

Opinion of the Economic and Social Committee on the 'Report on the operation of Directive 90/88 and the Proposal for a European Parliament and Council Directive amending Directive 87/102 (as amended by Directive 90/88) for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit'⁽¹⁾

(97/C 30/23)

On 31 May 1996 the Council decided to consult the Economic and Social Committee, under Article 100a of the Treaty establishing the European Community, on the above-mentioned report and proposal.

The Section for Protection of the Environment, Public Health and Consumer Affairs, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 16 July 1996. The Rapporteur was Mr Burani, and the Co-Rapporteurs were Mr Ceballo Herrero and Mr Sanderson.

At its 338th Plenary Session (meeting of 26 September 1996), the Economic and Social Committee adopted the following Opinion by 94 votes to ten with five abstentions.

1. Introduction

1.1. The first Directive on consumer credit 87/102/EEC⁽²⁾ left open the definition of a uniform method for calculation of the 'annual percentage rate of charge' (APR), which would allow all consumers to compare the cost of consumer credit charged by lenders in the various EU countries. A subsequent Directive, 90/88/EEC, adopted by the Council on 22 February 1990⁽³⁾, introduced a Community method of calculating the APR, and defined the items to be used in the calculation.

Following referral from the Council, the Economic and Social Committee adopted an Opinion⁽⁴⁾ which broadly supported the initiative, whilst making some suggestions which were only partly taken on board.

1.2. The Directive in question required the Commission (Article 1a(5)(b)) to present to the Council, by 31 December 1995, 'a Report, accompanied by a proposal' which will make it possible to definitively apply a single mathematical formula for calculating the APR, valid in all EU and European Economic Area (EEA) countries, i.e. Iceland, Liechtenstein and Norway. Directive 90/88 was in fact incorporated in the EEA agreement (cf. Commission document, Introduction and Summary, paragraphs 5 and 8, p. 2).

1.3. In proposing the Directive, the Commission has responded to the Council's instruction — albeit with a certain delay which is justified by various circumstances. The proposal leaves the calculation method more or less intact: it sets the principle that all Member States should use the calculation method laid down in the 1990 Directive, introduces the requirement to use a common

European symbol for the APR, and makes some changes to the English and Greek versions (regarding the term 'APR').

2. General comments

2.1. The Directive is the logical and scheduled follow-up to previous work, and accordingly the Committee supports the Commission, and is willing to work with it to achieve ever better protection of consumer interests.

2.2. Moreover, in order to avoid any misunderstanding, the scope and limits of the Directive should be discussed. If it had been merely a matter of allowing comparison of APR within a single country, it would have been sufficient to require each country to adopt its own uniform rate. The aim of the Directive is, however, to establish a basis for comparison between all EEA countries.

2.3. This objective has, however, only been achieved in part. A 'perfect' comparison between different countries would be possible if, further to harmonization of the calculation system, it were also possible to give a common definition of the items used in calculating the APR. These items, together with their definitions, vary from country to country⁽⁵⁾ owing to the remaining discrepancies in business practices, business legislation and taxation. The Commission has accepted⁽⁶⁾ that it is not possible, while complying with the proportionality rule and subsidiarity, to harmonize these definitions (let alone the items, the Committee would add); but it must

⁽¹⁾ OJ No C 235, 13. 8. 1996, p. 8.

⁽²⁾ OJ No L 42, 12. 2. 1987.

⁽³⁾ OJ No L 61, 10. 3. 1990.

⁽⁴⁾ OJ No C 337, 31. 12. 1988.

⁽⁵⁾ Cf. the study carried out for the Commission, which is quoted several times in the Report and the table set out in paragraphs 97 to 111 of the Report.

⁽⁶⁾ Cf. point 10, of the Report.

be admitted that where no uniform definition exists, 'cross-border' comparison of consumer credit becomes difficult.

2.4. Moreover, consumer credit is still largely provided by the financial institutions of a country for the residents of the same country, and for obvious reasons: the need to know the client, different legislation, difficulty in reclaiming sums lent abroad. It is only in certain border areas that 'cross-border' credit is of any significance.

2.5. This situation is bound to change with the introduction of the single currency, but only for the countries which join. For consumers from these countries, the Euro-area will be a real single market for consumer credit. For the others, nothing will change.

2.6. It is precisely because of the imminent creation of a real single market for consumer credit that the Directive could provide a step forward towards the completion of the Single Market.

2.7. The Commission asserts that adoption of the APR promotes 'the establishment and functioning of the internal market' and ensures that 'consumers benefit from a high level of protection'⁽¹⁾; it should, therefore, include in the recitals the logical — albeit as yet inexplicit — consequence, i.e. that adoption of the APR will mean that consumers can gain access to consumer credit under the provisions covering the freedom to provide services.

2.8. In view of the above points 2.3, 2.4, and 2.5, and following the line illustrated in 2.7, the Committee believes that it is the duty of the Commission, the national authorities and credit institutions to warn consumers against entering into decisions lightly. Another country's apparently more attractive rate is not necessarily better value than the home country rate. Quite apart from the items which make up the APR, each interest rate is specific to each currency, and generally reflects the state of the relevant national economy and monetary policies; it can alter with varying frequency, and not always to the benefit of the consumer. Exchange rates can also vary, with consequences the consumer can neither predict nor prevent when signing a contract. The consumer must be informed of the risks involved in borrowing in another currency.

2.9. Another aspect which should be commented on is the introduction of a symbol (not 'logo', as sometimes mentioned in the Report — symbol and logo are not the

same thing). It would have to be used whenever the denomination 'APR' is used. Without wishing to dwell on the problems involved in preparing the lay-out of information leaflets and contracts, one wonders whether the average consumer will actually understand the meaning of the symbol. Here again, insider terminology is not necessarily welcomed by the public, especially if it requires an effort to understand it. The introduction of the symbol would cost a significant sum (one major European bank has estimated the cost of using the symbol to be in the region of ECU 6-7m.). Furthermore, in order to reduce the symbol to a size suitable to appear on contracts, the stars surrounding the percentage sign merge into a circle. The objective of a single recognizable sign is therefore lost.

2.10. There is an even more cogent argument against using the symbol: it is open to abuse and misuse. A 'Europe' symbol always confers some kind of official authority on a document. Given the multitude of financial consultants on the market — licensed or otherwise, vetted or otherwise — it is easy to see that it could be misused in a variety of ways. It would be only too easy to trick the consumer into thinking that the APR quoted in the literature had been given some kind of official approval. The ESC would advise against using a 'Europe'-type symbol which, rather than providing greater clarity and improving consumer information, would sow the seeds of confusion and misunderstanding.

2.11. The proposals do not really make any great changes to the current situation; however, three provisions deserve special attention because of their practical implications:

- deletion of the scope (used by Finland, France and Germany) for adopting a different method for calculating the APR;
- the requirement to base calculations on the calendar year (365 or 366 days) rather than on the 'business' year (360 days);
- accuracy to two decimal places, which has not yet been adopted everywhere, and was not, in any case, required earlier.

2.12. As shown below in the comments on the individual Articles, these provisions could lead to increased costs in most Member States, due to the need to adapt computer programmes prior to the entry into force of the Directive on 1 January 1997. The programmes would have to be adapted again when

⁽¹⁾ Proposal for a Directive, first recital.

the Single Currency is adopted two years later. The Committee wonders whether it would not be better for the Directive to enter into force on 1 January 1999, at least as far as calculation is concerned. Thus, it would be possible to carry out the changes to the programmes all at once; this would reduce costs considerably and should be of benefit to the consumer.

3. Comments on individual Articles

3.1. Article 1

3.1.1. As stated in the above 'general comments' (2.9 and 2.10), the Committee would strongly advise against adopting an 'official' or seemingly official symbol, in all cases — including that currently being discussed — concerning private transactions: the consumer could be misled. Moreover, an innovation of this kind could set a precedent for extensive use of the European symbol whenever a contract refers to European regulation. The situation would be confusing for consumers and the authorities would not be able to vet it.

3.1.2. Furthermore, it gives rise to the delicate problem of whether a European symbol (the twelve stars) should be used by the non-EU countries, i.e. the EEA countries (cf. 1.2 above), which would still have to respect the provisions of the Directive.

3.2. Article 4

3.2.1. This Article deletes the scope given to financial institutions to use a different APR formula from that laid down in the Directive, as long as the formula was already in force in their country before 1 March 1990. This derogation is currently used by Finland, France and Germany. Although this derogation was intended to apply only until 31 December 1995, it remains operative *de facto* until the Directive mentioned in Article 1a(5)(c) of the amended Directive 87/102/EEC is adopted.

3.2.2. As for the costs involved in altering programmes, the Commission states (cf. paragraph 15 of the Report) that 'production costs for software companies and financial institutions will be reduced due to the economies of scale provided by the use of a single formula throughout the Single Market.' The problem should not be seen in this light, since the financial institutions of derogation countries would have to meet costs which the institutions of the other countries have already met. Moreover, this comment is important for the remarks below on the other amendments proposed in the Directive (cf. 3.3) and the effective date of the Directive (cf. 3.4).

3.3. Article 7

3.3.1. According to the wording of this Article, it merely replaces the previous Annex I of Directive 87/102 by another Annex which makes apparently minor amendments to the previous text. The amendments concern:

- the method of calculating the days of the year, which must be carried out according to the calendar year (365 or 366) and not 360, as in some countries⁽¹⁾;
- the result of the calculation must be expressed within an accuracy of up to two decimal places (it was previously possible to round off to one decimal place).

3.3.2. Whilst the abolition of the derogation provided for in Article 4 affects only the above-mentioned Member States (Finland, France and Germany), which must replace their existing methods of calculation with the formula laid down in the Directive, the proposal to replace the 360 day year used by some Member States as the basis for calculation with a 365/6 day year would also affect Member States which are currently using the method of calculation which is in future to be binding throughout the EU. Most Member States would therefore have to change their method and/or basis of calculation partially or completely. This is particularly so if the new rule means that the calculation has to be exact to the day. In this case a basis of calculation would have to be introduced throughout Europe which is so far used by only three Member States, representing about a third of the EU population.

3.3.3. A calendar day calculation would create considerable problems, since it would no longer be based — as in most of the States concerned — on standardized values (e.g. $365 \text{ days} \div 12 = 30,41666 \text{ days/month}$) but on actual values; thus, a monthly calculation would have to be based on 31 days for January and 28/29 days for February. The APR would then depend on the loan-payment date and vary according to the length of the month, notwithstanding a nominally identical interest rate. This would be counterproductive from the standpoint of the Single Market consumer, since the interest rates quoted by different lenders would no longer be comparable. The ESC therefore calls for clarification of the Directive text, to enable financial institutions to apply the uniform calculation method based on standardized values. In addition, leap years should no longer be taken into account since, as the Commission itself acknowledges, these would not be noticed even in calculations to two decimal places.

3.3.4. The practical impact of calculating APRs to two decimal places will have an adverse effect on

⁽¹⁾ Germany, Finland, Sweden, Liechtenstein and Norway: cf. paragraphs 124 to 128, and the table in paragraph 124 of the Report.

consumers. This requirement will mean that financial institutions will no longer be able to issue the pre-prepared tables which are currently used for advertising purposes. The tables provide details about loans which consumers use to compare the cost of borrowing before requesting a bespoke loan from their chosen financial institution.

3.3.5. Bearing in mind the fact that the 360-day year is only used in a minority of countries, and that it is already normal practice almost everywhere to round off to two decimal places, the costs involved alone would not seem to justify altering systems which have not yet conformed to the prescriptions of Annex II. The Committee wonders whether the modest practical impact of this harmonization and the ensuing benefits for consumers are really in proportion to the costs involved.

3.4. Article 9

3.4.1. This Article gives 1 January 1997 as the effective date of the Directive. The Commission evidently felt

that such a short deadline was feasible since adoption of the proposals posed no particular problem. In fact, the proposals are, in part, of only marginal significance (slight alteration of calculation systems), and partly meet a requirement which had already been envisaged (withdrawal of the right to use a different system).

3.4.2. Moreover, considering the costs involved in altering the programmes (cf. 3.2.1 and 3.2.2 above) twice (cf. 2.12), the Committee wonders whether it would be worth deferring entry into force of the Directive to 1 January 1999.

On this date, the Member States which already use the APR calculation method described in the 1990 Directive 90/88 will have to make calculating adjustments. For similar reasons, it is proposed that Member States which issued the derogation provided for in Article 1a(5)(a) of the amended Directive 87/102 should also be required to adopt the APR calculation method laid down in the Directive by the date on which the single currency is introduced.

Brussels, 26 September 1996.

The President
of the Economic and Social Committee
Carlos FERRER

APPENDIX

to the Opinion of the Economic and Social Committee

Defeated Amendments

The following amendments, which received at least one quarter of the votes cast, were defeated during the discussion.

Paragraph 2.9

Delete the text after the third sentence (thus the first deleted sentence begins with 'Here again ...') and continue with:

'It is therefore imperative that the consumer is well informed about its meaning. The consumer should be made aware through information campaigns that the symbol does not reflect a recommendation from EU-authorities in favour of that particular credit offer, but merely stands for the European substitution of a term referring to a uniform method of calculation of the annual percentage rate.'

Reason

Although the danger for confusion of the consumer, as the Rapporteur notes, cannot be excluded, his rejection of the symbol altogether is going much too far. Information campaigns would help to prevent the danger of misinterpretation. Since the incidence of obtaining credit from another member country will increase, especially after the introduction of the Euro, the consumer should be informed in a simple way of the application of a uniform method of calculation of the annual charges. Since no agreement could be reached on 'uniform language', the introduction of a symbol can be regarded as a second-best alternative.

Result of the vote

For: 34, against 47, abstentions: 21.

Paragraph 2.10

Delete.

Reason

See preceding amendment.

Result of the vote

For: 34, against: 47, abstentions: 21.

Paragraph 2.12

Delete.

Reason

The significance of the entering into force of a harmonized regime for the calculation of the annual percentage rate of charge as of 1 January 1997 far outweighs the comparatively minuscule extra costs which are involved in separately adapting programmes for the introduction of the Euro two years later. It is simply not true that the suggested delay will yield significant savings. The extra costs should be judged in relation to the amount of credit granted annually. It would, moreover, not be sensible to use the same date for the introduction of the Euro and the implementation of the consumer credit Directive. The banks will already be stretched to the limit by the work that is involved in introducing the Euro, as is made clear in the ESC's excellent opinion on the subject. Moreover, it is not at all clear which Member States will in fact accede to the single currency. For the Member States which will not participate as of 1 January 1999, no extra costs are involved. Finally, the suggested delay sets dangerous precedents for the settling of dates for the implementation of any directive, since most measures will involve certain costs.

Result of the vote

For: 37, against: 62, abstentions: 12.
