



COMMISSION OF THE EUROPEAN COMMUNITIES

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2002/0222 (COD)

Amended proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on the harmonisation of the laws, regulations and administrative provisions of the Member States concerning credit for consumers repealing Directive 87/102/EC and modifying Directive 93/13/EC**

(presented by the Commission pursuant to Article 250 (2) of the EC Treaty)

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**1. STATE OF PROCEDURE**

The proposal – COM (2002) 443 final – 2002/0222 (COD) was adopted by the Commission on 11th September 2002 and was transmitted to the European Parliament and to the Council on 12<sup>th</sup> September 2002.

The European Economic and Social Committee adopted its opinion on the Commission proposal on 17 July 2003, CESE 2003/918.

The European Parliament adopted 152 amendments in the first reading on 20<sup>th</sup> April 2004.

**2. OBJECTIVE OF THE PROPOSAL**

Directive 87/102/EEC concerning consumer credit<sup>1</sup>, amended in 1990 and 1998<sup>2</sup>, established the Community framework for consumer credit with a view to promoting the setting-up of a common market for credit and establishing minimum Community rules to protect consumers.

Following several reports and very broad consultations of the parties involved, it appeared that Directive 87/102/EEC no longer reflected the current situation on the consumer credit market and was therefore in need of revision<sup>3</sup>. In September 2002, the Commission adopted a proposal for a Directive establishing provisions concerning credit for consumers on a completely new basis.

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<sup>1</sup> Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit.

<sup>2</sup> Council Directive 90/88/EEC of 22 February 1990 amending Directive 87/102/EEC for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit, OJ L 061, 10/03/1990 p. 14-18, itself amended by Directive 98/7/EC of the European Parliament and of the Council of 16 February 1998 amending Directive 87/102/EEC for the approximation of laws, regulations and administrative provisions of the Member States concerning consumer credit, OJ L 101, 01/04/1998 p. 17-23.

<sup>3</sup> Communication from the Commission – Financial services: enhancing consumer confidence – follow-up to the Green Paper on “Financial services: meeting consumers’ expectations”, COM(97)309 final.

### 3. OBJECTIVE OF THE AMENDED PROPOSAL

In the light of the European Parliament's opinion on first reading, this amended proposal adapts the original proposal for a Directive on consumer credit in a number of respects. This means in particular restricting the scope, introducing light regimes for certain types of credit agreements, and deleting certain provisions already covered by Community legislation or dealt with satisfactorily at national level. It should introduce the concept of "linked credit", as well as a revised version of the calculation method for the APR, and be focussed on pre-contractual and contractual information requirements.

### 4. COMMENTS ON THE AMENDMENTS ADOPTED BY THE PARLIAMENT

#### 4.1. Amendments accepted as such by the Commission

Amendments 5, 8, 12, 13, 15, 16, 24, 25, 39, 42, 43, 46, 50, 51, 64, 67, 68, 69, 70, 71, 72, 74, 75, 78, 86, 102, 104, 109, 111, 113, 116, 123, 125, 126, 132, 133, 134, 135, 136, 138, 144, 146, 148, 199, 201 can be accepted as they are presented by the Parliament since these amendments add clarity to the text and improve certain definitions.

#### 4.2. Amendments not accepted by the Commission

Amendments 4, 10, 19, 21, 28, 30, 31, 33, 44, 45, 47, 48, 49, 76, 77, 82, 83, 85, 88, 89, 93, 94, 106, 110, 112, 114, 115, 121, 124, 131, 137, 140, 142, 151, 152, 161, 175, 178, 181, 182, 183, 193, 196, 204 cannot be accepted by the Commission.

#### 4.3. Amendments accepted by the Commission in part or subject to reformulation

All other amendments can be accepted in part or in principle subject to reformulation, because they introduce a number of improvements concerning either the clarity of the text or concerning certain matters of detail, or of additions that could be useful in the implementation of the proposal. **In the following, when Articles are quoted, changes in conformity with Parliament amendments are underlined, whereas changes inserted by the Commission are underlined and in italics.** The essential changes should be as follows:

##### 4.3.1. *Scope*

The following types of agreements will be excluded from the scope: surety agreements guaranteeing business loans, agreements certified by a court (Am. 59), credit agreements where the consumer is required to repay within 3 months free of charge (Am. 60, 184), credit concluded with pawn-shops (Am. 55), loans above € 100,000 (Am. 185). These changes will be done in Article 3 (Scope).

The commission proposes introducing two "light regimes", based on pre-contractual and contractual information. The types of agreements to be submitted to these light regimes will be defined in Article 3 (Scope), and two new articles (6 and 7) will list the information requirements.

- The first “light regime” concerns overdrafts (Am. 57, 179) and will be detailed in a new Article 6:

“Where a credit agreement covers credit in the form of an advance on a current account or debit account within the meaning of Article 3 (3), the consumer shall be informed before the agreement is concluded of:

- The total amount of credit ,
- the borrowing rate,
- the annual percentage rate of charge by means of a representative example mentioning all the financial data and assumptions used for calculating the said rate,
- the charges applicable from the time the agreement is concluded, and the conditions under which those charges may be amended, and
- the conditions and procedure for terminating the agreement.”

- The second “light regime” detailed in a new Article 7 will be drafted as follows :

“In good time before a consumer is bound by a credit agreement or any offer concerning a credit agreement within the meaning of Article 3 (4), the creditor and, where applicable, the credit intermediary shall provide, on paper or on another durable medium, the following information:

- (a) the total amount of credit,
- (b) the borrowing rate,
- (c) the annual percentage rate of charge, by means of a representative example mentioning all the financial data and assumptions used for calculating the said rate,
- (d) the duration of the credit agreement, and
- (e) the amount, number and frequency of payments to be made.”

It concerns specific credit agreements on:

- smaller loans (below €300),
- loans “granted to a restricted public, at a lower interest rate than usually proposed on the market or free of interest, and when the creditor is fulfilling a statutory duty with a general interest purpose” (Am. 53),
- loans granted by certain non-profit associations such as genuine credit unions (Am. 61),
- and credit agreements aiming at refinancing the existing debts of a consumer in order to avoid legal proceedings and where the terms do not have the consequence of putting the consumer in a worse situation than before the new agreement (Am. 54).

#### 4.3.2. *Linked credit agreements (35, 105, 108, 165, 176)*

The concept of linked agreement contains the following elements:

“linked credit agreement” means an agreement where the credit in question serves exclusively to finance an agreement concerning the supply of goods or the provision of a service and the two agreements form from an objective point of view a commercial unit. It should be assumed that a commercial unit is involved where the supplier or service provider himself finances the credit for the consumer or, if it is financed by a third party, if the creditor uses the services of the supplier or service provider in connection with the conclusion, or preparation, of the credit agreement, or if the credit agreement makes reference to the specific goods or services to be financed with the credit”.

This will be inserted in the Article 2 (Definitions).

In the case of a linked credit agreement, if the consumer is allowed to withdraw from the purchase agreement, he will be allowed to withdraw also from the credit agreement. However, the directive will not include consequences for purchase contracts in case of withdrawal from the credit agreement. Such consequences seem inappropriate in a directive on credit agreements only. However, the principles established in article 11(2) of Directive 87/102 (right to pursue remedies against the creditor) will remain included, as they have been implemented by all Member States. They will therefore be reflected in full in the relevant article.

#### 4.3.3. *Standard information (Am. 62)*

Article 4 on advertising will be deleted. However, a new Article on “standard information” is drafted as follows:

- “1. Any advertising concerning credit agreements shall include standard information which includes information on the cost of credit in accordance with this Article.
2. The standard information shall include, in the following order, and in a clear, concise and prominent way through a representative example, the total amount of credit, the annual percentage rate of charge, the duration of the credit agreement, the number and amount of monthly payments and any kind of fees in connection with the credit agreement in conformity with the terms thereof and which are known to the creditor. If an ancillary service relating to the credit agreement, in particular an insurance, is compulsory to obtain the credit or the advertised rate, and its cost cannot be determined in advance, the obligation to take out this service shall also be mentioned in a clear, concise and eye-catching manner prominent way, together with the annual percentage rate of charge.

If these credit terms are not generally available for every borrower, the annual percentage rate of charge must be stated by means of at least two representative examples.

Where a lower interest rate is offered for a limited duration at the beginning of the credit agreement, the advertisement shall contain the annual percentage rate calculated on the whole duration of the credit agreement.

The provisions of this Article are without prejudice to Directive [.../.../EC of .../.../... (the Unfair Commercial Practices Directive)]”

#### 4.3.4. *Pre-contractual information (Am. 65, 188)*

At the pre-contractual stage, information will contain all the basic information a consumer needs to be able to shop around and compare offers, including the total cost of credit and the APR. The information will also include the indication concerning the compulsory conclusion of an ancillary contract as found in advertising. This information is necessary for the consumer to make his choice, as an APR including the cost of insurance will necessarily be higher than an APR excluding this cost. It will also include information on the rights of the consumer and their cost (in particular the right to and cost of repaying early and withdrawing), so that the consumer can make his transaction decision in full knowledge.

The concept of responsible lending in Article 9 will be modified and transferred into the chapter on pre-contractual information. Lenders are requested to assess consumer solvability on the basis of information disclosed by the latter and, where appropriate, consultation of databases. At the same time, it is essential for responsible lending and borrowing to maintain on lenders substantive pre-contractual information obligations and an adequate duty to establish, among the credit agreements they usually offer, the most appropriate type and total amount of credit.

The drafting is therefore as follows:

1. The creditor and, where applicable, the credit intermediary shall adhere to the principle of responsible lending. Responsible lending includes the requirement for the creditor and, where applicable, the credit intermediary, to comply with their obligations as regarding the provision of pre-contractual information and the requirement for the creditor to assess the consumer’s creditworthiness on the basis of the information provided by the latter, and, where appropriate, on the basis of a consultation of the relevant database.

In case the agreement allows to amend the total amount of credit after the date of conclusion of the agreement, the creditor is required to update the financial information at his disposal and to assess the consumer’s creditworthiness before any significant increase in the total amount of credit.

2. In good time before the consumer is bound by a credit agreement or any offer, the creditor and, where applicable, the credit intermediary shall provide, on paper or on another durable medium, the necessary and essential information needed for the conclusion of the credit agreement under consideration. The information shall refer to:

(a) the sureties and insurance required;

(b) the duration of the credit agreement;

(c) the amount, number and frequency of payments to be made, where possible set out in a payment schedule;

(d) where applicable, the costs of maintaining an account recording both payment

transactions and credit transactions, the costs of using a card or another means of payment for both payment transactions and draw downs, and the costs relating to payment transactions in general

- (e) the total amount of credit and the conditions governing the drawdown of the credit;
- (f) where applicable, the borrowing rate, the conditions governing the application of this rate and any index, where available, or reference rate applicable to the initial borrowing rate, as well as the periods, conditions and procedures for varying the borrowing rate;
- (g) the annual percentage rate of charge and the total cost of credit, by means of a representative example. All the financial data and assumptions used for calculating the said rate shall be mentioned;
- (h) Costs payable by the consumer on conclusion of the credit agreement to persons other than the creditor or the credit intermediary, in particular a notary, tax authorities, registrar of mortgages, and any costs in general imposed by the authority responsible for registration and sureties, shall be mentioned. If an ancillary service relating to the credit agreement, in particular an insurance, is compulsory to obtain the credit or the advertised rate, and its cost cannot be determined in advance, the obligation to take out this service shall also be mentioned in a clear, concise and eye-catching manner;
- (i) the existence or absence of the right of withdrawal, the period during which that right of withdrawal may be exercised, and the procedure for the exercise of that right
- (j) the right to be informed of the result of a database consultation for the assessment of the creditworthiness, according to Article 9(2);
- (k) the right of early repayment, and, where applicable, the costs arising there from, indicating the amount or the calculation method;
- (l) the interests in the case of overdue payments as applicable at the time when the information according to this provision is given and the arrangements for their adjustment, and the charges for defaulting;

In the cases of voice telephony communications as referred to in Article 3 (3) of Directive 2002/65/EC, this information must include in addition to the information required by this provision at least the items referred to in points c), e), and g) of this paragraph.

The duty under this paragraph to provide information may also be discharged by supplying a draft agreement including the information in accordance with Article 10.

3. In the case of a contract where 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 the ancillary agreement, the information given according to this

provision must include a clear and concise statement that such contracts do not provide for a guarantee of repayment of the total amount of credit drawn down, unless such a guarantee is given.

4. The creditor or, where applicable, the credit intermediary shall seek to establish, among the credit agreements they usually offer or arrange, the most appropriate type and total amount of credit taking into account the financial situation of the consumer, the advantages and disadvantages associated with the product proposed, and the purpose of the credit.

#### 4.3.5. *Contractual information (Am. 79, 81, 84, 87, 107)*

Information provided in the credit agreement must be comprehensive and contain all the information provided at a pre-contractual stage – with a fully calculated APRC (as at this stage the bank is aware of all the costs) and total cost of credit – as well as detailed amortisation tables in the case of fixed rate loans.

The charges in case of defaulting need to be indicated so that the consumer can appreciate the implications of default.

In order to improve the transparency of the text, the modified proposal explicitly lists all the contractual information requirements:

- “1. Credit agreements and surety agreements shall be drawn up on paper or on another durable medium.

All the contracting parties shall receive a copy of the credit agreement. The guarantor shall receive a copy of the surety agreement.

Agreements shall contain information regarding access to out-of-court complaint procedures and shall specify the formalities to be followed when a creditor or credit intermediary makes use of such procedures.

2. The credit agreement shall include, *in a clear and concise manner*:

- (a) the names and addresses of the contracting parties as well as, if applicable, the name and address of the credit intermediary involved;

- (b) the sureties and insurance required;

- (c) the duration of the credit agreement;

- (d) the amount, number and frequency of payments to be made;

- (e) where capital amortisation of a credit agreement with fixed duration and rate is involved, a statement of account in the form of an amortisation table, the payments owing, and the periods and conditions relating to the payment of these amounts;

- (f) if charges and interest are to be paid without capital amortisation, a statement showing the periods and conditions for the payment of the borrowing interest and of the associated recurrent and non-recurrent charges;

- (g) a statement of the costs, indicating their purpose and amounts, which are not included in the calculation of the annual percentage rate of charge but which are known to the creditor or the credit intermediary and are to be paid by the consumer, namely the interest in case of overdue payments as applicable at the time of conclusion of the agreement and the arrangements for their adjustment penalties, charges or interests on arrears relating to an overrunning of the total amount of credit, and the charges for defaulting;
- (h) the total amount of credit and the conditions governing the drawdown of the credit;
- (i) where applicable, the goods or services being financed;
- (j) where applicable, the borrowing rate, the conditions governing the application of this rate and any index, where available, or reference rate applicable to the initial borrowing rate, as well as the periods, conditions and procedures for varying the borrowing rate;
- (k) the total cost of credit to the consumer and the annual percentage rate of charge, calculated at the time the credit agreement is concluded, on the basis of all the financial data and assumptions applicable to the agreement;
- (l) the existence or absence of the right of withdrawal, the period during which that right of withdrawal may be exercised, and the procedure to exercise that right.
- (m) the right of early repayment, the procedure for early repayment, and, where applicable, the costs arising there from, indicating the amount or the calculation method;
- (n) the right to be informed of the result of database consultation for assessment of creditworthiness according to Article 9(2)
- (o) the procedure to be followed to exercise the right of termination of the credit agreement;
- p) information concerning the rights resulting from Article 15 as well as the conditions for the exercise of these rights

3. The surety agreement shall state the maximum amount guaranteed, as well as the charges for defaulting to be applied in accordance with the procedure referred to in paragraph 2 (e).”

#### 4.3.6. Provisions covered by existing Community legislation

The initial proposal contained provisions related to areas covered by existing Community legislation, in particular doorstep selling<sup>4</sup> (Article 5), data protection (Article 8)<sup>5</sup> (Am. 180) and unfair contract terms (Article 15)<sup>6</sup> (Am. 95).

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<sup>4</sup> Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises.

In the light of the European Parliament's Opinion, the Commission proposes to adopt the approach of not covering that which is covered by existing Directives. However, the existence of unfair contract terms specific to credit contracts makes it necessary to add to the annex of the Unfair Terms Directive any terms imposing as a condition for a drawdown an obligation to leave the amounts borrowed as a surety or a deposit unless the consumer obtains at least the same rate for this surety or deposit as the APR; to oblige the consumer to enter into another contract with the creditor or a third party unless the cost thereof are included in the total cost of credit; to oblige the consumer to use the same creditor for financing the residual value and any final payment on a credit agreement for the purchase of a movable property or a service. Article 15 on unfair terms is modified as follows:

"The Annex of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts<sup>7</sup> shall be modified as follows:

3. Terms of a consumer credit agreement (as defined in Article 2 c) of Directive.../.../EC of the European Parliament and the Council on the harmonisation of the laws, regulations and administrative provisions of the Member States concerning credit for consumers) which have the object or effect of:

- (a) imposing on the consumer, as a condition for a drawdown, a requirement to leave as surety, in full or in part, the sums borrowed or granted, or to use them, in full or in part, to constitute a deposit or purchase securities or other financial instruments, unless the consumer obtains at least the same rate for such deposit, purchase or surety as the agreed annual percentage rate of charge;
- (b) oblige the consumer, when concluding a credit agreement, to enter into another contract with the creditor, credit intermediary or a third party designated by them, unless the costs thereof are included in the total cost of the credit"

Concerning data protection, the Commission proposes to establish that access to existing private and public databases in Member States must be guaranteed to cross-border lenders on a non-discriminatory basis. Article 8 of the initial proposal is therefore entirely replaced by a new Article as follows:

1. In the case of cross-border credit, each Member State shall ensure access for creditors from other Member States to databases in that Member State under non-discriminatory conditions.
2. The consumer and the guarantor shall, if they so request, be informed of the result of any consultation immediately and without charge.

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<sup>5</sup> 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.

<sup>6</sup> Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts.

<sup>7</sup> OJ L 095, 21.04.1993, p. 29-34.

#### 4.3.7. APR (Am. 23, 40, 194, 195, 197, 198)

The APR for purposes of pre-contractual information must be clear, transparent and the basis on which it is calculated should ensure genuine comparability for consumers between various credit offers. Advertising must contain an illustrative example. In the contract, the rate indicated has to include the cost of any compulsory insurance, no matter by whom it is offered.

The APR will be calculated on the basis of the “total cost of credit”, which will include all costs concerning ancillary agreements concluded by the consumer with or via the creditor, when these agreements are compulsory to obtain the credit or the advertised rate (This will be inserted in recital 19). Examples of calculation will be given in annex.

The total cost of credit is defined as follows in Article 2 (definitions):

“total cost of credit to the consumer” means all the costs, including borrowing interest, commissions, and any kind of fees which the consumer has to pay in connection with the credit agreement in conformity with the terms thereof, and which are known to the creditor. Costs relating to ancillary services relating to the credit agreement, in particular insurance premiums, are included if the service is compulsory in order to obtain the credit or the advertised rate, and is concluded with the creditor or with a third party, if the creditor, or, where applicable, the credit intermediary have concluded it on behalf of this third party or have presented the offer or the service as such to the consumer. Costs payable by the consumer on conclusion of the credit agreement to persons other than the creditor or the credit intermediary, in particular a notary, tax authorities, registrar of mortgages, and any costs in general imposed by the authority responsible for registration and sureties are excluded;

The article 12 (APR) will be modified to take these changes into account, and in particular it will not refer anymore to what should be included in the total cost of credit, as it will already be defined completely in Article 2.

#### 4.3.8. Right of early repayment

The consumer is granted a right to repay early at any time during the course of the contract. In such cases, he “shall be entitled to an equitable reduction in the cost of credit”. However, the creditor is entitled to claim “fair and objective” indemnities, except:

- for credit agreements where the period used to fix the borrowing rate is less than one year;
- if repayment has been made under an insurance contract intended to provide a conventional credit repayment guarantee.

These changes will be inserted in Article 16 (Early repayment).

Moreover, the concerned recital will clarify what “fair and objective” means: “The consumer should have the right to discharge his obligations before the due date. In the case of early repayment either in part or in full, the creditor must be entitled to

claim only a fair and objective indemnity. The objective indemnity constitutes a compensation for the costs of the creditor directly linked to the early repayment; it is fair if it takes into account the interests of both contractual parties-

#### 4.3.9. *Right of withdrawal (Am. 192)*

Consumers are granted a 14-days right to withdraw from a credit agreement. In Article 11 (Right of withdrawal), the period and the modalities will be aligned with the Directive on distance marketing of financial services<sup>8</sup> in order to avoid inconsistencies (in particular when consumer credit is sold at a distance). To accommodate this, paragraphs 1 and 2 of Article 11 will be redrafted following Article 6 paragraph 1 and 6 of that Directive respectively.

Further, consumers must be notified of the sums to be repaid. Article 11 paragraph 3 will be redrafted according to Amendment 192, except for the last sentence which will be deleted.

In paragraph 4, the wording following the words “credit agreements” is replaced by the following: “concluded through services of an official, provided that the official confirms that the consumer is guaranteed the rights under Article 5(2) and 10(2) nor to credit agreements within the scope of the Directive which are secured either by a mortgage on immovable property or by a surety commonly used in a Member State for this purpose or credit agreements cancelled under: [...]”.

#### 4.3.10. *Overrunning of the total amount of credit (Am. 130)*

Specific provisions will be foreseen in case of overrunning of the total amount of credit, under certain conditions. Within Article 25 of the initial proposal, paragraphs 2 and 3 is redrafted as follows:

1. In the event of a significant overrunning of the total amount of credit which endures for a period longer than one month, the creditor shall inform the consumer, on paper or on another durable medium, that he has overrun the credit amount and shall inform him of the amount involved, the borrowing rate and/or the penalties, charges or interest on arrears applicable.
2. Any significant overrunning of the total amount of credit which exceeds three months shall be rectified, where necessary through a new credit agreement providing for a higher total amount of credit.

#### 4.3.11. *Credit intermediaries (Am. 162)*

The Commission maintains the initial definition of credit intermediaries. However, regulation and supervision of these intermediaries should be left to Member States. The text of Article 28 (Registration of creditors and credit intermediaries) is replaced by the following:

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<sup>8</sup> Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC.

Member states shall ensure that creditors and credit intermediaries are supervised by a body or authority independent from financial institution or regulated.

#### 4.3.12. *Legislative drafting*

Acceptance of certain amendments voted by the European Parliament leads to both direct and consequential changes to the initial proposal. Chapters and articles will require re-organising and re-numbering to ensure clarity.

### **5. AMENDED PROPOSAL**

Having regard to Article 251 of the EC Treaty, the Commission amends its proposal as indicated above.