor's rights under a credit agreement should not have the effect of placing the consumer in a less favourable position. The consumer should also be properly informed when the credit agreement is assigned to a third party. However, where the initial creditor, in agreement with the assignee, continues to service the credit vis-à-vis the consumer, the consumer has no significant interest in being informed of the assignment. Therefore, a requirement at EU level that the consumer be informed of the assignment in such cases would be excessive.

Member States should remain free to maintain or introduce national rules providing for collective forms of communication when this is necessary for purposes relating to the effectiveness of complex transactions such as securitisations or liquidation of assets that take place in the compulsory administrative liquidation of banks.

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(41) In order to promote the establishment and functioning of the internal market and to ensure a high degree of protection for consumers throughout the Community, it is necessary to ensure the comparability of information relating to annual percentage rates of charge throughout the Community. Despite the uniform mathematical formula for its calculation, the annual percentage rate of charge provided for in Directive 87/102/EEC is not yet fully comparable throughout the Community. In individual Member States different cost factors are taken into account in the calculation thereof. This Directive should therefore clearly and comprehensively define the total cost of a credit to the consumer.

(42) In order to ensure market transparency and stability, and pending further harmonisation, Member States should ensure that appropriate measures for the regulation or supervision of creditors are in place.

(43) This Directive respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, this Directive seeks to ensure full respect for the rules on protection of personal data, the right to property, non-discrimination, protection of family and professional life, and consumer protection pursuant to the Charter of Fundamental Rights of the European Union.

(44) Since the objective of this Directive, namely the establishment of common rules for certain aspects of the laws, regulations and administrative provisions of the Member States concerning consumer credit, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(45) Member States should lay down rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and ensure that they are implemented. While the choice of penalties remains within the discretion of the Member States, the penalties provided for should be effective, proportionate and dissuasive.

(46) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (1).

(47) In particular, the Commission should be empowered to adopt additional assumptions for the calculation of the annual percentage rate of charge. Since those measures are of general scope and are designed to amend non-essential elements of this Directive, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

(48) In accordance with paragraph 34 of the Interinstitutional agreement on better law-making (2), Member States are encouraged to draw up, for themselves and in the interest of the Community, their own tables, illustrating, as far as possible, the correlation between this Directive and the transposition measures and to make them public.

(49) Accordingly, taking account of the number of amendments that need to be made to Directive 87/102/EEC due to the evolution of the consumer credit sector and in the interests of the clarity of Community legislation, that Directive should be repealed and replaced by this Directive.

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter

The purpose of this Directive is to harmonise certain aspects of the laws, regulations and administrative procedures of the Member States concerning agreements covering credit for consumers.

Article 2

Scope

1. This Directive shall apply to credit agreements.

2. This Directive shall not apply to the following:

(a) credit agreements which are secured either by a mortgage or by another comparable security commonly used in a Member State on immovable property or secured by a right related to immovable property;

(b) credit agreements the purpose of which is to acquire or retain property rights in land or in an existing or projected building;

(c) credit agreements involving a total amount of credit less than EUR 200 or more than EUR 100 000;


(d) hiring or leasing agreements where an obligation to purchase the object of the agreement is not laid down either by the agreement itself or by any separate agreement; such an obligation shall be deemed to exist if it is so decided unilaterally by the creditor;

(e) credit agreements in the form of an overdraft facility and where the credit has to be repaid within one month;

(f) credit agreements where the credit is granted free of interest and without any other charges and credit agreements under the terms of which the credit has to be repaid within three months and only insignificant charges are payable;

(g) credit agreements where the credit is granted by an employer to his employees as a secondary activity free of interest or at annual percentage rates of charge lower than those prevailing on the market and which are not offered to the public generally;

(h) credit agreements which are concluded with investment firms as defined in Article 4(1) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (1) or with credit institutions as defined in Article 4 of Directive 2006/48/EC for the purposes of allowing an investor to carry out a transaction relating to one or more of the instruments listed in Section C of Annex I to Directive 2004/39/EC, where the investment firm or credit institution granting the credit is involved in such transaction;

(i) credit agreements which are the outcome of a settlement reached in court or before another statutory authority;

(j) credit agreements which relate to the deferred payment, free of charge, of an existing debt;

(k) credit agreements upon the conclusion of which the consumer is requested to deposit an item as security in the creditor’s safe-keeping and where the liability of the consumer is strictly limited to that pledged item;

(l) credit agreements which relate to loans granted to a restricted public under a statutory provision with a general interest purpose, and at lower interest rates than those prevailing on the market or free of interest or on other terms which are more favourable to the consumer than those prevailing on the market and at interest rates not higher than those prevailing on the market.

3. In the case of credit agreements in the form of an overdraft facility and where the credit has to be repaid on demand or within three months, only Articles 1 to 3, Article 4(1), points (a) to (e) of Article 4(2), Article 4(4), Articles 6 to 9, Article 10(1), points (a) to (g), (l), (p) and points (i) to (u) of Article 10(2), Article 10(3), Articles 12, 15, 16(1), first sentence, Article 17 and Articles 19 to 32 shall apply.

The information to be included in those credit agreements shall also contain information concerning the charges applicable from the time such credit agreements are concluded and, if applicable, the conditions under which those charges may be changed.

4. In the case of credit agreements in the form of overrunning, only Articles 1 to 3, 18, 20 and 22 to 32 shall apply.

5. Member States may determine that only Articles 1 to 4, 6, 7 and 9, Article 10(1), points (a) to (h) and (l) of Article 10(2), Article 10(3) and Articles 11, 13 and 16 to 32 shall apply to credit agreements which are concluded by an organisation which:

(a) is established for the mutual benefit of its members;

(b) does not make profits for any other person than its members;

(c) fulfils a social purpose required by domestic legislation;

(d) receives and manages the savings of, and provides sources of credit to, its members only; and

(e) provides credit on the basis of an annual percentage rate of charge which is lower than that prevailing on the market or subject to a ceiling laid down by national law,

and whose membership is restricted to persons residing or employed in a particular location or employees of a particular employer, or to persons meeting other qualifications laid down under national law as the basis for the existence of a common bond between the members.

Member States may exempt from the application of this Directive credit agreements concluded by such an organisation where the total value of all existing credit agreements entered into by the organisation is insignificant in relation to the total value of all existing credit agreements in the Member State in which the organisation is based and the total value of all existing credit agreements entered into by all such organisations in the Member State is less than 1 % of the total value of all existing credit agreements entered into in that Member State.

Member States shall each year review whether the conditions for the application of any such exemption continue to exist and shall take action to withdraw the exemption where they consider that the conditions are no longer met.

6. Member States may determine that only Articles 1 to 4, 6, 7, 9, Article 10(1), points (a) to (i), (l) and (q) of Article 10(2), Article 10(3), Articles 11, 13, 16 and Articles 18 to 32 shall apply to credit agreements which provide for arrangements to be agreed by the creditor and the consumer in respect of deferred payment or repayment methods, where the consumer is already in default on the initial credit agreement and where:

(a) such arrangements would be likely to avert the possibility of legal proceedings concerning such default; and

(b) the consumer would not thereby be subject to terms less favourable than those laid down in the initial credit agreement.

However, if the credit agreement falls within the scope of paragraph 3, only the provisions of that paragraph shall apply.

Article 3

Definitions

For the purpose of this Directive, the following definitions shall apply:

(a) ‘consumer’ means a natural person who, in transactions covered by this Directive, is acting for purposes which are outside his trade, business or profession;

(b) ‘creditor’ means a natural or legal person who grants or promises to grant credit in the course of his trade, business or profession;

(c) ‘credit agreement’ means an agreement whereby a creditor grants or promises to grant to a consumer credit in the form of a deferred payment, loan or other similar financial accommodation, except for agreements for the provision on a continuing basis of services or for the supply of goods of the same kind, where the consumer pays for such services or goods for the duration of their provision by means of instalments;

(d) ‘overdraft facility’ means an explicit credit agreement whereby a creditor makes available to a consumer funds which exceed the current balance in the consumer’s current account;

(e) ‘overrunning’ means a tacitly accepted overdraft whereby a creditor makes available to a consumer funds which exceed the current balance in the consumer’s current account or the agreed overdraft facility;

(f) ‘credit intermediary’ means a natural or legal person who is not acting as a creditor and who, in the course of his trade, business or profession, for a fee, which may take a pecuniary form or any other agreed form of financial consideration:

(i) presents or offers credit agreements to consumers; or

(ii) assists consumers by undertaking preparatory work in respect of credit agreements other than as referred to in (i); or

(iii) concludes credit agreements with consumers on behalf of the creditor;

(g) ‘total cost of the credit to the consumer’ means all the costs, including interest, commissions, taxes and any other kind of fees which the consumer is required to pay in connection with the credit agreement and which are known to the creditor, except for notarial costs; costs in respect of ancillary services relating to the credit agreement, in particular insurance premiums, are also included if, in addition, the conclusion of a service contract is compulsory in order to obtain the credit or to obtain it on the terms and conditions marketed;

(h) ‘total amount payable by the consumer’ means the sum of the total amount of the credit and the total cost of the credit to the consumer;

(i) ‘annual percentage rate of charge’ means the total cost of the credit to the consumer, expressed as an annual percentage of the total amount of credit;

(j) ‘borrowing rate’ means the interest rate expressed as a fixed or variable percentage applied on an annual basis to the amount of credit drawn down;

(k) ‘fixed borrowing rate’ means that the creditor and the consumer agree in the credit agreement on one borrowing rate for the entire duration of the credit agreement or on several borrowing rates for partial periods using exclusively a fixed specific percentage. If not all borrowing rates are determined in the credit agreement, the borrowing rate shall be deemed to be fixed only for the partial periods for which the borrowing rates are determined exclusively by a fixed specific percentage agreed on the conclusion of the credit agreement;

(l) ‘total amount of credit’ means the ceiling or the total sums made available under a credit agreement;

(m) ‘durable medium’ means any instrument which enables the consumer to store information addressed personally to him in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;
(n) ‘linked credit agreement’ means a credit agreement where:

(i) the credit in question serves exclusively to finance an agreement for the supply of specific goods or the provision of a specific service; and

(ii) those two agreements form, from an objective point of view, a commercial unit; a commercial unit shall be deemed to exist where the supplier or service provider himself finances the credit for the consumer or, if it is financed by a third party, where the creditor uses the services of the supplier or service provider in connection with the conclusion or preparation of the credit agreement.

CHAPTER II

INFORMATION AND PRACTICES PRELIMINARY TO THE CONCLUSION OF THE CREDIT AGREEMENT

Article 4

Standard information to be included in advertising

1. Any advertising concerning credit agreements which indicates an interest rate or any figures relating to the cost of the credit to the consumer shall include standard information in accordance with this Article. This obligation shall not apply where national legislation requires the indication of the annual percentage rate of charge in advertising concerning credit agreements which does not indicate an interest rate or any figures relating to the cost of credit to the consumer.

2. The standard information shall specify, in the following order, and in a clear, concise and prominent way by means of a representative example:

(a) the borrowing rate, fixed or variable or both, if applicable, together with particulars of any applicable charges;

(b) the total amount of credit;

(c) the annual percentage rate of charge; in the case of a credit agreement of the kind referred to in Article 2(3), Member States may decide that the annual percentage rate of charge need not be provided;

(d) the duration of the credit agreement;

(e) in the case of a credit in the form of deferred payment for a specific good or service and linked credit agreements, that good or service and its cash price;

(f) the borrowing rate, the conditions governing the application of the borrowing rate and, where available, any index or reference rate applicable to the initial borrowing rate, as well as the periods, conditions and procedure for changing the borrowing rate; if different borrowing rates apply in different circumstances, the above-mentioned information on all the applicable rates;

(g) the annual percentage rate of charge and the total amount payable by the consumer and the amount of the instalments.

3. Where the conclusion of a contract regarding an ancillary service relating to the credit agreement, in particular insurance, is compulsory in order to obtain the credit or to obtain it on the terms and conditions marketed, and the cost of that service cannot be determined in advance, the obligation to enter into that contract shall also be stated in a clear, concise and prominent way, together with the annual percentage rate of charge.

4. This Article shall be without prejudice to Directive 2005/29/EC.

Article 5

Pre-contractual information

1. In good time before the consumer is bound by any credit agreement or offer, the creditor and, where applicable, the credit intermediary shall, on the basis of the credit terms and conditions offered by the creditor and, if applicable, the preferences expressed and information supplied by the consumer, provide the consumer with the information needed to compare different offers in order to take an informed decision on whether to conclude a credit agreement. Such information, on paper or on another durable medium, shall be provided by means of the Standard European Consumer Credit Information form set out in Annex II. The creditor shall be deemed to have fulfilled the information requirements in this paragraph and in Article 3, paragraphs (1) and (2) of Directive 2002/65/EC if he has supplied the Standard European Consumer Credit Information.

The information in question shall specify:

(a) the type of credit;

(b) the identity and the geographical address of the creditor as well as, if applicable, the identity and geographical address of the credit intermediary involved;

(c) the total amount of credit and the conditions governing the drawdown;

(d) the duration of the credit agreement;

(e) in the case of a credit in the form of deferred payment for a specific good or service and linked credit agreements, that good or service and its cash price;

(f) the borrowing rate, the conditions governing the application of the borrowing rate and, where available, any index or reference rate applicable to the initial borrowing rate, as well as the periods, conditions and procedure for changing the borrowing rate; if different borrowing rates apply in different circumstances, the above-mentioned information on all the applicable rates;

(g) the annual percentage rate of charge and the total amount payable by the consumer, illustrated by means of a representative example mentioning all the assumptions used in order to calculate that rate; where the consumer has informed the creditor of one or more components of his preferred credit, such as the duration of the credit agreement and the total amount of credit, the creditor shall take those components into account;
(h) the amount, number and frequency of payments to be made by the consumer and, where appropriate, the order in which payments will be allocated to different outstanding balances charged at different borrowing rates for the purposes of reimbursement;

(i) where applicable, the charges for maintaining one or several accounts recording both payment transactions and drawdowns, unless the opening of an account is optional, together with the charges for using a means of payment for both payment transactions and drawdowns, any other charges deriving from the credit agreement and the conditions under which those charges may be changed;

(j) where applicable, the existence of costs payable by the consumer to a notary on conclusion of the credit agreement;

(k) the obligation, if any, to enter into an ancillary service contract relating to the credit agreement, in particular an insurance policy, where the conclusion of such a contract is compulsory in order to obtain the credit or to obtain it on the terms and conditions marketed;

(l) the interest rate applicable in the case of late payments and the arrangements for its adjustment, and, where applicable, any charges payable for default;

(m) a warning regarding the consequences of missing payments;

(n) where applicable, the sureties required;

(o) the existence or absence of a right of withdrawal;

(p) the right of early repayment, and, where applicable, information concerning the creditor’s right to compensation and the way in which that compensation will be determined;

(q) the consumer’s right to be informed immediately and free of charge, pursuant to Article 9(2), of the result of a database consultation carried out for the purposes of assessing his creditworthiness;

(r) the consumer’s right to be supplied, on request and free of charge, with a copy of the draft credit agreement. This provision shall not apply if the creditor is at the time of the request unwilling to proceed to the conclusion of the credit agreement with the consumer; and

(s) if applicable, the period of time during which the creditor is bound by the pre-contractual information.

Any additional information which the creditor may provide to the consumer shall be given in a separate document which may be annexed to the Standard European Consumer Credit Information form.

2. However, in the case of voice telephony communications, as referred to in Article 3(3) of Directive 2002/65/EC, the description of the main characteristics of the financial service to be provided pursuant to the second indent of Article 3(3)(b) of that Directive shall include at least the items referred to in points (c), (d), (e), (f) and (h) of paragraph (1) of this Article, together with the annual percentage rate of charge illustrated by means of a representative example and the total amount payable by the consumer.

3. If the agreement has been concluded at the consumer’s request using a means of distance communication which does not enable the information to be provided in accordance with paragraph 1, in particular in the case referred to in paragraph 2, the creditor shall provide the consumer with the full Standard European Consumer Credit Information immediately after the conclusion of the credit agreement.

4. Upon request, the consumer shall, in addition to receiving the Standard European Consumer Credit Information, be supplied free of charge with a copy of the draft credit agreement. This provision shall not apply if the creditor is at the time of the request unwilling to proceed to the conclusion of the credit agreement with the consumer.

5. In the case of a credit agreement under which payments made by the consumer do not give rise to an immediate corresponding amortisation of the total amount of credit, but are used to constitute capital during periods and under conditions laid down in the credit agreement or in an ancillary agreement, the pre-contractual information required under paragraph 1 shall include a clear and concise statement that such credit agreements do not provide for a guarantee of repayment of the total amount of credit drawn down under the credit agreement, unless such a guarantee is given.

6. Member States shall ensure that creditors and, where applicable, credit intermediaries provide adequate explanations to the consumer, in order to place the consumer in a position enabling him to assess whether the proposed credit agreement is adapted to his needs and to his financial situation, where appropriate by explaining the pre-contractual information to be provided in accordance with paragraph 1, the essential characteristics of the products proposed and the specific effects they may have on the consumer, including the consequences of default in payment by the consumer. Member States may adapt the manner by which and the extent to which such assistance is given, as well as by whom it is given, to the particular circumstances of the situation in which the credit agreement is offered, the person to whom it is offered and the type of credit offered.

Article 6

Pre-contractual information requirements for certain credit agreements in the form of an overdraft facility and for certain specific credit agreements

1. In good time before the consumer becomes bound by any credit agreement or offer concerning a credit agreement as referred to in Article 2(3), (5) or (6), the creditor and, where applicable, the credit intermediary shall, on the basis of the credit terms and conditions offered by the creditor and, if applicable, the preferences expressed and information supplied by the consumer, provide the consumer with the information needed to compare different offers in order to take an informed decision on whether to conclude a credit agreement.
The information in question shall specify:

(a) the type of credit;
(b) the identity and geographical address of the creditor as well as, if applicable, the identity and geographical address of the credit intermediary involved;
(c) the total amount of credit;
(d) the duration of the credit agreement;
(e) in the case of a credit in the form of deferred payment for a specific good or service, that good or service and its cash price;
(f) the borrowing rate; the conditions governing the application of that rate, any index or reference rate applicable to the initial borrowing rate, the charges applicable from the time the credit agreement is concluded, and, where applicable, the conditions under which those charges may be changed;
(g) the annual percentage rate of charge, illustrated by means of representative examples mentioning all the assumptions used in order to calculate that rate;
(h) the conditions and procedure for terminating the credit agreement;
(i) where applicable, an indication that the consumer may be requested to repay the amount of credit in full at any time;
(j) the interest rate applicable in the case of late payments and the arrangements for its adjustment, and, where applicable, any charges payable for default;
(k) the consumer’s right to be informed immediately and free of charge, pursuant to Article 9(2), of the result of a database consultation carried out for the purposes of assessing his creditworthiness;
(l) the consumer’s right to be supplied, on request and free of charge, with a copy of the draft credit agreement. This provision shall not apply if the creditor is at the time of the request unwilling to proceed to the conclusion of the credit agreement with the consumer;
(m) the conditions and procedure for repayments; and
(n) if applicable, the period of time during which the creditor is bound by the pre-contractual information.

Such information shall be provided on paper or on another durable medium. It may be provided by means of the European Consumer Credit Information form set out in Annex III. The creditor shall be deemed to have fulfilled the information requirements in this paragraph and in Article 3(1) and (2) of Directive 2002/65/EC if he has supplied the European Consumer Credit Information.

2. In the case of a credit agreement of the kind referred to in Article 2(3), Member States may decide that the annual percentage rate of charge need not be provided.

3. In the case of a credit agreement as referred to in Article 2(5) and (6), the information provided to the consumer in accordance with paragraph 1 of this Article shall also include:

(a) the amount, number and frequency of payments to be made by the consumer and, where appropriate, the order in which payments will be allocated to different outstanding balances charged at different borrowing rates for the purposes of reimbursement; and

(b) the right of early repayment, and, where applicable, information concerning the creditor’s right to compensation and the way in which that compensation will be determined.

However, if the credit agreement falls within the scope of Article 2(3), only the provisions of paragraph 1 of this Article shall apply.

4. However, in the case of voice telephony communications and where the consumer requests that the overdraft facility be made available with immediate effect, the description of the main characteristics of the financial service shall include at least the items referred to in points (c), (f), (g) and (i) of paragraph 1. In addition, in credit agreements of the kind referred to in paragraph 3, the description of the main characteristics shall include a specification of the duration of the credit agreement.

5. Notwithstanding the exclusion provided for in point (e) of Article 2(2), the Member States shall apply at least the requirements of the first sentence of paragraph 4 of this Article to credit agreements in the form of an overdraft facility and where the credit has to be repaid within one month.

6. Upon request, the consumer shall, in addition to receiving the information referred to in paragraphs 1 to 4, be supplied free of charge with a copy of the draft credit agreement containing the contractual information provided for by Article 10 insofar as that Article is applicable. This provision shall not apply if the creditor is at the time of the request unwilling to proceed to the conclusion of the credit agreement with the consumer.

7. If the agreement has been concluded at the consumer’s request using a means of distance communication which does not enable the information to be provided in accordance with paragraphs 1 and 3, including in the cases referred to in paragraph 4, the creditor shall immediately after the conclusion of the credit agreement fulfil his obligations under paragraphs 1 and 3 by providing the contractual information pursuant to Article 10 insofar as that Article is applicable.

Article 7

Exemptions from the pre-contractual information requirements

Articles 5 and 6 shall not apply to suppliers of goods or services acting as credit intermediaries in an ancillary capacity. This is without prejudice to the creditor’s obligation to ensure that the consumer receives the pre-contractual information referred to in those Articles.
Obligation to assess the creditworthiness of the consumer

1. Before the conclusion of the credit agreement, the creditor shall assess the consumer's creditworthiness on the basis of sufficient information, where appropriate obtained from the consumer and, where necessary, on the basis of a consultation of the relevant database.

2. If the parties agree to change the total amount of credit after the conclusion of the credit agreement, the creditor shall update the financial information at his disposal concerning the consumer and assess the consumer's creditworthiness before any significant increase in the total amount of credit.

CHAPTER III
DATABASE ACCESS

Article 9
Database access

1. Without prejudice to the application of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (1), each Member State shall in the case of cross-border credit ensure access for creditors from other Member States to databases used in that Member State for assessing the creditworthiness of consumers. The conditions for access shall be non-discriminatory.

2. If the credit application is rejected on the basis of consultation of a database, the creditor shall inform the consumer immediately and without charge of the result of such consultation and of the particulars of the database consulted, unless the provision of such information is prohibited by other Community legislation or is contrary to objectives of public policy or public security.

CHAPTER IV
INFORMATION AND RIGHTS CONCERNING CREDIT AGREEMENTS

Article 10
Information to be included in credit agreements

1. Credit agreements shall be drawn up on paper or on another durable medium.

All the contracting parties shall receive a copy of the credit agreement. This Article shall be without prejudice to any national rules regarding the validity of the conclusion of credit agreements which are in conformity with Community law.

2. The credit agreement shall specify in a clear and concise manner:

(a) the type of credit;

(b) the identities and geographical addresses of the contracting parties as well as, if applicable, the identity and geographical address of the credit intermediary involved;

(c) the duration of the credit agreement;

(d) the total amount of credit and the conditions governing the drawdown;

(e) in case of a credit in the form of deferred payment for a specific good or service, that good or service and its cash price;

(f) the borrowing rate, the conditions governing the application of that rate and, where available, any index or reference rate applicable to the initial borrowing rate, as well as the periods, conditions and procedures for changing the borrowing rate and, if different borrowing rates apply in different circumstances, the above-mentioned information in respect of all the applicable rates;

(g) the annual percentage rate of charge and the total amount payable by the consumer, calculated at the time the credit agreement is concluded; all the assumptions used in order to calculate that rate shall be mentioned; in the case of a credit agreement of the kind referred to in Article 2(3), Member States may decide that the annual percentage rate of charge need not be provided;

(h) the amount, number and frequency of payments to be made by the consumer and, where appropriate, the order in which payments will be allocated to different outstanding balances charged at different borrowing rates for the purposes of reimbursement;

(i) where capital amortisation of a credit agreement with a fixed duration is involved, a statement of account in the form of an amortisation table indicating the payments owing and the periods and conditions relating to the payment of such amounts; the table shall contain a breakdown of each repayment showing capital amortisation, the interest calculated on the basis of the borrowing rate and, where applicable, any additional costs; where the interest rate is not fixed or the additional costs may be changed under the credit agreement, the amortisation table shall indicate, clearly and concisely, that the data contained in the table will remain valid only until such time as the borrowing rate or the additional costs are changed in accordance with the credit agreement;

(j) if charges and interest are to be paid without capital amortisation, a statement showing the periods and conditions for the payment of the interest and of any associated recurrent and non-recurrent charges;
(k) where applicable, the charges for maintaining one or several accounts recording both payment transactions and drawdowns, unless the opening of an account is optional, together with the charges for using a means of payment for both payment transactions and drawdowns, and any other charges deriving from the credit agreement and the conditions under which those charges may be changed;

(l) the interest rate applicable in the case of late payments as applicable at the time of the conclusion of the credit agreement and the arrangements for its adjustment and, where applicable, any charges payable for default;

(m) a warning regarding the consequences of missing payments;

(n) the sureties and insurance required, if any;

(o) the existence or absence of a right of withdrawal, the period during which that right may be exercised and other conditions governing the exercise thereof, including information concerning the obligation of the consumer to pay the capital drawn down and the interest in accordance with Article 14(2)(b) and the amount of interest payable per day;

(p) information concerning the rights resulting from Article 15 as well as the conditions for the exercise of those rights;

(q) the right of early repayment, the procedure for early repayment, as well as, where applicable, information concerning the creditor’s right to compensation and the way in which that compensation will be determined;

(r) the procedure to be followed in exercising the right of termination of the credit agreement;

(s) whether or not there is an out-of-court complaint and redress mechanism for the consumer and, if so, the methods for having access to it;

(t) where applicable, other contractual terms and conditions;

(u) where applicable, the name and address of the competent supervisory authority;

3. In the case of a credit agreement under which payments made by the consumer do not give rise to an immediate corresponding amortisation of the total amount of credit, but are used to constitute capital during periods and under conditions laid down in the credit agreement or in an ancillary agreement, the information required under paragraph 2 shall include a clear and concise statement that such credit agreements do not provide for a guarantee of repayment of the total amount of credit drawn down under the credit agreement, unless such a guarantee is given.

### Article 11

**Information concerning the borrowing rate**

1. Where applicable, the consumer shall be informed of any change in the borrowing rate, on paper or another durable medium, before the change enters into force. The information shall state the amount of the payments to be made after the entry into force of the new borrowing rate and, if the number or frequency of the payments changes, particulars thereof.

2. However, the parties may agree in the credit agreement that the information referred to in paragraph 1 is to be given to the consumer periodically in cases where the change in the borrowing rate is caused by a change in a reference rate, the new reference rate is made publicly available by appropriate means and the information concerning the new reference rate is also kept available in the premises of the creditor.

### Article 12

**Credit agreement in the form of an overdraft facility**

1. Where a credit agreement covers credit in the form of an overdraft facility, the consumer shall be kept regularly informed by means of a statement of account, on paper or on another durable medium, containing the following particulars:

   (a) the precise period to which the statement of account relates;
   (b) the amounts and dates of drawdowns;
   (c) the balance from the previous statement, and the date thereof;
   (d) the new balance;
   (e) the dates and amounts of payments made by the consumer;
   (f) the borrowing rate applied;
   (g) any charges that have been applied;
   (h) where applicable, the minimum amount to be paid.

2. In addition, the consumer shall be informed on paper or another durable medium of increases in the borrowing rate, or in any charges payable, before the change in question enters into force.

   However, the parties may agree in the credit agreement that information concerning changes in the borrowing rate is to be given in the manner provided for in paragraph 1 in cases where the change in the borrowing rate is caused by a change in a reference rate, the new reference rate is made publicly available by appropriate means and the information concerning the new reference rate is also kept available in the premises of the creditor.

### Article 13

**Open-end credit agreements**

1. The consumer may effect standard termination of an open-end credit agreement free of charge at any time unless the parties have agreed on a period of notice. Such a period may not exceed one month.
If agreed in the credit agreement, the creditor may effect standard termination of an open-end credit agreement by giving the consumer at least two months’ notice drawn up on paper or on another durable medium.

2. If agreed in the credit agreement, the creditor may for objectively justified reasons terminate the consumer’s right to draw down on an open-end credit agreement. The creditor shall inform the consumer of the termination and the reasons for it on paper or on another durable medium, where possible before the termination and at the latest immediately thereafter, unless the provision of such information is prohibited by other Community legislation or is contrary to objectives of public policy or public security.

Article 14
Right of withdrawal

1. The consumer shall have a period of fourteen calendar days in which to withdraw from the credit agreement without giving any reason.

That period of withdrawal shall begin:

(a) either from the day of the conclusion of the credit agreement; or

(b) from the day on which the consumer receives the contractual terms and conditions and information in accordance with Article 10, if that day is later than the date referred to in point (a) of this subparagraph.

2. If the consumer exercises his right of withdrawal, he shall:

(a) in order to give effect to the withdrawal before the expiry of the deadline referred to in paragraph 1, notify this to the creditor in line with the information given by the creditor pursuant to point (o) of Article 10(2) by means which can be proven in accordance with national law. The deadline shall be deemed to have been met if that notification, if it is on paper or on another durable medium that is available and accessible to the creditor, is dispatched before the deadline expires; and

(b) pay to the creditor the capital and the interest accrued thereon from the date the credit was drawn down until the date the capital is repaid, without any undue delay and no later than 30 calendar days after the despatch by him to the creditor of notification of the withdrawal. The interest shall be calculated on the basis of the agreed borrowing rate. The creditor shall not be entitled to any other compensation from the consumer in the event of withdrawal, except compensation for any non-returnable charges paid by the creditor to any public administrative body.

3. If an ancillary service relating to the credit agreement is provided by the creditor or by a third party on the basis of an agreement between the third party and the creditor, the consumer shall no longer be bound by the ancillary service contract if the consumer exercises his right of withdrawal from the credit agreement in accordance with this Article.


5. Member States may provide that paragraphs 1 to 3 of this Article shall not apply to credit agreements which by law are required to be concluded through the services of a notary, provided that the notary confirms that the consumer is guaranteed the rights provided for under Articles 5 and 10.

6. This Article shall be without prejudice to any rule of national law establishing a period of time during which the performance of the contract may not begin.

Article 15
Linked credit agreements

1. Where the consumer has exercised a right of withdrawal, based on Community law, concerning a contract for the supply of goods or services, he shall no longer be bound by a linked credit agreement.

2. Where the goods or services covered by a linked credit agreement are not supplied, or are supplied only in part, or are not in conformity with the contract for the supply thereof, the consumer shall have the right to pursue remedies against the creditor if the consumer has pursued his remedies against the supplier but has failed to obtain the satisfaction to which he is entitled according to the law or the contract for the supply of goods or services. Member States shall determine to what extent and under what conditions those remedies shall be exercisable.

3. This Article shall be without prejudice to any national rules rendering the creditor jointly and severally liable in respect of any claim which the consumer may have against the supplier where the purchase of goods or services from the supplier has been financed by a credit agreement.

Article 16
Early repayment

1. The consumer shall be entitled at any time to discharge fully or partially his obligations under a credit agreement. In such cases, he shall be entitled to a reduction in the total cost of the credit, such reduction consisting of the interest and the costs for the remaining duration of the contract.

2. The creditor shall be entitled to compensation for possible costs directly linked to early repayment of credit provided that the early repayment falls within a period for which the borrowing rate is fixed and the creditor proves that the reference interest rate applied by the European Central Bank to its most recent main refinancing operation carried out before the first calendar day of the half year in question is lower at the time of the early repayment than at the time of conclusion of the credit agreement. For a Member State which is not participating in the third stage of economic and monetary union, the reference rate shall be the equivalent rate set by its national central bank. Such compensation shall be determined by the creditor and may not exceed 1 % of the amount of credit repaid early, if the period of time between the early repayment and the agreed termination of the credit agreement exceeds one year. If the period does not exceed one year, the compensation may not exceed 0,5 % of the amount of credit repaid early.

The compensation shall not exceed the amount of interest the consumer would have paid during the period between the early repayment and the agreed date of termination of the credit agreement.

3. Compensation for early repayment shall not be claimed:
   (a) if the repayment has been made under an insurance contract intended to provide a credit repayment guarantee;
   (b) in the case of overdraft facilities; or
   (c) if the repayment falls within a period for which the borrowing rate is not fixed.

4. Member States may provide that such compensation may be claimed by the creditor only on condition that the amount of the early repayment exceeds the threshold defined by national law. That threshold shall not exceed EUR 10 000 within any period of twelve months.

Article 17

Assignment of rights

1. In the event of assignment to a third party of the creditor's rights under a credit agreement or the agreement itself, the consumer shall be entitled to plead against the assignee any defence which was available to him against the original creditor, including set-off where the latter is permitted in the Member State concerned.

2. The consumer shall be informed of the assignment referred to in paragraph 1 except where the original creditor, by agreement with the assignee, continues to service the credit vis-à-vis the consumer.

Article 18

Overrunning

1. In the case of an agreement to open a current account, where there is a possibility that the consumer is allowed an overrun, the agreement shall contain in addition the information referred to in point (f) of Article 6(1). The creditor shall in any case provide that information on paper or another durable medium on a regular basis.

2. In the event of a significant overrunning exceeding a period of one month, the creditor shall inform the consumer without delay, on paper or on another durable medium,
   (a) of the overrunning;
   (b) of the amount involved;
   (c) of the borrowing rate;
   (d) of any penalties, charges or interest on arrears applicable.

3. This Article shall be without prejudice to any rule of national law requiring the creditor to offer another kind of credit product when the duration of the overrunning is significant.

CHAPTER V

ANNUAL PERCENTAGE RATE OF CHARGE

Article 19

Calculation of the annual percentage rate of charge

1. The annual percentage rate of charge, equating, on an annual basis, to the present value of all commitments (drawdowns, repayments and charges), future or existing, agreed by the creditor and the consumer, shall be calculated in accordance with the mathematical formula set out in Part I of Annex I.

2. For the purpose of calculating the annual percentage rate of charge, the total cost of the credit to the consumer shall be determined, with the exception of any charges payable by the consumer for non-compliance with any of his commitments laid down in the credit agreement and charges other than the purchase price which, for purchases of goods or services, he is obliged to pay whether the transaction is effected in cash or on credit.

The costs of maintaining an account recording both payment transactions and drawdowns, the costs of using a means of payment for both payment transactions and drawdowns, and other costs relating to payment transactions shall be included in the total cost of credit to the consumer unless the opening of the account is optional and the costs of the account have been clearly and separately shown in the credit agreement or in any other agreement concluded with the consumer.
3. The calculation of the annual percentage rate of charge shall be based on the assumption that the credit agreement is to remain valid for the period agreed and that the creditor and the consumer will fulfil their obligations under the terms and by the dates specified in the credit agreement.

4. In the case of credit agreements containing clauses allowing variations in the borrowing rate and, where applicable, charges contained in the annual percentage rate of charge but unquantifiable at the time of calculation, the annual percentage rate of charge shall be calculated on the assumption that the borrowing rate and other charges will remain fixed in relation to the initial level and will remain applicable until the end of the credit agreement.

5. Where necessary, the additional assumptions set out in Annex I may be used in calculating the annual percentage rate of charge.

If the assumptions set out in this Article and in Part II of Annex I do not suffice to calculate the annual percentage rate of charge, the Commission may determine the necessary additional assumptions for the calculation of the annual percentage rate of charge. These measures, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 25(2).

CHAPTER VI
CREDITORS AND CREDIT INTERMEDIARIES

Article 20
Regulation of creditors

Member States shall ensure that creditors are supervised by a body or authority independent from financial institutions, or regulated. This shall be without prejudice to Directive 2006/48/EC.

Article 21
Certain obligations of credit intermediaries vis-à-vis consumers

Member States shall ensure that a credit intermediary:

(a) indicates in advertising and documentation intended for consumers the extent of his powers, in particular whether he works exclusively with one or more creditors or as an independent broker;

(b) does not receive any fee from a consumer who has requested his services, unless all the following conditions are met:

(i) the amount of the fee is agreed between the consumer and the credit intermediary on paper or another durable medium;

(ii) the credit intermediary does not receive a fee from the creditor;

(iii) the credit agreement in respect of which he has acted is actually concluded;

(iv) the credit intermediary communicates the amount of the fee to the creditor for the purpose of calculation of the annual percentage rate of charge.

CHAPTER VII
IMPLEMENTING MEASURES

Article 22
Harmonisation and imperative nature of this Directive

1. Insofar as this Directive contains harmonised provisions, Member States may not maintain or introduce in their national law provisions diverging from those laid down in this Directive.

2. Member States shall ensure that consumers may not waive the rights conferred on them by the provisions of national law implementing or corresponding to this Directive.

3. Member States shall further ensure that the provisions they adopt in implementation of this Directive cannot be circumvented as a result of the way in which agreements are formulated, in particular by integrating drawdowns or credit agreements falling within the scope of this Directive into credit agreements the character or purpose of which would make it possible to avoid its application.

4. Member States shall take the necessary measures to ensure that consumers do not lose the protection granted by this Directive by virtue of the choice of the law of a third country as the law applicable to the credit agreement, if the credit agreement has a close link with the territory of one or more Member States.

Article 23
Penalties

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.

Article 24
Out-of-court dispute resolution

1. Member States shall ensure that adequate and effective out-of-court dispute resolution procedures for the settlement of consumer disputes concerning credit agreements are put in place, using existing bodies where appropriate.

2. Member States shall encourage those bodies to cooperate in order to also resolve cross-border disputes concerning credit agreements.
Article 25
Committee procedure
1. The Commission shall be assisted by a Committee.
2. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

Article 26
Information to be supplied to the Commission
Where a Member State makes use of any of the regulatory choices referred to in Article 2(5) and 2(6), Article 4(1), point (c) of Article 4(2), Article 6(2), Article 10(1), point (g) of Article 10(2) and Article 16(4), it shall inform the Commission thereof as well as of any subsequent changes. The Commission shall make that information public on a website or in another easily accessible way. Member States shall take the appropriate measures to diffuse that information amongst national creditors and consumers.

Article 27
Transposition
1. Before ... (*) Member States shall adopt and publish the provisions necessary to comply with this Directive. They shall forthwith inform the Commission thereof.

2. The Commission shall undertake every five years, and for the first time (**), a review of the thresholds laid down in this Directive and the percentages used to calculate the maximum compensation payable in the event of early repayment, assessing them in the light of economic trends in the Community and the situation of the market concerned. The Commission shall also monitor the effect of the existence of the regulatory choices referred to in Article 2(5) and 2(6), Article 4(1), point (c) of Article 4(2), Article 6(2), Article 10(1), point (g) of Article 10(2) and Article 16(4) on the internal market and consumers. The results shall be made known to the European Parliament and the Council, accompanied where appropriate by a proposal to modify the thresholds and percentages as well as the above-mentioned regulatory choices accordingly.

Article 28
Conversion of amounts expressed in euro into national currency
1. For the purposes of this Directive, those Member States who convert the amounts expressed in euro into their national currency shall initially use in the conversion the exchange rate prevailing on the date of adoption of this Directive.
2. Member States may round off the amounts resulting from the conversion provided that such rounding off does not exceed EUR 10.

Article 29
Repeal
Directive 87/102/EEC shall be repealed with effect from ... (*).

Article 30
Transitional measures
1. This Directive shall not apply to credit agreements existing on the date when the national implementing measures enter into force.
2. However, Member States shall ensure that Articles 11, 12, 13 and 17, the second sentence of Article 18(1), and Article 18(2) are applied also to open-end credit agreements existing on the date when the national implementing measures enter into force.

Article 31
Entry into force
This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

Article 32
Addressees
This Directive is addressed to the Member States.

Done at ....
For the European Parliament
The President

For the Council
The President

(*) Two years after the entry into force of this Directive.
(**) Five years after the entry into force of this Directive.
ANNEX I

I. The basic equation expressing the equivalence of drawdowns on the one hand and repayments and charges on the other

The basic equation, which establishes the annual percentage rate of charge (APR), equates, on an annual basis, the total present value of drawdowns on the one hand and the total present value of repayments and payments of charges on the other hand, i.e.:

\[ \sum_{k=1}^{m} C_k \times (1 + X)^{-k} = \sum_{l=1}^{m'} D_l \times (1 + X)^{-l} \]

where:
- \( X \) is the APR,
- \( m \) is the number of the last drawdown,
- \( k \) is the number of a drawdown, thus \( 1 \leq k \leq m \),
- \( C_k \) is the amount of drawdown \( k \),
- \( t_k \) is the interval, expressed in years and fractions of a year, between the date of the first drawdown and the date of each subsequent drawdown, thus \( t_1 = 0 \),
- \( m' \) is the number of the last repayment or payment of charges,
- \( l \) is the number of a repayment or payment of charges,
- \( D_l \) is the amount of a repayment or payment of charges,
- \( s_l \) is the interval, expressed in years and fractions of a year, between the date of the first drawdown and the date of each repayment or payment of charges.

Remarks:
(a) The amounts paid by both parties at different times shall not necessarily be equal and shall not necessarily be paid at equal intervals.
(b) The starting date shall be that of the first drawdown.
(c) Intervals between dates used in the calculations shall be expressed in years or in fractions of a year. A year is presumed to have 365 days (or 366 days for leap years), 52 weeks or twelve equal months. An equal month is presumed to have 30.41666 days (i.e. 365/12) regardless of whether or not it is a leap year.
(d) The result of the calculation shall be expressed with an accuracy of at least one decimal place. If the figure at the following decimal place is greater than or equal to 5, the figure at that particular decimal place shall be increased by one.
(e) The equation can be rewritten using a single sum and the concept of flows \( A_k \), which will be positive or negative, in other words either paid or received during periods 1 to \( k \), expressed in years, i.e.:

\[ S = \sum_{k=1}^{m} A_k \times (1 + X)^{-k} \]

\( S \) being the present balance of flows. If the aim is to maintain the equivalence of flows, the value will be zero.

II. Additional assumptions for the calculation of the annual percentage rate of charge

(a) if a credit agreement gives the consumer freedom of drawdown, the total amount of credit shall be deemed to be drawn down immediately and in full;
(b) if a credit agreement provides different ways of drawdown with different charges or borrowing rates, the total amount of credit shall be deemed to be drawn down at the highest charge and borrowing rate;
(c) if a credit agreement gives the consumer freedom of drawdown in general but imposes, amongst the different ways of drawdown, a limitation with regard to the amount and period of time, the amount of credit shall be deemed to be drawn down on the earliest date provided for in the agreement and in accordance with those drawdown limits;
(d) if there is no fixed timetable for repayment, and no such timetable can be deduced from the terms of the credit agreement and the means of repaying the credit granted, the duration of the credit shall be deemed to be one year and the amount of the credit shall be assumed to be repaid in twelve equal instalments of capital at monthly intervals;
(e) if there is a fixed timetable for repayment but the amount of such repayments is flexible, the amount of each repayment shall be deemed to be the lowest for which the agreement provides;
(f) unless otherwise specified, where the credit agreement provides for more than one repayment date, the credit is to be made available and the repayments made on the earliest date provided for in the agreement;

(g) if the ceiling applicable to the credit has not yet been agreed, that ceiling is assumed to be EUR 1 000;

(h) in the case of an overdraft facility the total amount of credit shall be deemed to be drawn down in full and for the whole duration of the credit agreement. If the duration of the credit agreement is not known the annual percentage rate of charge shall be calculated on the assumption that the duration of the credit is three months;

(i) if different interest rates and charges are offered for a limited period or amount, the interest rate and the charges shall be deemed to be the highest rate for the whole duration of the credit agreement;

(j) for consumer credit agreements for which a fixed borrowing rate is agreed in relation to the initial period, at the end of which a new borrowing rate is determined and subsequently periodically adjusted according to an agreed indicator, the calculation of the annual percentage rate shall be based on the assumption that, at the end of the fixed borrowing rate period, the borrowing rate is the same as at the time of calculating the annual percentage rate, based on the value of the agreed indicator at that time.
## ANNEX II

### STANDARD EUROPEAN CONSUMER CREDIT INFORMATION

1. Identity and contact details of the creditor/credit intermediary

<table>
<thead>
<tr>
<th>Creditor</th>
<th>[Identity]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address</td>
<td>[Geographical address to be used by the consumer]</td>
</tr>
<tr>
<td>Telephone number (*)</td>
<td></td>
</tr>
<tr>
<td>E-mail address (*)</td>
<td></td>
</tr>
<tr>
<td>Fax number (*)</td>
<td></td>
</tr>
<tr>
<td>Web address (*)</td>
<td></td>
</tr>
</tbody>
</table>

If applicable

<table>
<thead>
<tr>
<th>Credit intermediary</th>
<th>[Identity]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address</td>
<td>[Geographical address to be used by the consumer]</td>
</tr>
<tr>
<td>Telephone number (*)</td>
<td></td>
</tr>
<tr>
<td>E-mail address (*)</td>
<td></td>
</tr>
<tr>
<td>Fax number (*)</td>
<td></td>
</tr>
<tr>
<td>Web address (*)</td>
<td></td>
</tr>
</tbody>
</table>

(* This information is optional for the creditor.

Wherever 'if applicable' is indicated, the creditor must fill in the box if the information is relevant to the credit product or delete the respective information or the entire row if the information is not relevant for the type of credit considered.

Indications between square brackets provide explanations for the creditor and must be replaced with the corresponding information.

2. Description of the main features of the credit product

<table>
<thead>
<tr>
<th>The type of credit</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>The total amount of credit</td>
<td></td>
</tr>
<tr>
<td>This means the ceiling or the total sums made available under the credit agreement.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>The conditions governing the drawdown</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>This means how and when you will obtain the money.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>The duration of the credit agreement</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Instalments and, where appropriate, the order in which instalments will be allocated</td>
<td>You will have to pay the following:</td>
</tr>
<tr>
<td></td>
<td>[The amount, number and frequency of payments to be made by the consumer]</td>
</tr>
<tr>
<td></td>
<td>Interest and/or charges will be payable in the following manner:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>The total amount you will have to pay</th>
<th>[Sum of total amount of credit and total cost of credit]</th>
</tr>
</thead>
<tbody>
<tr>
<td>This means the amount of borrowed capital plus interest and possible costs related to your credit.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>If applicable</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>The credit is granted in the form of a deferred payment for a good or service or is linked to the supply of specific goods or the provision of a service</td>
<td>Name of good/service</td>
</tr>
<tr>
<td></td>
<td>Cash price</td>
</tr>
</tbody>
</table>
If applicable
Sureties required

This is a description of the security to be provided by you in relation to the credit agreement.

<table>
<thead>
<tr>
<th>Kind of sureties</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

If applicable

Repayments do not give rise to immediate amortisation of the capital.

3. Costs of the credit

The borrowing rate or, if applicable, different borrowing rates which apply to the credit agreement

<table>
<thead>
<tr>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>— fixed, or</td>
</tr>
<tr>
<td>— variable (with the index or reference rate applicable to the initial borrowing rate),</td>
</tr>
<tr>
<td>— periods</td>
</tr>
</tbody>
</table>

Annual Percentage Rate of Charge (APR)

This is the total cost expressed as an annual percentage of the total amount of credit.
The APR is there to help you compare different offers.

<table>
<thead>
<tr>
<th>% A representative example mentioning all the assumptions used for calculating the rate to be set out here</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

Is it compulsory, in order to obtain the credit or to obtain it on the terms and conditions marketed, to take out
— an insurance policy securing the credit, or
— another ancillary service contract.

If the costs of these services are not known by the creditor they are not included in the APR.

Yes/no [if yes, specify the kind of insurance]
Yes/no [if yes, specify the kind of ancillary service]

Related costs

If applicable

Maintaining one or more accounts is required for recording both payment transactions and drawdowns

If applicable

Amount of costs for using a specific means of payment (e.g. a credit card)

If applicable

Any other costs deriving from the credit agreement

If applicable

Conditions under which the above-mentioned costs related to the credit agreement can be changed

If applicable

Obligation to pay notarial fees

Costs in the case of late payments

Missing payments could have severe consequences for you (e.g. forced sale) and make obtaining credit more difficult.

You will be charged [... (applicable interest rate and arrangements for its adjustment and, where applicable, default charges)] for missing payments
4. Other important legal aspects

<table>
<thead>
<tr>
<th>Right of withdrawal</th>
<th>Yes/no</th>
</tr>
</thead>
<tbody>
<tr>
<td>You have the right to withdraw from the credit agreement within a period of 14 calendar days.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Early repayment</th>
<th>[Determination of the compensation (calculation method) in accordance with the provisions implementing Article 16(2) of Directive .../.../EC]</th>
</tr>
</thead>
<tbody>
<tr>
<td>You have the right to repay the credit early at any time in full or partially.</td>
<td></td>
</tr>
<tr>
<td>If applicable</td>
<td>The creditor is entitled to compensation in the case of early repayment</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Consultation of a database</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>The creditor must inform you immediately and without charge of the result of a consultation of a database, if a credit application is rejected on the basis of such a consultation. This does not apply if the provision of such information is prohibited by European Community law or is contrary to objectives of public policy or public security.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Right to a draft credit agreement</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>You have the right, upon request, to obtain a copy of the draft credit agreement free of charge. This provision does not apply if the creditor is at the time of the request unwilling to proceed to the conclusion of the credit agreement with you.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>If applicable</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>The period of time during which the creditor is bound by the pre-contractual information</td>
<td>This information is valid from … until …</td>
</tr>
</tbody>
</table>

5. Additional information in the case of distance marketing of financial services

(a) concerning the creditor

<table>
<thead>
<tr>
<th>If applicable</th>
<th>[Identity]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Representative of the creditor in your Member State of residence</td>
<td>[Geographical address to be used by the consumer]</td>
</tr>
<tr>
<td>Address</td>
<td></td>
</tr>
<tr>
<td>Telephone number (*)</td>
<td></td>
</tr>
<tr>
<td>E-mail address (*)</td>
<td></td>
</tr>
<tr>
<td>Fax number (*)</td>
<td></td>
</tr>
<tr>
<td>Web address (*)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>If applicable</th>
<th>[The trade register in which the creditor is entered and his registration number or an equivalent means of identification in that register]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Registration</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>If applicable</th>
<th>The supervisory authority</th>
</tr>
</thead>
</table>

(b) concerning the credit agreement

<table>
<thead>
<tr>
<th>If applicable</th>
<th>[Practical instructions for exercising the right of withdrawal indicating, inter alia, the period for exercising the right, the address to which notification of exercise of the right of withdrawal should be sent and the consequences of non-exercise of that right]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exercise of the right of withdrawal</td>
<td></td>
</tr>
<tr>
<td>If applicable</td>
<td>The law taken by the creditor as a basis for the establishment of relations with you before the conclusion of the credit contract</td>
</tr>
<tr>
<td>If applicable</td>
<td>Clause stipulating the governing law applicable to the credit agreement and/or the competent court [Relevant clause to be set out here]</td>
</tr>
<tr>
<td>If applicable</td>
<td>Language regime Information and contractual terms will be supplied in [specific language]. With your consent, we intend to communicate in [specific language] during the duration of the credit agreement.</td>
</tr>
<tr>
<td>(c) concerning redress</td>
<td>Existence of and access to out-of-court complaint and redress mechanism [Whether or not there is an out-of-court complaint and redress mechanism for the consumer who is party to the distance contract and, if so, the methods of access to it]</td>
</tr>
</tbody>
</table>

(*) This information is optional for the creditor.
ANNEX III

EUROPEAN CONSUMER CREDIT INFORMATION FOR

(1) overdrafts

(2) consumer credit offered by certain credit organisations (Article 2(5) of Directive …/…/EC)

(3) debt conversion

1. Identity and contact details of the creditor/credit intermediary

<table>
<thead>
<tr>
<th>Creditor</th>
<th>Address</th>
<th>Telephone number (*)</th>
<th>E-mail address (*)</th>
<th>Fax number (*)</th>
<th>Web address (*)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>If applicable</td>
<td>Credit intermediary</td>
<td>[Identity]</td>
<td>[Geographical address to be used by the consumer]</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Address</td>
<td>Telephone number (*)</td>
<td>E-mail address (*)</td>
<td>Fax number (*)</td>
<td>Web address (*)</td>
<td></td>
</tr>
<tr>
<td>If applicable</td>
<td>Credit intermediary</td>
<td>[Identity]</td>
<td>[Geographical address to be used by the consumer]</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Address</td>
<td>Telephone number (*)</td>
<td>E-mail address (*)</td>
<td>Fax number (*)</td>
<td>Web address (*)</td>
<td></td>
</tr>
</tbody>
</table>

(*) This information is optional for the creditor.

Wherever 'if applicable' is indicated, the creditor must fill in the box if the information is relevant to the credit product or delete the respective information or the entire row if the information is not relevant for the type of credit considered.

Indications between square brackets provide explanations for the creditor and must be replaced with the corresponding information.

2. Description of the main features of the credit product

| The type of credit | | |
|-------------------|---------------------|
| The total amount of credit | |
| This means the ceiling or the total sums made available under the credit agreement. | |
| The duration of the credit agreement | |
| How and when will you have to repay the credit? | |
| If applicable | You may be requested to repay the amount of credit in full on demand at any time | |
| If applicable | The credit is granted in the form of a deferred payment for a good or service | |
| | Name of good/service | |
| | Cash price | |
3. Costs of the credit

<table>
<thead>
<tr>
<th>Description</th>
<th>Example</th>
</tr>
</thead>
<tbody>
<tr>
<td>The borrowing rate or, if applicable, different borrowing rates which apply</td>
<td>[% fixed, or — variable (with the index or reference rate applicable to</td>
</tr>
<tr>
<td>to the credit agreement</td>
<td>the initial borrowing rate)</td>
</tr>
<tr>
<td>If applicable</td>
<td></td>
</tr>
<tr>
<td>The annual percentage rate of charge (APR) (*)</td>
<td>[% A representative example mentioning all the assumptions used for</td>
</tr>
<tr>
<td>This is the total cost of credit expressed as an annual percentage</td>
<td>calculating the rate to be set out here]</td>
</tr>
<tr>
<td>of the total amount of credit. The APR is there to help you compare</td>
<td></td>
</tr>
<tr>
<td>different offers.</td>
<td></td>
</tr>
<tr>
<td>If applicable</td>
<td></td>
</tr>
<tr>
<td>Costs</td>
<td>[The costs applicable from the time the credit agreement is concluded]</td>
</tr>
<tr>
<td>If applicable</td>
<td></td>
</tr>
<tr>
<td>The conditions under which those costs may be changed</td>
<td></td>
</tr>
<tr>
<td>Costs in the case of late payments</td>
<td>You will be charged [... (applicable interest rate and arrangements for</td>
</tr>
<tr>
<td></td>
<td>its adjustment and, where applicable, default charges] for missing</td>
</tr>
<tr>
<td>(*) Not applicable to European Consumer Credit Information for overdrafts</td>
<td>payments.</td>
</tr>
</tbody>
</table>

4. Other important legal aspects

<table>
<thead>
<tr>
<th>Description</th>
<th>Example</th>
</tr>
</thead>
<tbody>
<tr>
<td>Termination of the credit agreement</td>
<td>[The conditions and procedure for terminating the credit agreement]</td>
</tr>
<tr>
<td>Consultation of a database</td>
<td></td>
</tr>
<tr>
<td>The creditor must inform you immediately and without charge of the result</td>
<td></td>
</tr>
<tr>
<td>of a consultation of a database if a credit application is rejected on the</td>
<td></td>
</tr>
<tr>
<td>basis of such a consultation. This does not apply if the provision of</td>
<td></td>
</tr>
<tr>
<td>such information is prohibited by European Community law or is contrary to</td>
<td></td>
</tr>
<tr>
<td>objectives of public policy or public security.</td>
<td></td>
</tr>
<tr>
<td>Right to a draft credit agreement</td>
<td></td>
</tr>
<tr>
<td>You have the right, upon request, to obtain a copy of the draft credit</td>
<td></td>
</tr>
<tr>
<td>agreement free of charge. This provision does not apply if the creditor is</td>
<td></td>
</tr>
<tr>
<td>at the time of the request unwilling to proceed to the conclusion of the</td>
<td></td>
</tr>
<tr>
<td>credit agreement with you.</td>
<td></td>
</tr>
<tr>
<td>If applicable</td>
<td></td>
</tr>
<tr>
<td>The period of time during which the creditor is bound by the pre-contractual</td>
<td>This information is valid from … until …</td>
</tr>
<tr>
<td>information</td>
<td></td>
</tr>
</tbody>
</table>

5. Additional information to be given where the pre-contractual information  |                                                                        |
| is provided by certain credit organisations (Article 2(5) of Directive      |                                                                        |
| …/[…]/EC) or relates to a consumer credit for debt conversion              |                                                                        |
| Instalments and, where appropriate, the order in which instalments will be  | You will have to pay the following:                                  |
| allocated                                                                   | [Representative example of an instal table including the amount, number |
|                                                                             | and frequency of payments to be made by the consumer]                  |
| The total amount you will have to pay                                       |                                                                        |
### Early Repayment

You have the right to repay the credit early at any time in full or partially. If applicable, The creditor is entitled to compensation in the case of early repayment.

<table>
<thead>
<tr>
<th>Determination of the compensation (calculation method) in accordance with the provisions implementing Article 16(2) of Directive .../.../EC</th>
</tr>
</thead>
</table>

If applicable

### Additional Information

#### 6. Additional information to be given in the case of distance marketing of financial services

<table>
<thead>
<tr>
<th>(a) concerning the creditor</th>
</tr>
</thead>
<tbody>
<tr>
<td>If applicable</td>
</tr>
<tr>
<td>Representative of the creditor in your Member State of residence</td>
</tr>
<tr>
<td>Address</td>
</tr>
<tr>
<td>Telephone number (*)</td>
</tr>
<tr>
<td>E-mail address (*)</td>
</tr>
<tr>
<td>Fax number (*)</td>
</tr>
<tr>
<td>Web address (*)</td>
</tr>
</tbody>
</table>

| If applicable |
| Registration |
| [The trade register in which the creditor is entered and his registration number or an equivalent means of identification in that register] |

| If applicable |
| The supervisory authority |

#### (b) concerning the credit agreement

| Right of withdrawal |
| You have the right to withdraw from the credit agreement within a period of 14 calendar days. |
| If applicable |
| Exercise of the right of withdrawal |
| Yes/no |
| [Practical instructions for exercising the right of withdrawal indicating, inter alia, the address to which notification of exercise of the right of withdrawal should be sent and the consequences of non-exercise of that right] |

| If applicable |
| The law taken by the creditor as a basis for the establishment of relations with you before the conclusion of the credit contract |
| [Relevant clause to be set out here] |

| If applicable |
| Clause stipulating the law applicable to the credit agreement and/or the competent court |

| If applicable |
| Language regime |
| Information and contractual terms will be supplied in [specific language]. With your consent, we intend to communicate in [specific language/languages] during the duration of the credit agreement. |

#### (c) concerning redress

| Existence of and access to out-of-court complaint and redress mechanism |
| [Whether or not there is an out-of-court complaint and redress mechanism for the consumer who is party to the distance contract and, if so, the methods of access to it] |

(*) This information is optional for the creditor.
STATEMENT OF THE COUNCIL’S REASONS

I. INTRODUCTION


2. The Economic and Social Committee adopted its opinion on 17 July 2003 (2).

3. The European Parliament gave its opinion on 20 April 2004 (first reading) (3).

4. In the light of the European Parliament’s opinion, the Commission submitted on 29 October 2004 an amended proposal (4).

5. In November 2004, the Commission decided to undertake further consultations on the draft directive, following which it transmitted on 10 October 2005 to the Council the proposal as amended for the second time, in the form of a modified (5) proposal for a Directive of the European Parliament and of the Council on credit agreements for consumers.

6. In this consolidated modified proposal, based on Article 95 of the Treaty, the Commission took due account of the position expressed in the European Parliament’s first-reading opinion and incorporated 110 of the 152 amendments proposed therein.

7. On 20 September 2007, the Council adopted its common position in accordance with Article 251(2) of the Treaty.

II. OBJECTIVE

The Commission considered that the transposition of Directive 87/102/EEC had resulted in Member States going beyond the Directive’s provisions to varying degrees. These differences in national legislations in some cases constitute obstacles to the internal market and dissuade businesses from offering their products across national borders. The consumer credit market remains to a large extent fragmented into the Member States’ 27 national markets, thus hindering European consumers and creditors from making cross-border offers and contracts and therefore benefiting from the advantages of a single market.

Against this background, the Commission presented its proposal, which was substantially modified in October 2005 following the first-reading opinion of the European Parliament and sought to:

— establish the conditions for a genuine internal market,

— ensure a high level of consumer protection, and

— improve the clarity of Community legislation by recasting the three existing Directives on consumer credit (87/102/EEC, 90/88/EEC and 98/7/EC).

III. ANALYSIS OF THE COMMON POSITION

1. General

The Council based its discussion on the modified proposal presented by the Commission in October 2005. In general, it endorsed the European Parliament’s first-reading opinion, already reflected to a large extent in that proposal.
The Council also shared the view that the directive should ensure a high level of harmonisation in substantial areas covered by its scope and should represent a 'European added value' for the internal market, consumer choice and consumer protection. The Council identified five main areas in which such a 'European added value' should be achieved:

— pre-contractual information (Articles 5 and 6),
— contractual information (Article 10),
— right of withdrawal (Article 14),
— early repayment (Article 16), and
— calculation of the Annual Percentage Rate (APR) (Article 19).

The Council also introduced other modifications with respect to:

— the scope of the draft directive by, on the one hand, excluding a number of situations in Articles 2 and 20 and, on the other, covering in more detail some specific issues such as advertising (Article 4), overdrafts (Articles 6 and 12) or overrunning (Article 18),
— the level of harmonisation, especially the Commission's proposal to couple full harmonisation with targeted mutual recognition (Article 22),
— the use of comitology (Article 25),
— the transparency on regulatory choices taken by Member States in areas not fully harmonised (Article 26) and the related review clause (Article 27(2)).

The Commission accepted the common position agreed by the Council.

2. Main changes introduced by the Council in the modified proposal of the Commission

The Council introduced in its common position a number of modifications related to the following issues:

A. Scope (Article 2)

The Council streamlined the scope of the draft Directive (already limited following the exclusion of mortgage credit agreements, surety agreements and guarantors and the introduction of a light regime for overdrafts).

In that respect, the Council agreed the following changes to the scope of the draft Directive:

— a comprehensive exclusion of credits related to immovable properties (paragraph 2(a) and (b)) and of surety agreements, owing to their relationship with the question of mortgage credit,
— the exclusion of small credits (below 200 euro) and wider coverage for larger credits by increasing the upper limit from EUR 50 000 to 100 000 (paragraph 2(c)),
— the exclusion of short-term overdrafts to be repaid within one month (paragraph 2(e)),
— the exclusion of credits that are free of any interest and charges and the exclusion of short-term credits with very small charges (paragraph 2(f)).
The Council also agreed on specific ‘light’ regimes for particular types of credits, namely overdraft facilities (paragraph 3), overrunning (paragraph 4), credits offered by certain organisations with restricted membership and established for the mutual benefit of its members (paragraph 5) and credits for deferred payments (paragraph 6).

In agreeing to the above changes, the Council in its common position:

(i) Took on board, in full or in part, 24 amendments (2, 4, 5, 8, 10, 34, 38, 39, 47, 48 and 178, 49, 50, 51, 53, 54, 55, 56, 59, 61, 121, 145, 184, 185), including amendments 184 and 185 not accepted by the Commission, as follows:

Amendment 184: the Council confirmed the deletion in the new Article 2(2)(e)

Amendment 185: the Council took over the limit of EUR 100 000 in Article 2(2) (c), but not the remainder of the amendment.

(ii) Did not introduce 4 amendments (11, 57, 60, 123).

B. Pre-contractual information (Articles 5 and 6)

The Council considered that consumers should receive sufficient information to allow them to make informed and responsible decisions before signing the contract. To that effect, the Council made the following changes:

— deletion of the principle of responsible lending in Article 5, as this was considered to create some legal uncertainty. Instead, an obligation for creditors to assess the creditworthiness of the consumer was introduced in the new Article 8,

— extension of the list of pre-contractual information to be provided to the consumer under Articles 5(2) and 6(1),

— creation of a ‘Standard European Consumer Credit Information’ form (new Annex II) and of a ‘European Consumer Credit Information for Overdrafts’ form (new Annex III) for the provision of pre-contractual information. These standard forms, which include information as provided for in Articles 5 and 6, will make it easier for consumers to compare different offers, including on a cross-border basis,

— clarification on what pre-contractual information shall be provided in case of voice telephony communications as referred to in Article 3(3) of Directive 2002/65/EC (Distance selling of financial services) and if the consumer requests that the overdraft facility be made available with immediate effect (Article 6(4)),

— flexibility left to Member States as regards the indication of the APR for overdrafts (Article 6(2)),

— introduction of an obligation (Articles 5(4) and 6(6)) to supply to the consumer with a copy of a credit agreement if he so requests (combined with the information about this right given in the above-mentioned European standard form).

In agreeing to above changes, the Council in its common position:

(i) Took on board, in full or in part, 6 amendments (16, 17, 18, 65 and 188, 179).

(ii) Did not introduce 2 amendments (19, 28).

C. Contractual information (Article 10)

In relation to the changes made to the list of pre-contractual information, the Council also extended the list of information to be provided to the consumer at the time of the conclusion of the credit agreement (mostly in parallel with the additions made in Articles 5(2) and 6(1)). In accordance with Article 10(2), the following additional information must be provided to the consumer:

— the type of credit: point (a),

— a description of the product and service and its cash price in cases of deferred payment: point (c),

— an amortisation table, also where a variable interest rate applies: point (i).
— more comprehensive information on charges related to the credit agreement and the conditions for changing them: point (k),

— a warning on the consequences of missing payments: point (m),

— more comprehensive information on the right of withdrawal: point (q),

— information on the existence of alternative redress mechanisms: point (s),

— a reference to other contractual terms and conditions: point (t), and

— the name and address of the competent supervisory authority: point (u).

In agreeing to the above changes, the Council in its common position:

(i) Took on board, in full or in part, 10 amendments (77, 78, 81, 82, 83, 85, 86, 87, 88, 89).

(ii) Did not introduce 3 amendments (76, 79, 84), including amendment 84 accepted by the Commission.

D. Right of withdrawal (Article 14)

The Council agreed to provide for a uniform right of withdrawal of 14 calendar days. The Council clarified the obligations of consumers when exercising their right of withdrawal and the interlink with the right of withdrawal provisions in Directives 85/577/EEC (Doorstep selling) and 2002/65/EC (Distance selling of financial services). These clarifications are the following:

— addition of the obligation for the consumer to repay to the creditor, within 30 days of the date of withdrawal notification, the amount of credit already drawn down, including interest (paragraph 2(b)),

— addition of a provision on the cancellation of the ancillary service related to the credit agreement in the event of withdrawal from the credit agreement (paragraph 3),

— in cases of distance or doorstep selling of consumer credits, the right of withdrawal will be regulated in accordance with the provisions of the consumer credit Directive and not in accordance with Directives 85/577/EEC and 2002/65/EC,

— Member States may provide that the right of withdrawal does not apply if the credit agreement has been concluded through the services of a notary.

By agreeing to the above changes, the Council in its common position:

(i) Took on board, in full or in part, 3 amendments (20, 192, 193), including amendment 193 which was not accepted by the Commission and which the Council added in the new wording of Article 14(4), after drafting modifications.

(ii) Did not introduce one amendment (107).

E. Early repayment (Article 16)

While recognising the right of a consumer to repay a credit earlier, the Council agreed to grant creditors a limited right to compensation for possible costs directly linked to early repayment (paragraph 2).

The compensation will apply only if:

— it is related to credit agreements with a fixed borrowing rate, and

— the applicable reference interest rate decreases between the moment of the conclusion of the credit agreement and the early repayment.
The compensation is further limited to 1% of the amount of the credit repaid early (or 0.5% if repayment takes place within the final year of the credit agreement) and must not exceed the amount of the interest that the consumer would have paid if there had been no early repayment.

In addition, flexibility was left to Member States to set in their national legislation the threshold under which no indemnity has to be paid. This threshold may be set between 0 and EUR 10 000 of early repayment within 12 months (paragraph 4).

With respect to early repayment, the Council in its common position:

(i) Took on board one amendment (201).

(ii) Did not introduce one amendment (25) accepted by the Commission, as the Council wanted to raise the level of harmonisation for determining the compensation to be paid to the creditor in the event of early repayment of the credit.

F. Calculation of the APR (Article 19)

The Council provided for a uniform means of calculating the APR and included a standard set of assumptions to be used by credit providers for APR calculations in different circumstances (set out in Annex I, paragraph II). In order to cope with the product innovations and the need to calculate the APR for possible new types of credits in the future, the Council introduced a comitology provision under the regulatory procedure with scrutiny to determine additional assumptions if necessary (new paragraph 5). Consequently, the Council set up an appropriate committee in Article 25.

With respect to the annual percentage rate of charge, the Council in its common position:

(i) Introduced, in full or in part, 10 amendments (23, 24, 40, 42, 43, 151, 152, 195, 198, 199).

(ii) Did not include 7 amendments (148, 149, 150, 183, 194, 196, 197) in the common position.

G. Mutual recognition clause (Article 22)

The Council considered that the implementation of a mutual recognition clause as proposed by the Commission, i.e. a clause that would complement the minimum harmonisation on certain specific issues, would not fulfil the objectives of the proposed Directive. It would be too difficult for consumers to understand and might lead to legal uncertainty owing to the application of the law of different Member States. Therefore, the Council deleted this clause (in the former Article 21(2)).

To that effect, the Council in its common position:

(i) Introduced one amendment (6).

(ii) Did not introduce 3 amendments (30, 140, 204).

As a supplementary measure, the Council added a new Article 26 in order to ensure transparency concerning regulatory choices allowed for Member States in respect of those issues where full harmonisation was not achieved and flexibility was left to Member States (Articles 2(5), 2(6), 4(1), 4(2)(c), 6(2), 10(1), 10(2)(g) and 16(4)).

H. Review by the Commission (Article 27(2))

The Council agreed that the periodic five-year review conducted by the Commission should also include:

— a review of the percentages used to limit maximum compensation in the event of early repayment,

— monitoring of the effects on the internal market and consumers and publication of regulatory choices as reported by Member States under Article 26.
I. Other issues

In addition to the changes to Article 2 of the proposed Directive already mentioned in part A above, the Council endorsed the Commission’s modified proposal of October 2005 in limiting the scope of other provisions, notably simplifying the wording on Database access (Article 9) and Assignment of rights (Article 17) and deleting a number of Articles (namely on Joint and several liability, which in turn prompted the need for a new Article 15 on Linked credit agreements).

Furthermore, the Council considered that the coverage of some other issues should be less prescriptive and in particular deleted some provisions in Article 20 regarding the obligation to supervise or regulate credit intermediaries.

Consequently, the Council in its common position:

(i) Introduced, in full or in part, 45 amendments (1, 3, 7, 9, 12, 13, 14, 15, 21, 27, 29, 37, 46, 64, 67, 68, 69, 70, 71, 72, 74, 75, 102, 104, 105, 106, 108, 109, 124, 125, 132, 133, 134, 135, 136 and 162, 138, 139, 143, 144, 146, 147, 176, 180, 182) as follows:

Amendment 1: partly taken into consideration, with drafting modifications, in the new wording of Recital 3

Amendment 3: partly taken into consideration, with drafting modifications, in the new wording of Recital 4

Amendment 7: partly taken into consideration, with drafting modifications, in the new wording of Recital 7

Amendment 9: taken into consideration, with drafting modifications, in the new wording of Recital 6

Amendment 12: accepted in full (deletion of the Recital)

Amendment 13: accepted in full (deletion of the Recital)

Amendment 14: partly taken into consideration, with drafting modifications, in the new wording of Recital 27

Amendment 15: accepted in full (deletion of the Recital)

Amendment 27: partly taken into consideration, with drafting modifications, in the new wording of Recital 39

Amendment 29: partly taken into consideration, with drafting modifications (partial deletion), in the new wording of Recital 42

Amendment 37: taken into consideration, with drafting modifications, in the new wording of Article 3, point (i)

Amendment 46: accepted in full (deletion of the point in Article 3)

Amendment 64: accepted in full (deletion of the Article)

Amendment 67: accepted in full (new heading of Chapter III)

Amendment 68: accepted in full (deletion of the Article)

Amendment 69: taken into consideration, with drafting modifications, in the new heading of for Article 9

Amendment 70: accepted in full (deletion of the subparagraph)
Amendment 71: accepted in full (deletion of the subparagraph)

Amendment 72: taken into consideration, with drafting modifications, in Article 9(1)

Amendment 74: accepted in full (deletion of the subparagraph)

Amendment 75: accepted in full (deletion of the subparagraph)

Amendment 102: fully taken into consideration, with drafting modifications, in the new wording of Article 17

Amendment 104: accepted in full (new heading of Article 15)

Amendment 105: partly taken into consideration, with drafting modifications, in the new wording of Article 15(1)

Amendment 106: partly taken into consideration in the new wording of Article 15(1)

Amendment 108: partly taken into consideration in the new wording of Article 15(2)

Amendment 109: accepted in full (deletion of the Article)

Amendment 124: accepted in full (deletion of the paragraph)

Amendment 125: accepted in full (deletion of the Article)

Amendment 132: accepted in full (deletion of the heading)

Amendment 133: accepted in full (deletion of the paragraph)

Amendment 134: accepted in full (deletion of the paragraph)

Amendment 135: accepted in full (deletion of the Article)

Amendments 136 and 162: partly taken into consideration, with drafting modifications, in the new wording of Article 20

Amendment 138: accepted in full (deletion of the Article)

Amendment 139: taken into consideration, with drafting modifications, in the new wording of Article 21

Amendment 143: fully taken into consideration, with drafting modifications, in the new wording of Article 24

Amendment 144: accepted in full (deletion of the Article)

Amendment 146: accepted in full (deletion of the paragraph)

Amendment 147: accepted in full (deletion of the paragraph)

Amendment 176: partly taken into consideration, with drafting modifications, in the new wording of Article 3, point (n)

Amendment 180: partly taken into consideration, with drafting modifications, in the new wording of Article 9(2).

This also includes the following two amendments not accepted by the Commission:

Amendment 21: the deletion of text mentioned in this amendment was confirmed

Amendment 182: the deletion of text mentioned in this amendment was confirmed.

(ii) Did not include 13 amendments (26, 31, 33, 44, 45, 95, 126, 137, 141, 142, 161, 165, 181).
The Council also endorsed the view taken by the Commission in its modified proposal of October 2005 that a number of specific issues should be more precisely covered. Consequently, the Council agreed to:

— include linked transactions (new Article 15) in the Directive,

— a more prescriptive regime for advertising concerning standard information (Article 4(2)), while leaving flexibility to Member States on certain credit agreements and on the indication of the APR (see Article 4(2)(c) and deletion of the former paragraphs 3 and 4 of Article 4),

— specific provisions on overdraft facilities in case of increase of the borrowing rate (Article 12),

— cover overrungnings under a regime similar to credit agreements and overdrafts (notably regarding pre-contractual information), with a view to creating legal certainty; the Council also deleted provisions involving rectifying the situation through a new credit agreement in cases of significant overrungnings exceeding three months and introduced provisions which allow more flexibility (Article 18, paragraph 3), by leaving the regulation of this situation to national legislation,

— a more accurate wording on Information on the borrowing rate (Article 11) and Open-end credit agreements (Article 12), in order to better protect consumers.

In relation to the above, the Council in its common position:

(i) Introduced, in full or in part, 9 amendments (62, 94, 111, 113, 115, 116, 117, 129, 130) as follows:

Amendment 62: partly taken into consideration, with drafting modifications, in the new wording of Article 4

Amendment 94: accepted in full (deletion of the subparagraph)

Amendment 111: accepted in full (deletion of the point in Article 12)

Amendment 113: accepted in full (deletion of the point in Article 12)

Amendment 115: accepted in full (deletion of the point in Article 12)

Amendment 116: accepted in full (deletion of the point in Article 12)

Amendment 117: partly taken into consideration, with drafting modifications, in the new wording of Article 12(2)

Amendment 129: accepted in full (deletion of the paragraph)

Amendment 130: accepted in full (deletion of the paragraph).

(ii) Did not include 9 amendments (92, 93, 110, 112, 114, 120, 131, 175, 187).

In relation to three amendments accepted by the Commission but not included in the common position:

Amendment 120: this amendment was not taken over by the Council due to the nature of open-end credit agreements and the sufficient level of consumer protection in Article 13

Amendment 131: the deletion of text mentioned in the amendment was confirmed by the Council

Amendment 187: the Council deleted former Article 4(4) but reinforced information on the borrowing rate in Article 4(2)(a).
3. European Parliament amendments

In its plenary vote on 20 April 2004, the European Parliament adopted 152 amendments to the Commission’s initial proposal. The Commission incorporated 110 amendments into its modified proposal.

The Council introduced in the common position 104 amendments accepted by the Commission and 5 amendments not accepted by the Commission.

The Council did not include in the common position 6 amendments accepted by the Commission and 37 amendments not accepted by the Commission.

IV. CONCLUSION

The Council considers that its common position, which incorporates 109 amendments detailed in part III, takes good account of the European Parliament’s first-reading opinion.

Taking into account also the other innovations agreed by the Council, the common position represents a balance of concerns and interests, ensuring a high level of consumer protection and a good functioning of the internal market, in line with the European Parliament’s first-reading opinion and the Commission’s modified proposal.