

COMMISSION OF THE EUROPEAN COMMUNITIES

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Amended Proposal for a

COUNCIL DIRECTIVE

relating to the approximation of the laws, regulations and
administrative provisions of the Member States
concerning consumer credit

COM 342

AMENDED PROPOSAL FOR A COUNCIL DIRECTIVE RELATING TO THE APPROXIMATION OF
THE LAWS, REGULATIONS AND ADMINISTRATIVE PROVISIONS OF THE MEMBER STATES
CONCERNING CONSUMER CREDIT

EXPLANATORY MEMORANDUM

1. INTRODUCTION

The general aim of the Commission's proposal for a Council directive (1) in this field is to provide a pattern of rules which will cover the whole of consumer credit. Experience has shown that the provision of credit to consumers is increasingly done via types of credit for which Member States have adopted no legislation and for which there is often little consumer protection, whereas the amount of consumer credit granted via regulated forms of credit is falling. Moreover, the fact that a number of Member States regulate only some forms of consumer credit not only leaves consumers unprotected, but also creates distortions of competition between those suppliers of credit who have to comply with regulations and those who do not. The considerable differences between such national laws as exist on consumer credit have the effect of perpetuating in the European Community the fragmentation of the market in consumer credit, and their divergence from one Member State to another is inimical to the development of the common market. Both the Economic and Social Committee (2) and the European Parliament (3) approved the Commission's comprehensive approach to the regulation of credit, while on many aspects of the subject they sought a much higher degree of harmonisation, nevertheless retaining the structure and the principles of the Commission's original proposal.

The Commission has accepted the vast majority of the amendments proposed by Parliament. The words actually used by Parliament have in most cases been incorporated in the Commission's amended proposal. Where, very occasionally, the amended proposal uses different words from those suggested by Parliament, the Commission has maintained the sense of the parliamentary amendment, but for the sake of clarity, or sometimes for the sake of consistency within the text itself or between the various language versions, has proposed new wording.

There was little or no discussion of the recitals either in the Economic & Social Committee or in Parliament. The Commission has, however, recast them so as to reflect the amendments which have been introduced in the Articles.

(1) OJ No C 80, 27.3.1979, p.4.

(2) ECOSOC Opinion, OJ No C 113, 7.5.1980, p.22.

(3) See Parliament's proposed text in OJ No C 68, 14.3.1983, p.91 and Parliament's Resolution adopting it in OJ No C 242, 12.9.1983, p.10.

Member States differ in their views on what constitutes "consumer" credit. Moreover, in those Member States which maintain national statistics relating to it the bases which are used in compiling them vary from one Member State to the next. Nevertheless, the figures for any recent ten-year period show a massive increase in the use of consumer credit in those Member States for which they are available. (Some illustrations are given in the schedule to this explanatory memorandum.) They emphasize the significance of the Commission's proposal.

Not the least important aspect of the work done at Community level on the subject of consumer credit is that whereas so much law in the credit field is essentially public law, much of the Commission's proposal on consumer credit grasps the nettle of private law and endeavours, by a process of law-approximation, to achieve the following objectives, as does the amended proposal, namely:

- (1) to contribute to the creation of a common market in consumer credit by removing many of the differences which stand in the way of this and which perpetuate the fragmentation of the market into ten consumer credit markets. The establishment of a common market in this field should operate to the benefit of lenders, manufacturers, distributors and retailers, as well as to the benefit of consumers;
- (2) to contribute to the setting of reasonable standards of consumer protection and information throughout the European Community in the field of consumer credit, while at the same time removing distortions of competition between suppliers of credit.

2. COMMENTARY ON THE ARTICLES

ARTICLE 1

Paragraph 2

Subparagraph (a)

Parliament considered that by using the word "predominantly" in the definition of "consumer" the original text created uncertainty. The new definition, which abandons that word, is derived from Article 13 of the Convention dated 27 September 1968 on jurisdiction and enforcement of judgments in civil and commercial matters (1) and from Article 5 of the Convention dated 19 June 1980 on the law applicable to contractual obligations (2). This definition should therefore lead to greater uniformity. ./.

(1) OJ No. L 304, 30.10.1978, p.77

(2) OJ No. L 266, 9.19.1980, p.1

Subparagraph (b)

In the English language version the original definition of "creditor" related to a natural or legal person (or a group of them) who grants credit "in the course of his commercial activity or business". These words purported to be equivalent to the following expressions in the other languages:

Danish:	i udøvelsen af erhvervmaessig virksomhed
Dutch:	in de uitoefening van een bedrijf of beroep
French:	dans le cadre de l'exercice de ses activités commerciales ou professionnelles
German:	in Ausübung ihrer Gewerblichen oder beruflichen Tätigkeit
Italian:	nell' esercizio di un'attività commerciale o professionale

but the English words were inadequate, for they were limited to commercial or business activity. The Commission has therefore amended the English language version and considers that the words "trade, business or profession" correctly convey the concept.

Also, in the original definition of "creditor" the notion that credit grantors include not only natural or legal persons but also a "group of such persons", was conveyed with perfect clarity in the Dutch, English and French language texts: but in the Danish, German and Italian this idea was not expressed.

The Commission has accordingly made the necessary corrections.

Subparagraph (c)

Parliament took the view that it was unclear whether the original text covered a grant of other financial accommodation or a promise to grant other financial accommodation, or both. Parliament took the broadest view and the Commission has amended its proposal accordingly.

Subparagraph (d)

This subparagraph, as amended, defines the "annual percentage rate of charge" for credit, identifying the charges to be included in establishing the true cost of credit. The amendment also provides for a further Directive on consumer credit.

The Commission's proposal left the cost of credit to be calculated in accordance with national rules. Parliament and the Economic & Social Committee considered, however, that the aims of the Directive would be better achieved if a uniform method of calculating the rate of charge were to be established for the Community as a whole. This would enable true comparisons to be made from one Member State to another between competing offers of credit, and thus lead to market transparency.

Parliament thought that to achieve the required degree of precision the uniform method should be embodied in a Commission Decision. However, the Commission considers the appropriate legal instrument for establishing generally applicable rules on the method of calculation to be a Commission Directive, which it has undertaken should be sufficiently precise to achieve uniformity.

The comprehensive concept of the true cost of credit, expressed as an annual percentage, is described in Parliament's amended text of Article 1(2)(d) by the following expressions in the various languages :

Danish: årlige omkostringer i procent
Dutch: jaarlijks kostenpercentage
English: annual percentage rate of charge
French: taux annuel des frais
German: jährlicher Belastungssatz
Greek: ετήσιο ποσοστό επιβαρύνσεως
Italian: tasso annuo di oneri

These expressions are new, and have been incorporated in the Commission's text of Article 1(2)(d) on the basis of Parliament's use of them.

Paragraph 4

The application of the principles propounded by the proposal should not be affected by the fact that a broker, or other intermediary, has been involved in negotiating the credit agreement. The original text suggested that only agreements between a consumer and an intermediary were covered. It has been amended so that situations where the intermediary is not contractually committed are also covered.

ARTICLE 2

The exemptions proposed by the Commission were endorsed by Parliament subject to certain changes of detail.

Paragraph 1

Subparagraph (a)

The exemption is made because lending for the acquisition of property rights in land or in an existing building, or for the construction of buildings, is a separate market from consumer credit. The amounts of money and the periods of credit involved are much greater than in the general consumer credit market. Also, the lending techniques are different.

It should be noted that Parliament took the view that the exemption should apply not only to credit for the acquisition of land or buildings but also to credit granted under a renegotiated mortgage where, for example, the period of the credit or the amount of the credit, or both, are modified so as to enable the borrower to retain land and/or buildings which he has already acquired.

Parliament also considered that loans for the purpose of renovating or improving the structure of a building should be excluded from the scope of application of the directive. The extension of a house by adding a room or rooms, or by adding a garage plus a room above it, or by rebuilding the upper storeys and roof, would be "renovating or improving the structure" and a loan for any of these purposes would be excluded. But a loan for redecorating a house, inside or outside, would not be excluded.

Subparagraph (b)

The Commission has incorporated the provision suggested by Parliament. The Commission's original proposal excluded "hiring agreements". The Economic and Social Committee took the view (point 2.1.6) that "whilst some sort of protection should be envisaged in connection with hiring agreements having regard to the potential abuses, the legal rules brought into play by a pure hiring contract differ so much from those which apply to the ordinary type of consumer credit that there could be no question of including such agreements within the scope of the Directive". In other words, the directive should not apply to agreements for the hiring of property, whether movable or immovable.

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Parliament took the same view but was particularly mindful of the fact that certain hiring agreements are hiring agreements in name only. That is to say, a hiring agreement may well contain provisions which enable the hirer to become the owner of the thing hired. Theoretically there is no limit to the kinds of things which can be the subject of a hiring agreement (e.g. caravans, motor vehicles, bicycles) and there is no distinction to be made as between movable and immovable property. Thus, for example, there can be an agreement for the hiring of movables or an agreement for the hiring of immovables (e.g. a holiday cottage).

Parliament wished to ensure that where, under the terms of the agreement, the hirer could obtain the ownership of the property, or some other proprietary right, the provisions of the directive would apply. In order to achieve this purpose the Commission has incorporated Parliament's words as follows;

"hiring agreements under which the title does not ultimately pass to the hirer".

Subparagraph (d)

The Commission has followed Parliament and substituted "other than on credit card accounts" for "other than credit cards" since, as a form of current account, they might otherwise have fallen under the exemption.

Subparagraph (e)

Parliament considered it essential that upper and lower monetary limits be established. The Commission accepts this greater degree of law-approximation.

Paragraph 2

The Economic & Social Committee approved the principle that the directive must not be circumvented, but considered (point 2.1.9. of its Opinion) that this principle should "apply to the whole series of exclusions and not merely to the exclusion of agreements covering amounts outside upper and lower cut-off points". Parliament took the same view. The Commission has recast the paragraph in line with that view.

ARTICLE 3

The Economic & Social Committee pointed out (point 2.3.1 of its Opinion) "that the idea behind this Article is that the public should not be misled by the information given to it".

Parliament observed that the Commission's original text was inapplicable where the rate or the period, or both, were variable.

Retaining the principle that advertising should be informative, the Commission has amended the text in line with the view of the Economic & Social Committee and of Parliament.

ARTICLE 4

Apart from a slight change of wording at the beginning of the provision suggested by Parliament, the Commission has incorporated the parliamentary text in its amended proposal.

The said change is as follows: Parliament spoke of "A credit agreement for the supply of goods or services resulting from an unsolicited visit" etc. The Commission text now reads: "A credit agreement which results from an unsolicited visit" etc. The purpose of the change is to ensure that by the combined operation of this Article and of Article 1(3) in its amended form, the right of cancellation applies both to the agreement for credit and to the agreement for supply of goods or services, in cases where they are separate. The Commission believes that this was also Parliament's aim.

ARTICLE 5

The Economic & Social Committee considered that the Commission's original text was too stringent for practical application. Parliament took the same view. The Commission has amended this provision in line with their opinions.

ARTICLE 6

Paragraph 1

The principle that consumer credit agreements are to be concluded in writing is retained.

The provisions in the original proposal which were designed to produce uniform rules on the matter of signature of consumer credit agreements have been deleted. This accords with Parliament's view. The consequence is that the national rules govern the matter of signature.

The original provision requiring that the consumer receive a copy of the written agreement has been retained.

Paragraph 2

Parliament's text reintroduced provisions covering running-account credit, as in the Commission's earlier drafts. These provisions are intended to apply to the kind of running account which the consumer maintains with a supplier of goods or services. They are not intended to apply to bank accounts or to credit card accounts. These are, technically speaking, running accounts, but they are dealt with individually in Article 8 and Article 6(2)(b) respectively. The Commission has placed the special provisions on running accounts in subparagraph (c) of its amended proposal.

Having taken that step, Parliament resolved that subparagraph (a) should relate to credit agreements for the supply of particular goods or services. The Commission has followed this amendment.

The Commission has incorporated in its new text of Article 6 virtually all the additional detailed amendments suggested by Parliament. For the sake of clarity or of internal consistency of the text the Commission has in certain subparagraphs altered the sequence of Parliament's words or used different words, as presaged in the letter dated 30 March 1983 from the Commission to the European Parliament (1). Thus, for example:

2 (a)(v) now reads: "an indication that the borrower will be entitled, as provided in Article 10, to a reduction or refund if he repays early"

and thereby becomes consistent with Article 10 itself in the wording proposed by Parliament.

2 (a)(vii) now reads: "an indication of the security required, if any". This wording is identical to that now suggested for (d)(iii);

2 (a)(x) reads: "an indication of the insurance(s) required, if any, and, when the choice of insurer is not left to the consumer, an indication of the cost thereof".

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(1) See the text of the letter, with annex, in Parliament's document No PE 84.212 dated 12 April 1983.

Two short paragraphs appear in Parliament's proposed text of Article 6(2) and are reproduced by the Commission at the end of provisions (2)(b) and (c) of Article 6. These commence with the words: "The provisions of Article 6(1) and Article 6(2)(a) shall not apply to an agreement" etc. The purpose of these two provisions is to prevent Article 6 from being interpreted in such manner as to require information about credit to be given twice in relation to an agreement for the supply of goods or provision of services where the financing is done by means of a credit card or by means of a running account.

ARTICLE 7

This Article is unchanged.

ARTICLE 8

In paragraph (b) the Commission has in the English language version deleted the words "bank statement" and has substituted the words "statement of account". The reason is that Article 8 applies not only to accounts maintained with a bank. It applies to accounts with any credit institution or financial institution (see Article 2(1)(d)).

ARTICLE 9

The Commission's original text left it to Member States to ensure that repossession of goods did not lead to injustice to any of the parties. Parliament insisted, however, on a number of specific provisions, and the Commission has reproduced these with marginal changes of wording.

ARTICLE 10

Parliament's wording has been taken over verbatim. The original text referred to a refund for the consumer in the event of his choosing to terminate the agreement by discharging his obligations before the due date. This is appropriate where all the payments have been made. However, where some payments remain to be paid it is more appropriate to refer to a "reduction". The text has been amended to cover both eventualities.

ARTICLE 11

This Article is unchanged.

ARTICLE 12

Both the Economic & Social Committee and Parliament were very positive in their support for this Article's restriction on the use of negotiable instruments.

Parliament's text is reproduced verbatim except for one small change in the order of words in paragraph (a) and the insertion of a reference to bank notes therein, for bank notes must remain free for use in paying or repaying; and in paragraph (b) and (c), in some of the language versions, the terminology has been improved.

ARTICLE 13

The principles embodied in this Article as amended by Parliament are retained in the Commission's amended proposal.

The wording of paragraph (1) follows very closely that proposed by Parliament but has been expanded so as to clarify the fact that the consumer's right to recover payments made by him and to refuse to make any further payment is a right which is given to him in relation to the goods not supplied or the services not provided. This clarification was requested specifically by the credit card issuers, and the Commission considered that their request was justified.

Paragraphs (2), (3) and (4) are the same verbatim as in Parliament's text. The final paragraph added by Parliament to confer on the creditor a right of indemnity against the supplier, unless they agree otherwise, is reproduced in the Commission's amended text in words which in certain language versions differ slightly from Parliament's. The purpose of this minor divergence is to make clear that the word "operation" in Parliament's text referred to the operation of Article 13 itself.

The cross-reference to Article 1(3)(b) in the Commission's original proposal has been eliminated, for Article 13 in its amended form now covers the situation which was contemplated by that subparagraph, which has been deleted.

ARTICLE 14

Parliament's text has been followed verbatim except in the second subparagraph of paragraph (2). However, the Commission's amended wording there was proposed in the Commission's above-mentioned letter of 30 March 1983 to the European Parliament (see the references in the commentary on Article 6(2)) and was approved by Parliament.

ARTICLES 15 AND 16

These Articles are unchanged, except that the French language version of Article 16 has been re-worded in order to make the meaning clearer.

ARTICLE 17

The first paragraph has been amended by the Commission to take account of the fact that provision had to be made for the entry into force not only of the Council directive on consumer credit but also of the directive which the Commission is to adopt for the purpose of establishing a uniform method of calculating the annual percentage rate of charge for credit (see Article 1(2)(d)).

ARTICLE 18

This Article is unchanged.

THE SCHEDULE referred to in the Introduction

BELGIUM

Instalment credit sales

Outstanding balances at 31 December 1972	33.253.631.000 francs
Outstanding balances at 31 December 1982	67.607.814.000 francs

Personal Loans

Outstanding balances at 31 December 1972	13.631.127.000 francs
Outstanding balances at 31 December 1982	90.872.796.000 francs

(Statistics issued by the National Statistical Institute, Ministry of Economic Affairs)

FEDERAL REPUBLIC OF GERMANY

Consumer credits granted by credit institutions (excluding credit secured by mortgage)

Outstanding balances at 31 December 1970	29.678.000.000 DM
Outstanding balances at 31 December 1980	131.067.000.000 DM

(Statistics from Table B 11/1 in "Praxis der Konsumentenkredits" issued by the Ministry of Justice, Bonn)

Debit balances on wage/salary/pension accounts maintained with credit institutions

Outstanding at 31 December 1968	1.233.000.000 DM
Outstanding at 31 December 1979	14.991.000.000 DM

(Statistics from Table D 111 3/1, ibid)

THE NETHERLANDS

Instalment credit sales

Outstanding balances at 31 December 1972	1.550.000.000 guilders
Outstanding balances at 31 December 1982	816.000.000 guilders

Personal loans

Outstanding balances at 31 December 1972	1.227.000.000 guilders
Outstanding balances at 31 December 1982	6.091.000.000 guilders

Overdrafts on wage/salary accounts

Outstanding at 31 December 1972	99.000.000 guilders
Outstanding at 31 December 1982	414.000.000 guilders

Revolving credits (doorlopend geldkrediet)

Outstanding balances at 31 December 1972	326.000.000 guilders
Outstanding balances at 31 December 1982	5.025.000.000 guilders

(Statistics issued by the National Bureau of Statistics)
(1982 figures are provisional)

UNITED KINGDOM

Hire purchase and other credits granted by Finance Houses and other specialist consumer credit grantors

Amounts outstanding at 31 December 1978	£6.234.000.000
Amounts outstanding at 30 June 1983	£12.337.000.000

(Statistics issued by the Department of Trade and Industry)

Consumer credit and other personal sector borrowing

Total borrowing at 31 December 1978	£7.945.000.000
Total borrowing at 31 December 1982	£19.309.000.000

(Statistics issued by the Central Statistical Office)

Amended proposal for a Council Directive relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit (1)

Original Version

New Proposal*

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

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 proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the European Parliament,

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

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 Community in matters of consumer credit,

Whereas wide differences exist between the laws in force in the Member States of the European Economic Community in the field 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 in the national provisions of law are inimical to the establishment of a system which ensures that competition between grantors of credit is not distorted in the common market;

Whereas these differences of law result in, or are otherwise accompanied by, divergent practices in each of the ten national consumer credit markets in the European Economic Community; whereas the disparities of law and practice result in unequal consumer protection in the field of consumer credit from one Member State to another;

(1) OJ No C 80, 27.3.1979, p.4

* Amendments to the original version are indicated as follows:

where words have been added, or a word or words replace another or others, they are underlined; save in some of the recitals where side-lining has been used.

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 these differences limit the opportunities the consumer has to obtain credit in another Member State; whereas they 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 obtainable by consumers 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) provided, *inter alia*, that the consumer should be protected against unfair credit terms and that a harmonisation of the general conditions governing consumer credit should be undertaken as a priority; whereas the Second Programme of the European Economic Community for a consumer protection and information policy (2) lists the Commission's proposal for a directive on consumer credit as one which is still under discussion in the Council; whereas, in relation to action already begun by the Commission under the Preliminary Programme but not completed, paragraph 30 of the Second Programme requires the Commission to pursue that action, particularly as regards certain unfair commercial practices; and whereas these latter are to some extent regulated in this present directive in so far as they affect consumer credit;

Whereas the laws in force in the Member States concerning consumer credit cause fragmentation of the market in consumer credit, tend by their very nature to perpetuate that fragmentation, accordingly operate to that extent as obstacles to the establishment of a common market in consumer credit, and therefore, given the enormous and constantly increasing volume of credit granted in the European Economic Community to consumers, which is a

(1) OJ No C 92, 25.4.1975, p.1

(2) OJ No C 133, 3.6.1981, p.1

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;

reflection of society's dependence upon credit in general, directly affect the functioning of the common market;

Whereas the establishment of a common market in consumer credit would benefit alike consumers, grantors of credit, manufacturers of goods and providers of services;

Whereas there has been much change in recent years in the types of credit available to and used by consumers; whereas new forms of consumer credit have emerged and continue to develop;

Whereas the consumer does not always receive enough information on the conditions and cost of credit and on the nature of his obligations; whereas he would be much assisted in this if he were told, inter alia, the annual percentage rate of charge for credit; whereas there should be established, for each type of consumer credit, a uniform method of calculating the annual percentage rate of charge for credit, which uniform method should be used in every Member State;

Whereas the terms of credit are often disadvantageous to the consumer;

Whereas better protection of consumers can be achieved by adopting certain requirements which are to apply to all forms of credit;

Whereas, however, it is appropriate that certain types of consumer credit and certain kinds of transaction be excluded from the scope of this directive, namely:

- (a) credit intended primarily for the purpose of acquiring or retaining property rights in land or buildings or of renovating or improving the structure of a building,
- (b) hiring agreements under which the title does not ultimately pass to the hirer,

- (c) credit to finance the supply of goods or services and which the consumer is under obligation to repay within three months of the date on which the credit is granted,
- (d) credit granted in the form of an advance on a current account, or accepted in that form, by a credit institution or other financial institution, but certain specific rules relating to overdrafts granted or accepted by these institutions should nevertheless be laid down,
- (e) credit of an amount less than 200 European currency units or more than 30,000 European currency units, these upper and lower limits being nevertheless adjustable in line with the average annual rate of inflation in the European Community;

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 it is necessary to adjust periodically, in accordance with a Community procedure, the financial limits above or below which this directive shall not apply; whereas for the sake of legal certainty these upper and lower limits, and their values in the national currency of each Member State, must be fixed on the basis of the rates of exchange prevailing on the day on which the limits are fixed; and whereas, for the like reason, the values of these limits in each national currency of the Member States must continue to apply until the limits are adjusted;

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 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 the consumer should be allowed a cooling-off period of not less than seven days from the date of conclusion of a credit agreement which results from an unsolicited visit to him at his home, his place of work or elsewhere and is

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 co-operation between a creditor and a supplier, they should be jointly

concluded in a place other than the place of business of the creditor or negotiator; whereas the consumer should be given notice of his right to cool off;

Whereas consumer protection is further improved if credit agreements are made in writing and contain at least certain minimum particulars concerning the contractual terms; whereas the consequences of failure to respect the provisions requiring disclosure of those terms are to be determined by application of the national law;

Whereas provision should be made for credit agreements to terminate where the creditor repossesses the goods; whereas repossession of the goods or early termination of a credit agreement must not disadvantage any of the parties unjustifiably; whereas, where the consumer has paid a certain proportion of the price but then defaults in payment, the creditor should not be permitted, except by order of a court, to repossess goods supplied on credit;

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 payable should then be reduced, or, if already paid, should be refunded, in accordance with the provisions adopted by the Member State;

Whereas the assignment of the creditor's rights arising under a credit agreement 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 and bank notes should be used only as means of payment in this context;

Whereas, in the event of co-operation between a grantor of credit ("the creditor") and a supplier of goods or

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.

services ("the supplier"), in such circumstances that the supply of the goods or the provision of the services is to be financed by the creditor under an arrangement between him and the supplier, they should be jointly and severally liable to the consumer for reimbursement of the payments made by him, if the goods or services are not supplied or do not conform with the terms of the agreement; whereas it is appropriate that the creditor be indemnified by the supplier if the creditor reimburses the consumer in those circumstances;

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 in implementation of this directive must not be permitted;

Whereas the provisions of this directive must 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 free movement of goods, freedom to provide services, and competition;

Whereas the entry into force in the Member States of the provisions establishing for each type of consumer credit a uniform method of calculating the annual percentage rate of charge for credit must coincide with the entry into force of the provisions adopted by the Member States in implementation of the remaining parts of this directive,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. This directive applies 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.

2. For the purposes of this Directive:

- (a) 'consumer' means a natural person who, in transactions covered by this directive, is acting for purposes which can be regarded as outside his trade or profession;
- (b) 'creditor' means a natural or legal person who grants credit in the course of his trade, business or profession, or a group of such persons;
- (c) 'credit agreement' means an agreement whereby a creditor grants or promises to grant to a consumer a credit in the form of a deferred payment, 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) 'Annual percentage rate of charge' means the total cost of the credit expressed as an annual percentage of the amount of the credit granted. The total cost of the credit will include, in particular, interest and any other charges which arise under :
 - i) the credit agreement itself;
 - ii) any transaction entered into to comply with the credit agreement;
 - iii) any other contract which the creditor insists on the consumer or a relative of his making or maintaining as a condition of being granted the credit;
 - iv) any contract for security relating to the credit agreement; and
 - v) any statutory obligation connected with the making of the credit agreement.

The matters set out at (i) to (iv) inclusive do not include premiums payable in contracts of insurance when the choice of the insurer is left to the consumer.

All references in this directive to the annual percentage rate of charge are references to the annual percentage rate of charge calculated in accordance with the provisions adopted in implementation of the directive mentioned in the next following subparagraph.

Within one year after notification of this directive the Commission shall adopt a directive establishing a uniform method of calculating the annual percentage rate of charge.

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.

3. An agreement for the supply of goods or the provision of services concluded with a consumer which is financed by means of a credit agreement between the supplier of the goods or provider of the services and the consumer shall be deemed to be a credit agreement within the meaning of paragraph 2.

4. Member States shall apply the provisions of this Directive mutatis mutandis to credit agreements involving an intermediary.

Article 2

1. This directive shall not apply to:

(a) credit agreements or agreements promising to grant

Article 2

1. This directive does not apply to:

(a) credit agreements or agreements promising to grant credit intended

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.

primarily for the purpose of acquiring or retaining property rights in land or in an existing or projected building or intended for the purpose of renovating or improving the structure of a building;

- (b) hiring agreements under which the title does not ultimately pass to the hirer.
- (c) unchanged
- (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 on credit card accounts;
- (e) agreements involving amounts less than 200 or more than 30,000 European currency units, these limits to be adjusted periodically by the Commission in line with the average annual rate of inflation in the Community.

The parities between the national currencies of Member States and these upper and lower limits shall be fixed at the rates of exchange prevailing on the same day as the limits themselves are fixed and shall continue until such time as the Commission shall adjust such limits.

2. Member States shall ensure that the provisions which they adopt in implementation of this directive 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, an 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 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 any rate is expressed or implied to be the rate of charge or interest, shall also indicate the annual percentage rate of charge, by means of an example if no other means is practicable.

Article 4

A credit agreement which results from an unsolicited visit to a consumer at his home, his place of work or elsewhere and is concluded in some place other than the place of business of the creditor or negotiator shall be subject to cancellation by the consumer by notification to the creditor within a cooling-off period of not less than seven days from the conclusion of the agreement. This right of cancellation shall be made known to the consumer by clear written notice given to him not later than the time of the conclusion of the agreement.

For the purposes of this Article a period of approval during which the consumer has possession of the goods and may return the same free of charge shall be deemed to be a cooling-off period.

Article 5

Any offer to provide credit, which is displayed at business premises to which the public has access, shall include a statement of the annual percentage rate of charge, where appropriate by means of an example.

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);

Article 6

1. Credit agreements shall be made in writing. The consumer shall receive a copy of the written agreement.

2. The written agreement shall contain at least the following terms :

- (a) credit agreements for financing the supply of particular goods or services:
- (i) unchanged
 - (ii) unchanged
 - (iii) the annual percentage rate of charge;
 - (iv) the amount of the deposit (if any), the number and size of instalments and the dates on which they fall due, or the method of ascertaining any of the same if unknown at the time of agreement;
 - (v) an indication that the borrower will be entitled, as provided in Article 10, to a reduction or refund if he repays early;
 - (vi) who owns the goods, and the terms on which the consumer becomes the owner of them;
 - (vii) an indication of the security required, if any;

- (viii) the cooling-off period, if any;
- (ix) the conditions and terms applicable to changes in the rate of interest;
- (x) an indication of the insurance(s) required, if any, and, when the choice of insurer is not left to the consumer, an indication of the cost thereof;
- (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;
- (b) credit agreements operated by credit cards :
- (i) the serial number of the credit card, if known;
- (ii) unchanged;
- (iii) the annual percentage rate of charge;
- (iv) the terms of repayment or the means of determining the same;
- (v) the cooling-off period, if any;
- (vi) the conditions and terms applicable to changes in the rate of interest.
- The provisions of paragraph 1 and paragraph 2(a) shall not apply to an agreement for the supply of goods or the provision of services concluded with a consumer, which is financed by means of an existing credit agreement operated by a credit card.
- (c) credit agreements in the form of running accounts not otherwise covered by this Directive:
- (i) the limit of credit or the method of determining the same;

(ii) the annual percentage rate of charge;

(iii) the terms of use and repayment;

(iv) the cooling-off period, if any;

(v) the conditions and terms applicable to changes in the rate of interest.

The provisions of paragraph 1 and paragraph 2(a) shall not apply to an agreement for the supply of goods or the provision of services concluded with a consumer, which is financed by means of an existing credit agreement in the form of a running account not otherwise covered in this Directive between the same supplier and the same consumer.

(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) an indication of the security required (if any);
- (v) the terms of repayment.

(d) other credit agreements falling within the scope of this Directive:

- (i) unchanged;
- (ii) the annual percentage rate of charge;
- (iii) an indication of the security required, if any;
- (iv) the terms of repayment;
- (v) the cooling-off period, if any;
- (vi) the conditions and terms applicable to changes in the rate of interest.

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 amendments 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.

Article 7

Unchanged.

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 or before the agreement is concluded,
- unchanged;
 - unchanged;
 - unchanged;
- (b) during the period of 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 statement of account at intervals of three months or less;
- (c) when a tacitly accepted overdraft extends beyond a period of three months, of the annual rate of interest and of any relevant charges, and of any amendment thereof

Article 9

1. A credit agreement relating to goods shall terminate if the relevant goods are repossessed, on the basis either of a right of ownership or of any other right.

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.

2. Member States shall lay down rules to ensure that repossession of goods or early termination of a credit agreement does not lead to unjustified disadvantages to any of the parties involved.

3. Where the consumer has repaid one third or more of the credit price of the goods, the creditor may not recover possession of the goods on the ground of his right of ownership, or of any other right, except on order of a court.

4. Where goods are recovered by the creditor in contravention of the rules laid down in implementation of paragraphs 2 and 3, the credit agreement shall terminate and the consumer shall be released from all liability under the agreement and shall be entitled to recover from the creditor all the sums paid to him under the agreement.

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 10

The consumer shall be entitled to discharge his obligations under a credit agreement before the time fixed by the agreement; in this event the consumer shall be entitled to an appropriate reduction in the total amount payable, or to an equivalent refund if the whole amount has already been paid, in accordance with the rules laid down 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 11

Unchanged.

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.

Article 12

In the operation of credit agreements:

- (a) cheques and bank notes may be used only as means of payment or repayment but not otherwise;
- (b) subject to (a), negotiable instruments shall not be used either as security or as means of payment;
- (c) if a consumer becomes liable to a holder in due course of a negotiable instrument, the creditor shall indemnify him in respect of that liability.

Article 13

1. Where it is established that an arrangement exists between a supplier of goods or services and a creditor by which the supply is to be financed by a loan or loans to the consumer, and where, in such a case, the goods are not supplied or the services are not provided and the consumer is not responsible for such failure to supply the goods or services, he shall be entitled to recover from the supplier or creditor, or both of them, all payments made by him under the agreement for supply of the goods or provision of the services, or under the agreement for loan, in respect of the goods not supplied or services not provided, and may refuse to make any further payment to either of them in respect thereof.

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, in circumstances where such failure to conform would entitle the consumer to rescission of the contract under the applicable national law.

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 creditor against the supplier or rights of the creditor against the supplier.

3. In the cases referred to in paragraphs 1 and 2, the supplier and creditor shall be jointly and severally liable to the consumer,

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

Subject to any agreement to the contrary, the creditor shall be entitled to be indemnified by the supplier against any loss arising from the operation of this Article.

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.

Article 14

(a) unchanged

(b) unchanged

(c) a body be empowered 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.

2. If persons offering to conclude or arrange credit agreements satisfy the definition in Article 1 of the First Council Directive 77/780/EEC on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions (1), they may not receive official authorization to exercise their activity before they have received authorization under the provisions of that Directive.

(1) OJ No L 322, 17.12.1977, p.30

Where authorization under the provisions of that Directive is withdrawn, official authorization to offer to conclude or arrange credit agreements shall also be withdrawn.

Nevertheless, by way of derogation from the foregoing subparagraph, where such persons expressly surrender their authorisation to receive deposits, they may continue to grant credits, or to act as intermediaries for purposes of the conclusion of credit agreements, provided the surrender is notified to the authorities empowered to issue the said official authorisation and those authorities consider that those persons should be permitted to continue granting credits.

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.

3. Any body empowered under paragraph 1 (c) to receive complaints shall also 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 15

Unchanged

Article 16

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

Article 16

Unchanged

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.

Article 17

1. The Member States shall bring into force the measures necessary to comply with this directive and with the directive referred to in Article 1(2)(d) within eighteen months after notification of this directive, 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.

2. The Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the fields covered by the two said directives.

Article 18

Unchanged.