

II

(Preparatory Acts)

COMMISSION

**Proposal for a Council Directive relating to the approximation of the laws, regulations
and administrative provisions of the Member States concerning consumer credit**

(Submitted by the Commission to the Council on 27 February 1979)

THE COUNCIL OF THE EUROPEAN
COMMUNITIES,

Having regard to the Treaty establishing the
European Economic Community, and in particular
Article 100 thereof,

Having regard to the proposal from the
Commission,

Having regard to the opinion of the European
Parliament,

Having regard to the opinion of the Economic and
Social Committee,

Whereas wide differences exist between the laws in
force in the Member States of the European
Economic Community in matters of consumer
credit;

Whereas these differences in the national legal
provisions are liable to jeopardize the establishment
of a system which ensures that competition between
creditors is not distorted in the common market;

Whereas these differences lead to disparities in the
degree of consumer protection in the various
Member States, limit the opportunities the consumer
has to obtain credit in another Member State, affect
the volume and the nature of the credit sought, and
also the purchase of goods and services;

Whereas, in consequence, these differences have an
influence on the free movement of goods and
services obtained on credit and thus hinder the

harmonious development of economic activities
throughout the Community;

Whereas the Preliminary Programme of the
European Economic Community for a consumer
protection and information policy⁽¹⁾ provides *inter
alia* that the consumer should be protected from
unfair credit terms and that a harmonization of the
general conditions governing consumer credit should
be undertaken as a priority; whereas for the
foregoing reasons the laws in force in Member States
concerning consumer credit directly affect the
functioning of the common market;

Whereas in the European Community the demand
for consumer credit in order to meet private needs
has increased considerably in recent decades;
whereas it continues to show this overall tendency;

Whereas the type of credit taken out has changed
over a period of time; whereas new forms have
emerged and continue to develop;

Whereas the consumer does not always receive
sufficient information on the conditions and cost of
credit and the nature of his obligations; whereas the
terms of credit agreements are often disadvantageous
to the consumer;

Whereas better protection of consumers can be
achieved by adopting certain minimum requirements
for all forms of credit; whereas, nevertheless, specific
rules governing overdrafts granted or accepted by
banks and other finance institutions should be laid
down;

⁽¹⁾ OJ No C 92, 25. 4. 1975, p. 1.

Whereas it may be necessary to fix different financial limits above or below which the provisions of this Directive shall not apply in light of their different economic effects in each Member State; whereas such financial limits have to be determined in accordance with a Community procedure;

Whereas the provision of information on the cost of credit in advertising and at the business premises of the creditor or credit broker can make it easier for the consumer to compare different offers; whereas Member States should be permitted to completely prohibit the unsolicited canvassing of consumers for the purpose of offering personal credit;

Whereas consumer protection is further improved if credit agreements are made in writing and contain certain particulars concerning the essential contractual conditions;

Whereas, in the event of default in payments on the part of the consumer, the creditor should not be permitted to repossess goods supplied on credit where the consumer remains liable for payment; whereas provisions should be made for credit agreements to be deemed to be terminated where the creditor repossesses the goods;

Whereas, in view of the considerable bearing which credit has on the consumer's economic and, in many cases, personal situation, he should be allowed to discharge his obligations before the due date; whereas the interest and other charges paid should then be refunded in accordance with the provisions adopted by the Member State;

Whereas the assignment of rights arising from credit agreements should not be allowed to weaken the position of the consumer;

Whereas the use of negotiable instruments in credit agreements with a consumer should be restricted; whereas cheques should be used only as a means of payment;

Whereas, in the event of cooperation between a creditor and a supplier, they should be jointly and severally liable to the consumer for the payments made by him if the goods are not supplied or are not in accordance with the terms of the agreement; whereas liability should not also be imposed on the creditor in respect of damage caused by a defective item to other property of the consumer or of a third party;

Whereas suitable measures to be chosen by the Member States should be adopted for supervising creditors;

Whereas contractual clauses excluding the application of the provisions adopted pursuant to this Directive must not be permitted;

Whereas the provisions of this Directive shall not prevent Member States from adopting other measures to protect consumers, with due regard for their obligations under the Treaty establishing the European Economic Community and in particular the rules on the free movement of goods, the freedom to provide services, and competition,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. This Directive shall apply to credit agreements.
2. For the purposes of this Directive:
 - (a) 'consumer' means a natural person not acting predominantly in a commercial or professional capacity;
 - (b) 'creditor' means a natural or legal person who grants credit in the course of his commercial activity or business, or a group of such persons;
 - (c) 'credit agreement' means an agreement whereby a creditor grants a consumer credit in the form of deferred payment, a loan or a promise to grant a loan or other financial accommodation and under which the consumer repays the credit, including any interest and charges, in more than one instalment;
 - (d) 'effective annual rate of interest' means the total cost of the credit expressed as an annual percentage of the amount of the credit granted, including interest and all other charges; the effective annual rate of interest shall be calculated in accordance with the rules laid down by the Member States.
3. An agreement for the supply of goods or the provision of services concluded with a consumer
 - (a) which is financed by means of a credit agreement between a supplier and a consumer, or
 - (b) which is financed by means of a credit agreement between a creditor and a consumer,

in so far as the creditor cooperates with the supplier in the performance of the agreement for the supply of goods or the provision of services,

shall also be deemed to be a credit agreement within the meaning of paragraph 2.

4. Member States shall adjust the provisions of this Directive in applying them to credit agreements between a broker and a consumer.

Article 2

1. This Directive shall not apply to:

- (a) credit agreements or agreements promising to grant credit intended primarily for the purpose of acquiring property rights in land or in an existing or projected building or intended for the purpose of renovating or improving a building;
- (b) hiring agreements;
- (c) agreements, in particular for the supply of goods or the provision of services, under which the consumer is granted a period not exceeding three months within which to pay the price stipulated in the agreement;
- (d) subject to the provisions of Article 8, credit in the form of advances on a current account granted or accepted by a credit institution or financial institution, other than credit cards;
- (e) amounts greater or less than particular sums to be fixed by the Commission for a Member State which so requests after consultation with that Member State.

2. Where the provisions of paragraph 1 (e) above are applied, Member States concerned shall take steps to ensure that the provisions on consumer credit are not circumvented as a result of the way in which agreements are formulated, in particular by the device of distributing the amount of credit over several agreements.

Article 3

Without prejudice to the general rules on misleading and unfair advertising, any advertisement in which a person offers to conclude or arrange credit agreements, and in which costs relating to the credit are indicated, shall show the total cost.

Where a percentage is given, the effective annual rate of interest must also be indicated.

Article 4

Member States may prohibit unsolicited visits to a consumer at his home, at his place of work or elsewhere for the purpose of proposing to him the conclusion of a credit agreement.

Article 5

Any person offering to conclude or arrange credit agreements shall clearly display, at those of his business premises to which the public has access, the annual rate of interest and other costs relating to the credit which he grants or arranges, and/or a notice to the effect that the consumer may request an offer which shall be binding on such a person if he grants the credit. He shall in both cases give examples of the effective annual rate of interest in respect of given sums.

Article 6

1. Credit agreements shall be made in writing. All credit agreements shall be signed by both parties. The facsimile signature of the creditor shall suffice.

The consumer shall receive a copy of the written agreement.

2. The written agreement shall contain the essential contractual conditions and at least the following particulars:

- (a) for credit agreements for the supply of goods or the provision of services:
 - (i) a description of the goods or services covered by the agreement;
 - (ii) the cash price and the credit price where this differs from the cash price;
 - (iii) the effective annual rate of interest; where the cash price and the credit price are different;
 - (iv) the amount of the deposit (if any) and the due dates, the number and amount of the instalments;
 - (v) the terms covering any rebate for early repayment;
 - (vi) who owns the goods and the terms under which the consumer becomes the owner of the goods;
 - (vii) details of the security required (if any);

- (b) for credit agreements in the form of credit cards:
- (i) a means of identifying the credit card;
 - (ii) the credit limit (if any);
 - (iii) annual rate of interest (if any) and the amount of any charges;
 - (iv) the terms of repayment;
- (c) for other credit agreements falling within the scope of this Directive:
- (i) the amount or limit of the credit or — in the case of a promise to grant credit — the amount or limit of the credit proposed;
 - (ii) the annual rate of interest and any other charges;
 - (iii) the effective annual rate of interest unless a promise of a loan is concerned, in which case that rate shall be specified at the date when the loan is taken up;
 - (iv) and indication of the security required (if any);
 - (v) the terms of repayment.

Article 7

The laws of each Member State shall lay down the legal consequences of failure to respect the provisions of Article 6.

Article 8

Notwithstanding the exclusion provided for in Article 2 (1) (d), the consumer shall be informed in writing in the case of credit in the form of an advance on a current account within the meaning of Article 2 (1) (d):

- (a) at the time the agreement is concluded,
- of the credit limit (if any);
 - of the annual rate of interest and the charges applicable from the time the agreement is concluded and the conditions under which it may be amended;
 - of the procedure for terminating the agreement;
- (b) during the period of the contract credit agreement, of any change in the annual rate of interest or in the relevant charges at the time it occurs. Such information may be given in a bank statement if such statements are sent at intervals of one month or less;

- (c) when a tacitly accepted overdraft extends beyond a period of three months of the annual rate of interest and any relevant charges, and of any amendment thereto.

Article 9

1. A credit agreement shall be void from the time the creditor repossesses, either on the basis of a right of ownership or of any other right, the goods supplied under a credit agreement.

2. Member States shall lay down rules to ensure that repossession of goods does not lead to unjustified disadvantages to any of the parties involved.

Article 10

The consumer shall be entitled to discharge his obligations under a credit agreement before the time fixed by the agreement; in this case, interest and other charges shall be refunded in accordance with the provisions adopted by the Member States.

Article 11

Where the creditor assigns to a third person his rights against the consumer under a credit agreement, the consumer shall be entitled to plead against the third party any defence — including set-off — which is or would have been available to him against the creditor before the assignment.

Article 12

In the operation of credit agreements:

- (a) bills of exchange, other than cheques, and promissory notes may not be used either as security or as a means of payment;
- (b) cheques may be used only as a means of payment.

Article 13

1. Where the consumer proves the existence of cooperation as referred to in Article 1 (3) (b), and where the goods are not supplied or the services are not provided, and where he is not responsible for such failure to supply the goods or services, he shall, provided he has the right under the laws of the

Member State concerned to recover from the supplier payments made by him and to refuse further payment, enjoy the same right in relation to the creditor.

2. The consumer shall have the same rights under the conditions specified in paragraph 1 where the goods supplied or services provided do not conform to the agreement.

3. In the cases referred to in paragraphs 1 and 2, the supplier and creditor shall be jointly and severally liable to the consumer for any repayment of sums paid.

4. This Article shall not prejudice any other rights of the consumer against the supplier or rights of the creditor against the supplier.

Article 14

1. Member States shall provide that:

- (a) persons offering to conclude or arrange credit agreements shall obtain official authorization; or
- (b) persons concluding or arranging credit agreements shall be subject to inspection of their activities by an official body; or
- (c) a body be set up to examine complaints from individual consumers concerning credit agreements entered into by or offered to them as well as to receive complaints from consumer organizations concerning credit agreements or credit conditions offered to consumers;
- (d) if persons referred to in paragraph (a) above satisfy the definition in Article 1 of the First Coordinating Directive on Banking Activities⁽¹⁾, they may not receive official authorization to exercise their activity before they have received banking authorization.

⁽¹⁾ OJ No L 322, 17. 12. 1977 p. 30.

Where banking authorization is withdrawn, official authorization to carry on their activities in the consumer credit field shall also be withdrawn.

2. The body referred to in paragraph 1 (c) shall be empowered to examine the complaints it receives, to advise consumers on the legal protection to which they are entitled and to institute legal proceedings on their behalf where they do not wish to exercise their rights but are willing to let the body act for them.

Article 15

No contractual agreement shall derogate, to the disadvantage of the consumer, from the provisions adopted in application of this Directive.

Article 16

Member States may lay down or retain more stringent provisions to protect consumers consistent with their obligations under the Treaty.

Article 17

1. The Member States shall bring into force the measures necessary to comply with this Directive within 18 months of its notification and shall forthwith inform the Commission thereof.

2. The Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field covered by this Directive.

Article 18

This Directive is addressed to the Member States.