



COMMISSION OF THE EUROPEAN COMMUNITIES

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Modified proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on credit agreements for consumers amending Council Directive 93/13/EC

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

EXPLANATORY MEMORANDUM

1. PROCEDURE

The Commission adopted on 28th October 2004 a modified proposal for a Directive on Consumer Credit following the opinion voted by the European Parliament (EP) on 20 April 2004.

After the modified proposal was published, the Commission continued consultation with Member States and stakeholders. As a result, the Commission concluded that a consolidated text would be useful. In addition the consultations showed the need for further substantial modifications in order to avoid unintentionally burdening consumer credit business whilst at the same time ensuring a high level of protection for consumers. In particular:

- The Forum Group of experts on mortgages set up by the Commission had issued its final report, which contributed to the decision to exclude all mortgage credit from the scope of the proposal.
- The duty to offer advice to the consumer in the pre-contractual stage has been clarified and adapted to the circumstances of the credit offer.
- The flexibility associated with certain provisions is coupled with a mutual recognition clause aimed at ensuring that any differences in the resulting transposition will not constitute an obstacle to the internal market.

2. OBJECTIVES

The Commission has three main objectives in the area of consumer credit:

- establishing the conditions for a genuine internal market,
- ensuring a high level of consumer protection, and
- improving the clarity of EC regulation by recasting the three existing Directives on consumer credit (87/102/CE, 90/88/CE and 98/8/CE).

These objectives are in line with the Lisbon Strategy, as the development of an internal market in credit will increase the competitiveness of EU creditors by enhancing competition and promoting product innovation.

Harmonisation of consumer protection provisions in the area of retail financial services, coupled with targeted mutual recognition, is a key aspect of the Commission strategy for developing the retail financial services market. The latter is a natural follow-up to the introduction of a single currency, which removes the exchange rate risk between euro-zone countries and renders price comparisons more transparent. Transfer costs between euro zone countries have been considerably reduced following the introduction of Regulation 2560/2001. This will be supplemented by further integration of EU payments systems, making regular

payments throughout the euro-zone as easy as currently nationally. Cross-border loans, requiring period cross-border repayment stand to especially benefit from these developments.

3. AVAILABLE OPTIONS

The Consumer Credit Directive 87/102/EC, based on minimum harmonisation, resulted in Member States going beyond the Directive's provisions to a different extent. As the relevant provisions are mostly of a mandatory nature, these differences in national legislations constitute obstacles to the internal market and dissuaded business to offer pan-European products.

Consequently, a legislative initiative was the only available option to meet the objectives.

4. IMPACT OF THE DIRECTIVE

4.1. Impact on competitiveness

- The market for credit has a potential to develop; only a small part of it is currently cross-border. The considerable overall size of the credit market masks a large diversity between markets, where levels of consumer credit vary considerably. For example, while the UK market amounts to some €230 billion, this contrasts with just €40 billion in a similar sized country, Italy. The average use of credit per household varies largely as well¹. In some Member States, consumer credit accounts for a large part of the households' available income, in others it is relatively small.² Some markets have little potential to expand further, whereas others have still great potential to develop.
- The possibility to offer credit contracts throughout the EU should result in improved efficiencies and economies of scale for banks and a cheaper and wider selection of products for customers. Lenders will be able to design pan-EU consumer credit products, which do not necessarily have to comply with 25 sets of domestic rules.
- New business opportunities are arising to harness the potential of the internal market – technology (in particular the Internet) allow consumers and creditors to contract at a distance, new demand for credit may arise from the increase in retail sales over the Internet, growth in access to Internet is stimulating remote banking.

4.2. Impact on competition

- Facilitating access to credit markets may stimulate competition in certain markets where at present a few players dominate and consumers enjoy reduced access to

¹ From 942€ in Spain, 3,000€ to 3,500€ in Belgium, Germany or France, up to 9,408€ in Sweden and almost 18,000€ in the UK (2002 figures).

² From 7% in Greece, 10% in Spain or France, 16% in Germany and Portugal, up to respectively 26% and 28% in Sweden and in the UK (2002 figures).

credit. Stimulating competition should improve efficiency of credit institutions in an increasingly global economy.

4.3. Impact on consumers

- Enhanced competition and opening of national markets to foreign creditors will lead to lower interest rates for consumers. Prices of consumer credit vary widely according to the creditor and from one Member State to another, and consumers should be put in a position to take advantage of offers throughout the EU territory.
- Removal of barriers to competition will lead to a broader range of offers and improved products. The level of innovation is already quite high in some Member States, however certain credit products available in a given Member State can, in many cases, not be sold elsewhere in the EU. It is the interests of consumers to have access to all credit products available in the EU, while being guaranteed a high level of information and protection.
- Harmonisation of certain key elements of the consumer credit agreement will improve consumer confidence and encourage consumers to buy credit across borders in the EU. The current low level of cross-border consumer credit agreements is also due to concerns regarding the level of consumer protection in foreign Member States.

5. MAIN CHANGES COMPARED TO THE MODIFIED PROPOSAL OF 28TH OCTOBER 2004

5.1. Aim

Article 1 clarifies that only certain aspects of the area are dealt with in the Directive. This is in line with the views expressed by various stakeholders in the consultation process.

5.2. Definitions

5.2.1. Overdrafts

The question of overdrafts needed clarification. In particular, in order to create legal certainty, the present modified proposal provides a definition corresponding to the usual practice in Member States.

5.2.2. Total cost of credit

The definition of the total cost of credit is redrafted in line with the comments of EP and industry. The objective is to include only those costs corresponding to services concluded with or via the creditor. This definition serves as basis for the calculation of the Annual Percentage Rate of Charge (APR). The total lending rate is deleted as requested by stakeholders and the EP, as it might have been confusing for consumers.

5.3. Scope

5.3.1. Mortgage credit agreements

The first modified proposal covered equity releases, while excluding credit agreements concluded for housing purposes. However, determining the purpose of a loan is very difficult for the creditor, if not impossible, as he has no control on the use of the money he lends. In addition, mortgage credit agreements in general are very specific instruments with particular features which require to be addressed separately, irrespective of the purpose of the loan. Therefore, the Commission has excluded equity release from the scope, This corresponds to an EP amendment strongly supported by industry.

5.3.2. Surety agreements, guarantors

Surety agreements are now excluded from the scope, as the main issue in relation to sureties was linked to the question of mortgage credit.

Guarantors are excluded from the scope as well. The Directive deals with credit agreements only; it is more opportune not to deal with specific aspects of contract law which are regulated in a larger context in the Member States. Both exclusions correspond to EP amendments, and meet concerns put forward by the banking sector.

5.3.3. Overdrafts

The EP as well as the European banking industry have argued that overdrafts are valued for simplicity and low cost, and therefore, need not to be subject to the full range of requirements for credit agreements. They are therefore submitted to a light regime only. However, a sufficient level of information is necessary. Overdrafts are therefore subject to a limited number of contractual information requirements.

5.3.4. Agreements above 50 000 €

Further to discussions with stakeholders, agreements above 50 000 € are excluded as they are generally not concluded for consumption purposes but rather for housing purposes, and therefore do not require the same type of legislation as the average consumer credit. A revision clause regarding the applicable thresholds has been introduced so as to allow for an adjustment of the credit thresholds covered by the Directive to the economic trends in the EU and the development of the market.

5.4. Pre-contractual information

As advertising is already dealt with by the Directive on Unfair Commercial Practices (2005/29/EC), the Commission only proposes a list of mandatory information elements to be mentioned in advertising containing financial information on credit. General advertising on a given credit service is not concerned, which avoids unnecessary burden on businesses.

Pre-contractual information allows consumers to compare offers. However, various stakeholders in the consultation process were concerned that an excess of information may be confusing. Some pre-contractual information requirements have therefore been deleted in the present modified proposal. Further, following requests

from the banking sector, the present modified proposal aims at ensuring consistency with information requirements in existing EC law.

The lender is requested to assess the consumer's creditworthiness on the basis of information disclosed by the latter and, where appropriate, consultation of databases. Against the background of broad consultation of the banking sector, the Commission does not perceive that this gives rise to any additional costs for banks as it corresponds to good banking practice.

The concept of a duty to advise was modified. Contrary to some requests from the banking industry, the Commission maintains the concept that a creditor should not merely fulfil the pre-contractual information requirements, but should provide additional explanations in order to enable the consumer to take a well-informed decision. However, in response to a request from the banking sector and some Member States, it was clarified that the consumer is always responsible for his final decision to conclude a credit agreement. Therefore, the reference to advice is specified as a duty to put the consumer in a position to assess the advantages and drawbacks of the loan. In addition, Member States have been given more flexibility to adapt their implementation law to the situation on their markets.

5.5. Contractual information

The provisions on contractual information require mainly information already provided at the pre-contractual stage plus information on how to exercise the right of withdrawal and the right of early repayment. This is in line with usual good professional practice and will not create significant additional costs for creditors.

In case of a variable rate, the consumer should be informed of significant changes to the borrowing rate. However, it is in practice impossible to inform him of every change, as in certain cases the rate can change slightly every day. Therefore, the present modified proposal foresees that consumers should be informed periodically and at least immediately in case of a significant change.

5.6. Database access

The obligation to set up national databases has been deleted, since this would go beyond the purpose of this Directive. Issues relating to data protection are already dealt with in the Data Protection Directive 95/46/EC. Therefore, the Commission proposes to guarantee only a mutual access to existing private and public databases on a non-discriminatory basis, which does not involve additional costs for the industry as the previous provision but, on the contrary, will help lowering a barrier to cross-border consumer credit.

5.7. Right of withdrawal

The present proposal foresees a possibility for consumers to withdraw from the credit agreement within 14 days. This delay allows consumers to shop around after conclusion of the agreement and possibly to find a better offer. This provision is intended to enhance competition. It corresponds to existing practice in most Member States, although the length of the period may vary. The length of the withdrawal period corresponds to the Distance Marketing Financial Services Directive

(2002/65/EC). As a consequence, at least for consumer credit agreements which are also marketed by distance means, it will not involve additional costs for creditors.

5.8. Linked transactions

The present proposal foresees that in case of linked transactions, when the consumer has a right to withdraw from the purchase agreement, he also has a right to withdraw from the linked credit agreement. This provision aims at avoiding that consumers have to keep a credit even when its very purpose has disappeared. However, the right to withdraw from the credit does not give a right to withdraw from the purchase agreement.

5.9. Early repayment

The present proposal grants the consumer a right to repay his credit earlier than initially agreed. However, early repayment has a cost for creditors. Therefore, following consultations with stakeholders and Member States, the proposal foresees that creditors may charge fair and objective fees to compensate the loss. Since the calculation of the compensation should be made on an objective basis, it is expected that this provision would only entail marginal costs for creditors.

5.10. Unfair terms

The proposal contains two examples of unfair terms specific to credit agreements and modifies the annex of Directive 93/13/EEC on unfair terms in consumer contracts. The impact on industry, if any, will be very low, as the examples provided are in clear contradiction with usual good professional practice.

5.11. Harmonisation

In general, both harmonisation and mutual recognition have contributed to EU market integration, while ensuring that consumer interests are taken into account. The policy mix chosen in a given area invariably depends on the characteristics of that area and should be decided on a case-by-case basis. Finding the right mix requires an application of the proportionality principle in designing a solution, combining where appropriate harmonisation with mutual recognition.

Against this background, the Commission suggests to maintain the full harmonisation approach, with a degree of flexibility for Member States in certain areas. Full harmonisation remains the optimal way to establish a genuine single market in consumer credit that allows businesses to offer consumer credit across borders while at the same time guaranteeing an appropriate high level of consumer protection regardless where a credit agreement is entered into throughout the EU. The proposal now clarifies that only those elements explicitly dealt with in the text are fully harmonised whereas issues such as joint and several liability are left to the national legal systems.

In some cases, the proposal gives leeway to national implementation, mainly due to existing heterogeneity as regards national markets or national legislation. This is the case, for instance, in the context of early repayment or overrunning. However, it is also necessary to ensure that the degree of flexibility provided for national

implementation within the limits of the Directive does not contribute to raise additional barriers to the single market in consumer credit. Therefore, the Commission complements its full harmonisation approach with mutual recognition for a limited number of issues. This helps to reduce burden on businesses who want to offer consumer credit across borders.

As a result of the proposed provision on mutual recognition, a creditor would only have to comply, for an activity in another Member State than the one he is established in, with legal requirements of its Member State of origin (or equivalent ones) and not with those of the host Member State. In the area of contract law, this could lead to another result than foreseen by Article 5 of the Rome Convention. In an Article 5 situation, which would lead to the application of the law of the country where the consumer has his habitual residence, this latter law may establish standards that, in relation to the equivalent standards applicable in an incoming creditor's home country, restrict that creditors activity, for instance by being higher (or different) than his home country standards. In that case, if areas mentioned in the mutual recognition clause are concerned, the host Member State has to ensure that the said standards would not apply to the contract. Either the law chosen by the parties, or, in the absence of such a choice, the requirements of the creditor's home country law would continue to apply.

The areas concerned by the mutual recognition clause are explicitly listed in the present proposal. As regards Article 15 and 17 on early repayment and overrunning, a phasing-in period has been introduced in order to allow Member States to adapt.

5.12. Examples

The illustrative examples for calculation of the APR as foreseen in former Annex II of the proposal have been deleted in view of the Commission's overall target of better regulation and in order not to over-burden the legislative procedure. If these examples are considered as helpful assistance in calculating the APR, they may be published separately once the Directive is adopted.

Modified 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 agreements for consumers amending Council Directive 93/13/EC

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission³,

Having regard to the opinion of the European Economic and Social Committee⁴,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁵

Whereas:

- (1) **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 credit⁶ lays down rules at Community level concerning consumer credit agreements.**
- (2) ~~(4) In 1995, the Commission presented a report⁷ on the operation of Council Directive 87/102/EEC of 22 December 1986 on for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit, following which it and undertook a very broad consultation of the interested parties. In 1997, the Commission~~#~~ presented a summary report of reactions to the 1995 report⁸. A second report⁹ was produced in 1996 on the operation of Directive 87/102/EC, as amended by Council Directive 90/88/EEC of 22 February 1990 amending Directive 87/102/EC on the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit.~~

³ OJ C , p. .

⁴ OJ C , , p. .

⁵ Opinion.

⁶ OJ L 42, 12.2.1987, p. 48. Directive as last amended by Directive 98/7/EC of the European Parliament and of the Council (OJ L 101, 1.4.1998, p. 17).

⁷ COM(95) 117 final.

⁸ COM(97) 465 final.

⁹ COM(96) 79 final.

- (3) ~~(2) These reports and consultations revealed substantial differences between the laws of the various Member States in the field of credit for natural persons in general and consumer credit in particular. An analysis of the national laws transposing Directive 87/102/EEC shows that Member States have considered the degree of protection offered by the Directive to be inadequate. They have therefore taken account, in their implementing legislation, of other types of credit and new types of credit agreement not covered by the Directive. Consequently, it is necessary to anticipate the reforms of national legislation envisaged by several Member States and to make provision for a harmonised Community framework.~~ **use a number of consumer protection mechanisms, in addition to the Directive 87/102/EEC, on account of differences in the legal or economic situation at national level.**
- (4) ~~(3) The de facto and de jure situation resulting from those national differences leads to distortions of competition among creditors in the Community and~~ **obstacles to the internal market where Member States have adopted different mandatory provisions more stringent than those foreseen in Directive 87/102/EEC. It** restricts consumers' ~~scope for~~ **ability to make direct use of the gradually increasing availability of cross-border credit** obtaining credit in other Member States. Those distortions and restrictions in turn affect the scale and nature of the demand for cross-border credit, which may **in turn** have consequences in terms of the demand for goods and services. A further effect of the differences between national laws and practices is that consumers do not enjoy the same protection in all Member States.
- (5) ~~(4) In recent years the types of credit offered to and used by consumers have evolved considerably. New credit instruments have appeared, and their use continues to develop. It is therefore necessary to adapt, amend and complete the existing provisions and to extend their scope,~~ **where appropriate.**
- (6) **In accordance with Article 14(2) of the Treaty, the internal market comprises an area without internal frontiers in which the free movement of goods and services and freedom of establishment are ensured. The development of a more transparent and efficient credit market within the area without internal frontiers is vital to promote the development of cross-border activities.**
- (7) **In order to facilitate the emergence of a well-functioning internal market in consumer credit, it is necessary to make provision for a harmonised Community framework in a number of core areas. In view of the continuously developing market in consumer credit and the increasing mobility of European citizens, forward-looking Community legislation which is able to adapt to future forms of credit and which allows Member States the appropriate degree of flexibility in their implementation should help to establish a modern body of law on consumer credit.**

- (8) ~~(5) It is also necessary to promote the creation of a more transparent and efficient credit market. It is important that this~~the market should offer a **sufficient** degree of consumer protection such that **to ensure consumer confidence. Thus,** the free movement of credit offers can take place under optimum conditions for both those who offer credit and those who require it, **with due regard to specific situations in the individual Member States.**
- (9) ~~This necessitates a process of maximum~~ **Full** harmonisation **is necessary in order** to assure all consumers in the Community of a high degree of **a high and equivalent level of** protection of their interests and an equivalent level of information. **and in order to create a genuine internal market. Member States should therefore not be allowed to maintain or introduce national provisions other than those laid down in this Directive. However, such restriction should only apply where there are provisions harmonised in this Directive. Apart from the provisions harmonised by this Directive, Member States should remain free to maintain or introduce national legislation. Accordingly, Member States may, for instance, maintain or introduce national provisions on joint and several liability of the seller or supplier of services and the creditor. Another example of this possibility for Member States could be national provisions introducing or maintaining a right of withdrawal from the contract of sale of goods or supply of services if the consumer exercises his right of withdrawal from the credit agreement. In the case of specific credit agreements to which only certain provisions of this Directive are applicable, for instance, in the case of overdrafts and certain other specific credit agreements, Member States should remain free to regulate, in their national legislation, such types of credit agreements regarding other aspects not harmonised by the Directive.**
- (10) **Even in some areas harmonised by this Directive, national implementing rules could differ and make it more burdensome for creditors to provide their services across borders. It is appropriate in those cases, taking into account the level of harmonisation and of consumer protection ensured by this Directive, and with a view to a well-functioning internal market, to avoid additional burdens on creditors, in particular as regards the necessity to comply with rules that go beyond those of the Member State where they are established. Therefore, the principle of mutual recognition should apply in certain cases which are exhaustively listed in this Directive. In those cases, the principle of mutual recognition implies that the rules of the law of the Member State in which the consumer has his habitual residence are set aside if its application to a given situation constitutes a restriction of the free circulation of services.**

- (11) **In certain cases where the principle of mutual recognition applies, this Directive provides for a transition period. Such a period should allow Member States to gain sufficient experience of the functioning of implementing legislation and it also should enable economic operators to adapt to a new legal framework following the implementation of this Directive before mutual recognition applies.**
- ~~(6) — In view of the growing diversity among the types of credit and credit providers, any person who provides a creditor with information allowing a consumer to be identified and who assists in the conclusion of a credit agreement for a remuneration must be regarded as a credit intermediary, regardless of the form of such remuneration. However, lawyers and notaries should not, in principle, be regarded as credit intermediaries where the consumer contacts them for advice on the scope of a credit agreement or if they help to draft or authenticate an agreement, as long as their role is limited to providing legal or financial advice and they do not direct their clients towards specific creditors~~
- (12) **Agreements for the provision on a continuing basis of services or for the supply of goods of the same kind and in the same quantity, where the consumer pays for them for the duration of their provision by means of instalments, may differ considerably, in terms of the interests of contractual parties involved, and of modalities and performance of the transactions, from credit agreements covered by this Directive. Therefore, it should be clarified that they are not considered as credit agreements for the purposes of this Directive. An example of such types of agreement is an insurance contract where the insurance is paid for via monthly instalments.**
- (13) ~~(7) Credit agreements covering the granting of credit for the purchase or transformation of immovable property **secured by real estate** should be excluded from the scope of this Directive. That type of credit is of a very specific nature. and is the subject of a Commission recommendation of 1 March 2001 on pre-contractual information to be given to consumers by lenders offering home loans.~~
- ~~(8) — In view of the risks to their financial interests, the situation of natural persons who stand as guarantors for consumers necessitates specific provisions ensuring a level of information and protection comparable to that provided for consumers.~~
- ~~(9) — Council Directive 84/450/EEC of 10 September 1984 concerning misleading advertising and comparative advertising¹⁰ is intended to provide protection with regard to the mention of a figure, cost or rate in advertising or advertising offers relating to a credit agreement. It requires such figure, cost or rate to be accompanied by calculation details making it possible to assess the figure in the context of all the consumer's obligations under a credit agreement~~

¹⁰ — OJ L 250, 19.9.1984, p. 17. Directive amended by Directive 97/55/EC of the European Parliament and of the Council (OJ L 290, 23.10.1997, p.18).

- (14) **Consumers should be protected against unfair or misleading practices, in particular with respect to the disclosure of information by the creditor, in line with Directive 2005/29/EC of 11 May 2005 of the Council and of European Parliament concerning unfair business-to-consumer commercial practices in the internal market and amending Directives 84/450/EEC, 97/7/EC and 98/27/EC (the Unfair Commercial Practices Directive¹¹). However, this Directive should contain specific provisions on advertising concerning credit agreements as well as certain elements of standard information consumers should be provided with in order to enable them, in particular, to compare different offers.**
- ~~(10) In order to ensure real consumer protection, it is necessary to adopt an approach to unsolicited doorstep selling of credit which is stricter than that laid down in Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises¹².~~
- ~~(11) The provisions of this Directive must apply without prejudice to 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 data¹³. However, a suitable framework for the collection and processing of personal data needed in order to assess the credit risk should be envisaged in certain cases.~~
- (15) ~~(14) So~~ **In order that** consumers can make their decisions in full knowledge of the facts, they ~~must~~ **should** receive adequate information, prior to the conclusion of the credit agreement, on the conditions and cost of the credit and on their obligations. To ensure ~~absolute~~ **the fullest possible** transparency and comparability of offers, such information should, in particular, include the annual percentage rate of charge (applicable to the credit, ~~illustrated by a representative example, and the total lending rate and determined throughout the Community in the same way. As the annual percentage rate of charge can at this stage only be indicated through an example, such example should be representative. Therefore, it should correspond, for instance, to the average duration and total amount of credit granted for the type of credit agreement under consideration and, if applicable, to the goods purchased. When determining the representative example, the frequency of certain types of credit agreement in a specific market should also be taken into account.~~
- (16) **Consumers should be informed of any additional costs that are compulsory for obtaining the credit before the conclusion of the credit agreement. Even if the amount of such costs cannot be determined in advance, consumers should receive adequate information both in advertising and at a pre-contractual stage.**
- (17) **For specific types of credit agreements, however, it is appropriate, in order to ensure at the same time an adequate level of consumer protection without putting an excessive burden on creditors or, where applicable, credit intermediaries, to**

¹¹ OJ L 149, 11.6.2005, p. 22.

~~¹² OJ L 372, 31.12.1985, p. 31.~~

~~¹³ OJ L 281, 23.11.1995, p. 31.~~

restrict the pre-contractual information requirements of this Directive, taking into account the specific character of such types of agreements.

- (18) **The consumer needs to be informed comprehensively before he concludes the credit agreement regardless of whether or not a credit intermediary is involved in the marketing of the credit. Therefore, in general, the pre-contractual information requirements should also apply when a credit intermediary is involved. However, if suppliers of goods and services act as credit intermediaries in an ancillary capacity, it is not appropriate to also burden them with the pre-contractual information requirements as laid down in this Directive. Therefore, the pre-contractual information requirements should not apply to such credit intermediaries. Suppliers of goods and services may be considered, for example, as acting as credit intermediaries in an ancillary capacity if their activity as credit intermediaries does not amount to a substantial part of their turnover. In those cases, full pre-contractual information of the consumer is still ensured because it has to be provided by the creditor.**
- (19) **Consumers should also act with prudence and respect their contractual obligations.**
- ~~(15) In view of the technical and legal complexity of credit instruments, it is necessary to impose a general obligation on the credit intermediary and creditor to provide advice so that the consumer can choose in full knowledge of the facts among the types of credit offered. Similarly, it is the responsibility of the creditor, in accordance with the principle of “responsible lending”, to check whether the consumer and, where applicable, the guarantor are in a position to meet new commitments.~~
- (20) **Despite the pre-contractual information to be provided, the consumer may still need additional assistance in order to decide which credit agreement, within the range of products proposed, is the most appropriate for his needs and financial situation. Therefore, Member States should ensure that creditors, and where applicable, credit intermediaries, provide such assistance. Where appropriate, the relevant pre-contractual information, as well as the advantages and the disadvantages associated with the products proposed, should be explained to the consumer in a personalised manner, in the light of the possible complexity of the relevant credit agreement.**

- (21) ~~(12) In order to help reduce the credit risk for both the creditor and the consumer, experience and practice testify to the benefits of sufficient and reliable information on cases of default. Member States must therefore ensure that there is a public or private central database in their territory, where appropriate in the form of a network of databases. Consumers and guarantors in the Member State who have defaulted should be registered in this database or network. With a view to working effectively, creditors must be obliged to consult this central database before accepting any commitment on the part of the consumer or guarantor. To prevent any distortion of competition among creditors, it must **should** be ensured that persons and businesses **creditors** have access to ~~the~~**private or public** central databases concerning consumers in a ~~of another Member State~~ **where they are not established** under the same **non-discriminatory** conditions **compared to** as persons and businesses **creditors** in that Member State, either directly or through the central database of their own Member State.~~
- (22) **In order to enable the consumer to know his rights and obligations under the credit agreement, it should contain all necessary information in a clear and concise manner.**
- ~~(13) In order to ensure the confidentiality of information and protection of personal data, it is essential that the data obtained may be used solely to assess the risk of non-performance for the consumer or guarantor. Any other processing or use of personal data obtained through the central database must be prohibited. Finally, to avoid any risk, the data must be destroyed immediately after the conclusion of the credit agreement or the refusal of the application for credit.~~
- ~~(16) The conditions laid down in a credit agreement may in some cases be to the consumer's disadvantage. Better consumer protection must be ensured by imposing specifying certain conditions which apply to all the forms of credit covered by the Directive. The credit agreement must confirm and add to the information provided before the conclusion of the agreement, where appropriate with the help of an amortisation table and details of the charges for defaulting.~~
- (23) **In order to ensure full transparency the consumer should be provided with information on the borrowing rate, both at a pre-contractual stage and when concluding the credit agreement. During the contractual relationship, the consumer further should be informed of significant changes to the borrowing rate.**
- (24) ~~(18) In order to approximate the procedures for exercising the right of withdrawal in similar areas, it is necessary to make provision for a right of withdrawal without penalty and with no obligation to provide justification, under conditions similar to those provided for by the Directive 2002/65/EC of the European Parliament and of the Council of **23 September 2002**{...} ~~on~~**concerning** the distance marketing of consumer financial services and amending Council Directives 90/619/EEC, 97/7/EC and 98/27/EC¹⁴. **Before exercising the right of withdrawal, the consumer may inform the creditor of his intention to withdraw from the credit agreement, in order to allow for re-negotiation of that agreement.**~~

¹⁴ OJ L 271, 9.10.2002, p. 16.

- (25) **In the case of linked agreements a relationship of interdependence exists between the purchase of goods or services and the credit agreement concluded for this purpose. Therefore, the exercise of the right of withdrawal in respect of the purchase agreement should allow the consumer to withdraw also from the credit agreement. In addition, consumers should be, under certain conditions, allowed to pursue remedies against the creditor in case of difficulties related to the purchase agreement. However, the non-compliance with such conditions should not deprive consumers of their rights granted by national provisions applying joint and several liability of the seller or supplier of services and the creditor.**
- (26) ~~(21)~~ The consumer should have the right to discharge his obligations before the due date **in the credit agreement.** In the case of early repayment, either in part or in full, the creditor ~~must~~**should** be entitled to claim **only** a fair and objective indemnity. **The objective indemnity should compensate the creditor for the costs directly linked to the early repayment and should take into account the interests of both contractual parties.**~~only, and provided that such repayment results in a corresponding financial loss for the creditor.~~
- (27) ~~(23)~~ The transfer of the creditor's rights under a credit agreement ~~must~~**should** not have the effect of placing the consumer or guarantor in a less favourable position. ~~For the same reasons a creditor who offers a credit agreement providing constitution of capital must assume the risk if the third party providing such constitution of capital defaults on his obligations.~~ **The consumer should also be properly informed when the credit agreement is assigned to a third party. However, where the assignment is effected for securitisation purposes only and where the initial creditor is, in agreement with the assignee, acting as a creditor vis-à-vis the consumer, the consumer does not have an important interest to be informed about the assignment. Therefore, a requirement at EU level to inform the consumer about the assignment in such cases would be excessive, but Member States should remain free to maintain or introduce such requirements in their national legislation.**

- (28) (19) In order to promote the establishing and functioning of the internal market and ensure a high degree of protection for consumers throughout the Community, it is necessary to ~~fine-tune the method of calculating~~ **the ensure the comparability of information relating to** annual percentage rates of charge **throughout the Community. Despite the uniform mathematical formula for calculating the annual percentage rate of charge provided for in Directive 87/102/EEC, as amended by Directive 98/7/EC, the annual percentage rate of charge is not yet fully comparable throughout the Community. In individual Member States different cost factors are taken into account in the calculation thereof. The Directive should therefore clearly define the total cost of a credit to the consumer. The costs associated with an insurance should only be included in the calculation of the annual percentage rate of charge if the insurance is compulsory in order to obtain the credit or the advertised interest rate and is concluded with or via either the creditor or the credit intermediary.** and to determine the components in the total cost of the credit to be used in the calculation. The annual percentage rate of charge is in fact an instrument of comparison allowing the consumer to gauge and compare the impact on his budget, in time and space, of commitments resulting from the conclusion of a credit agreement. The total cost of the credit must therefore include all costs which the consumer is required to pay for the credit, regardless of whether those costs are payable to the creditor, the credit intermediary or any other party. Accordingly, even if the consumer voluntarily takes out insurance on concluding the credit agreement, the costs associated with such insurance must be included in the total cost of the credit.
- (29) (17) In view of the specific nature of the terms used in credit and surety agreements, clarification is needed as to which terms are **should be** regarded as unfair without prejudice to the application to the agreement as a whole **in the framework** of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts¹⁵. **That Directive should therefore be amended accordingly.**
- (20) ~~It is also necessary to provide the consumer with information, in the form of a total lending rate, on the sums payable to the creditor, excluding those payable to third parties. This rate allows the consumer to compare the costs specific to a creditor in respect of the various products he offers and the various products available on the market~~
- (22) ~~If the supplier of goods or services acquired under a credit agreement can be regarded as a credit intermediary, the consumer must be able to enforce rights against the creditor which go further than his normal contractual rights against a supplier of goods or services~~
- (24) ~~It is necessary to establish common provisions on measures which apply in the event of non performance of credit agreements. In particular, certain debt collection practices which are manifestly out of proportion must be considered illegal.~~

¹⁵ OJ L 95, 21.4.1993, p. 29.

- (30) ~~(25)~~ In order to ensure market transparency and stability, **and pending further harmonisation,** Member States ~~need to adopt~~**should ensure that** appropriate measures for the ~~registration of persons offering credit or acting as~~**regulation or supervision of creditors and** credit intermediaries **are in place** with a view to the ~~conclusion of credit agreements, for the inspection or monitoring of creditors and intermediaries, and for enabling consumers to lodge complaints concerning credit agreements or conditions.~~
- ~~(26)~~ In order to ensure permanent protection of the interests of the consumer, credit or surety agreements should not derogate, to the detriment of the consumer or guarantor, from the provisions implementing or corresponding to this Directive.
- (31) ~~(27)~~ This Directive respects fundamental rights and **observes** the principles recognised **in particular** by the Charter of Fundamental Rights of the European Union. In particular, it aims **this Directive seeks** to ensure full compliance with **respect for** the rules on protection of personal data, the right to property, non-discrimination, protection of family and professional life, and consumer protection pursuant to Articles 8, 17, 21, 33 and 38 of the Charter **of Fundamental Rights of the European Union.**
- (32) ~~(28)~~ Since the objective of **the action to be taken** this Directive, namely to establish **common** rules allowing the harmonisation of **for certain aspects of** the laws, regulations and administrative provisions of the Member States concerning consumer credit, cannot be adequately **sufficiently** achieved by the Member States, and can therefore be **better** achieved more effectively at Community level, the Community can take action **may adopt measures** in accordance with the principle of subsidiarity referred to **as set out** in Article 5 of the Treaty. In accordance with the principle of proportionality, as referred to in the said **set out in that** Article, this Directive does not go beyond what is necessary **in order** to achieve the ~~these~~ objectives.
- (33) ~~(29)~~ **The** Member States ~~must~~ **should** lay down **rules on** penalties for **applicable to** infringements of the provisions of this Directive and ~~must~~ ensure that they are **implemented.** ~~enforced.~~ These penalties must be effective, proportionate and **dissuasive** constitute a deterrent.
- (34) ~~(30)~~ **Accordingly, taking account of the number of amendments that need to be made to Directive 87/102/EEC due to the evolution of the consumer credit sector and in the interests of clarity of Community legislation, that Directive should be** ~~It is therefore necessary to repealed~~ **and replaced by this** Directive 87/102/EEC,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I AIM, DEFINITIONS AND SCOPE

Article 1 *Aim Subject matter*

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

Article 3 2 *Scope*

1. This Directive ~~applies~~shall apply to credit agreements ~~and surety agreements~~.
2. This Directive shall not apply to the following credit agreements ~~and, where applicable, any corresponding surety agreements~~:
 - (a) credit agreements ~~the aim of which is to grant credit for the purchase or transformation of private immovable property that the consumer owns or is seeking to acquire and which are secured either by a mortgage on immovable property or by~~ another comparable surety commonly used in a Member State ~~for this purpose~~;
 - (b) credit agreements involving a total amount of credit exceeding EUR 50 000;
 - (c) hiring agreements, except where they stipulate that the title is to pass to the hirer eventually, ~~which exclude the passing of the title to the hirer or to persons entitled by him~~;
 - (d) leasing agreements which do not create any obligation to purchase the object of the agreement;
 - (e) credit agreements under the terms of which the consumer is required to repay the credit by means of instalments or in a single payment within a period not exceeding three months, without the payment of interest or any other charges;
 - (f) credit agreements which ~~meet the following conditions:~~ are granted by an employer to his employees as a secondary activity free of interest or ~~they are granted by the creditor as a secondary activity, i.e. outside the sphere of his principal commercial or professional activity,~~ ii) — they are granted at annual percentage rates of charge lower than those prevailing on the market,
 - iii) ~~they~~and which are not offered to the public generally;

- (g) credit agreements concluded with investment firms ~~within the meaning of~~ **as defined in point (2)** of Article 1(2) of Council Directive 93/22/EEC¹⁶ for the purposes of allowing an investor to carry out a transaction relating to one or more of the instruments listed in Section B of the Annex to that Directive, where the firm granting the credit is involved in such transaction;
- (h) **credit agreements which are the outcome of a settlement reached in court or before another statutory authority;**
- (i) **credit agreements which relate to the deferred payment, free of charge, of an existing debt;**
- (j) **credit agreements upon the conclusion of which the consumer is requested to deposit an item as security in the creditor's safe-keeping and where the liability of the consumer is strictly limited to that pledged item;**
- (k) **credit agreements which relate to loans granted to a restricted public, at lower interest rates than those prevailing on the market or free of interest, and where the creditor is fulfilling a statutory duty with a general interest purpose.**

3. **In the case of credit agreements on the basis of which credit is granted in the form of an overdraft facility, only Articles 1 to 4, 6, 7, and 8, Article 9(1), Article 9(2)(a) to (d), (h) and (o), Article 9(3), Articles 10 and 11, Article 17 (1), and Articles 18 to 29 shall apply.**

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

4. **In the case of the following credit agreements, only Articles 1 to 4, 6, 7 and 8, Article 9 (1), Article 9(2) (a) to (g) and (j), Article 9(3), and Articles 10, 12 and 17 to 29 shall apply:**

(a) credit agreements involving a total amount of credit not exceeding EUR 300;

(b) credit agreements concluded by non-profit associations of consumers which manage the savings of and provide sources of credits to their members, where:

(i) the ultimate responsibility lies with volunteers who provide credit on the basis of an annual percentage rate of charge which is subject to a ceiling laid down by national law; and

(ii) membership of such associations is restricted to persons residing or employed in a particular district or employees and retired employees of a particular employer;

¹⁶ OJ L 141, 11.6.1993, p. 27.

(c) credit agreements which provide for arrangements to be agreed by the creditor and the consumer in respect of deferred payment or repayment methods, where the consumer is already in default on the initial credit agreement] where:

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

(ii) the consumer would not thereby be subject to less favourable terms compared to the initial credit agreement.

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

Article 2 3
Definitions

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

(a) “consumer” means a natural person who, in transactions covered by this Directive, is acting for purposes which ~~can be regarded as~~ are outside his trade, business or profession;

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

(c) “credit agreement” means an agreement whereby a creditor grants or promises to grant to a consumer credit in the form of a deferred payment, loan or other similar financial accommodation; except for ~~agreements for the provision on a continuing basis of services (private or public),~~ or for the supply of goods of the same kind and in the same quantity, where the consumer ~~has the right to pay~~ for them for such services or goods for the duration of their provision by means of instalments, ~~are not deemed to be credit agreements for the purposes of this directive;~~

(d) “overdraft facility” means a credit agreement whereby a creditor grants to a consumer the possibility to dispose of funds in his current account which exceed the current balance in that account and where the amount of credit has to be repaid within three months or on demand;

(e) “credit intermediary” means a natural or legal person who on behalf of the creditor and for a fee, which may take a pecuniary form or any other agreed form of financial consideration, habitually:

(i) ~~acts as an intermediary by presenting~~ presents or ~~offering~~ offers credit agreements;

(ii) ~~undertaking~~ undertakes other preparatory work for credits ~~such~~ agreements other than that referred to in (i); or

(iii) ~~concluding~~ concludes credit ~~such~~ agreements; ~~the fee may take the form or any other agreed form of financial consideration;~~

- (e) ~~“surety agreement” means an ancillary agreement concluded by a guarantor and guaranteeing or promising to guarantee the fulfilment of a credit agreement granted to a consumer and covered by this directive; any form of credit granted to natural or legal persons;~~
- (f) ~~“guarantor” means a consumer concluding a surety agreement;~~
- (f) “total cost of **the** credit to the consumer” means all the costs, including ~~borrowing interest, indemnities, commissions~~ **and any kind of fees**, taxes and any other kind of charge which the consumer has to pay for the credit **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 conclusion of the service contract is compulsory for obtaining the credit or the advertised interest 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 or tax authorities, are excluded;**
- (g) “annual percentage rate of charge” means the total cost of the credit to the consumer expressed as an annual percentage of the total amount of credit ~~granted;~~
- (i) ~~“sums levied by the creditor” means all the mandatory costs associated with the credit agreement and paid to the creditor by the consumer;~~
- (j) ~~“total lending rate” means the sums levied by the creditor expressed as an annual percentage of the total amount of credit;~~
- (h) “borrowing rate” means the interest rate expressed as a **fixed or variable** periodic percentage applied for a given period to the ~~amount of credit drawn down~~ **drawdowns under the credit agreement;**
- (h) ~~“residual value” means the purchase price of the financed goods applicable at the time when the purchase option or the property transfer option is exercised;~~
- (i) “drawdown” means an amount of credit made available to the consumer ~~in the form of a deferred payment, loan or other similar financial accommodation~~ **under a credit agreement;**
- (j) “total amount of credit” means the ceiling or the sum of all drawdowns ~~that are likely to be agreed;~~
- (k) “durable medium” means any instrument which enables the consumer to store information addressed personally to him in a way which makes it accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;

~~(p) “third party providing constitution of capital” means any natural or legal person, other than the creditor or consumer, who gives the consumer or, where applicable, the creditor an undertaking, through an agreement appended to the credit agreement, to constitute the capital to be repaid under such credit agreement.~~

(l) **“linked credit agreement” means a credit agreement where**

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

(ii) those two agreements form from an objective point of view a commercial unit; 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.

CHAPTER II
INFORMATION AND PRACTICES PRELIMINARY TO THE ~~FORMATION~~CONCLUSION
OF THE CREDIT AGREEMENT

Article 4
Advertising

~~Without prejudice to Council Directive 84/450/EEC, any advertising or any offer displayed at business premises that includes information on credit agreements, in particular as regards the borrowing rate, total lending rate and annual percentage rate of charge, shall be provided in a clear and comprehensible manner, with due regard, in particular, to the principles of good faith in commercial transactions. The commercial purpose of this information must be made clear~~

Article 4
Standard information for advertising

- 1. Any advertising concerning credit agreements indicating an interest rate or any figures relating to the cost of the credit to the consumer shall include standard information in accordance with this Article ('the standard information').**
- 2. The standard information shall include, in the following order, and in a clear, concise and prominent way through a representative example:**
 - (a) the total amount of credit;**
 - (b) the annual percentage rate of charge;**
 - (c) the duration of the credit agreement;**
 - (d) the amount, number and frequency of payments to be made; and**
 - (e) any kind of fees in connection with the credit agreement in conformity with the terms thereof and which are known to the creditor.**
- 3. Where credit terms are not available to the general public, the annual percentage rate of charge shall be stated by means of at least two representative examples.**
- 4. 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 of charge calculated on the total duration of the credit agreement.**
- 5. Where the conclusion of a contract regarding an ancillary service relating to the credit agreement, in particular an insurance, is compulsory for obtaining the credit or the advertised interest 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 prominent way, together with the annual percentage rate of charge.**

6. This Article shall be without prejudice to Directive 2005/29/EC of 11 May 2005

Article 5

~~Ban on negotiation of credit and surety agreements outside business premises~~

~~The negotiation of a credit or a surety agreement outside business premises in the circumstances referred to in Article 1 of Council Directive 85/577/EEC shall be prohibited.~~

Article 6 5

*~~Exchange of information in advance and duty to provide advice~~ **Pre-contractual information***

- ~~Without prejudice to the application of Directive 95/46/EC, and in particular Article 6 thereof, the creditor and, where applicable, the credit intermediary may request of a consumer seeking a credit agreement, and any guarantor, only such information as is adequate, relevant and not excessive, with a view to assessing their financial situation and their ability to repay. The consumer and guarantor shall reply accurately and in full to any such request for information.~~ **The creditor and, where applicable, the credit intermediary shall adhere to the principle of responsible lending. Therefore, the creditor and, where applicable, the credit intermediary, shall comply with their obligations concerning the provision of pre-contractual information and the requirement for the creditor to assess the consumer's creditworthiness on the basis of accurate information provided by the latter, and, where appropriate, on the basis of a consultation of the relevant database.**

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

- In good time before the consumer is bound by any credit agreement or offer,** ~~The creditor and, where applicable, the credit intermediary shall provide~~ **the consumer , on paper or on another durable medium, with the necessary and essential information needed for the conclusion of the credit agreement under consideration.** ~~the consumer with all the exact and complete information needed in respect of the credit agreement under consideration. The consumer shall receive this information on paper or on another durable medium before the conclusion of the credit agreement.~~

~~Without prejudice to Article 5 of Directive .../.../EC [on the distance marketing of financial services to consumers and amending Council Directives 90/619/EEC, 97/7/EC and 98/27/EC], the~~ **That** ~~information provided must~~ **shall** ~~include a~~ **clear** ~~and~~ **concise** ~~clear~~ ~~description of the product's~~ ~~advantages, and any~~ ~~drawbacks. In particular~~ ~~the information must~~ **shall** ~~refer to:~~

- (a) the duration of the credit agreement;

- (b) the total amount of credit and the conditions governing the drawdown ~~of the credit~~;
- (c) ~~where applicable,~~ the borrowing rate, the conditions governing the application of this **borrowing rate** and, **where available,** any index or reference rate applicable to the initial borrowing rate, as well as the periods, conditions and procedure for varying the borrowing rate;
- (d) the annual percentage rate of charge ~~and the total lending rate~~ **and the total cost of the credit to the consumer,** by means of a representative example mentioning all the financial data and assumptions used for calculating this ~~said~~ rates;
- (e) the amount, number and frequency of payments to be made, **where possible set out in a payment schedule;**
- (f) ~~the recurrent and non-recurrent charges, including additional non-recurring costs which the consumer has to pay on concluding a credit agreement, such as taxes, administrative costs, legal fees and assessment costs with regard to the sureties required~~ **where applicable, the costs of maintaining an account recording both payment transactions and drawdowns, the costs of using a means of payment for both payment transactions and drawdowns, and other costs relating to payment transactions;**
- ~~(f) where applicable, the cash price of the financed goods or services, the down payment due and the residual value;~~
- (g) **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 or tax authorities;**
- (h) **the obligation to take out an ancillary service relating to the credit agreement, in particular an insurance, where the conclusion of a contract regarding this service is compulsory for obtaining the credit or the advertised interest rate, and its cost cannot be determined in advance,**
- (i) **the interest 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;**
- (j) the sureties ~~and insurance~~ required;
- (k) **the existence or absence of a right of withdrawal,** the period during which ~~that~~ right of withdrawal may be exercised;
- (l) **the right of early repayment, and, where applicable, the costs arising therefrom, indicating the amount or the calculation method;**
- (m) **the right to be informed of the result of a database consultation for the assessment of the creditworthiness in accordance with Article 8(2);**

However, in the cases of voice telephony communications, as referred to in Article 3(3) of Directive 2002/65/EC, this pre-contractual information must shall include at least the items referred to in points (b), (c), and (e), and (g) of this paragraph and the annual percentage rate of charge by means of a representative example and the total cost of the credit to the consumer.

The obligation to provide pre-contractual information to the consumer in accordance with this paragraph may also be discharged by supplying a copy of the draft credit agreement including the information in accordance with Article 9.

3. **The requirements provided for in paragraph 2 shall be fulfilled immediately after the conclusion of the credit agreement, if that agreement has been concluded at the consumer's request using a means of distance communication which does not enable providing the information in accordance with paragraph 2.**

4. **In the case of a credit agreement 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 an ancillary agreement, the pre-contractual information required under paragraph 2 shall include a clear and concise statement that such credit agreements do not provide for a guarantee of repayment of the total amount of credit drawn down under the credit agreement, unless such a guarantee is given.**

5. **Member States shall ensure that creditors and, where applicable, credit intermediaries provide adequate explanations to the consumer, in order to put the consumer in a position to assess whether the proposed credit agreement is adapted to his needs and to his financial situation, where appropriate by explaining the pre-contractual information to be provided in accordance with paragraph 2 as well as the advantages and the disadvantages associated with the products proposed. Member States may adapt the manner by and extent to which this assistance is given, as well as by whom it is given, to the particular circumstances of the situation in which the credit agreement is offered.**

~~The 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. ~~Paragraphs 1, 2 and 3 do not apply to suppliers of goods or services acting as credit intermediaries in an ancillary capacity.~~

Article 6

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

1. In good time before a consumer is bound by a credit agreement or any offer concerning a credit agreement within the meaning of Article 2(3) or Article 2(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 that rate;

(d) the charges applicable from the time the credit agreement is concluded, and the conditions under which those charges may be amended; and

(e) the conditions and procedure for terminating the credit agreement.

In the case of credit agreements within the meaning of Article 2(3), the information provided to the consumer in accordance with point (e) of this paragraph shall include, where applicable, an indication that the consumer may be requested to repay the amount of credit in full on demand at any time.

2. In the case of credit agreements within the meaning of Article 2(4), the information provided to the consumer in accordance with paragraph 1 of this Article shall also include:

(a) the duration of the credit agreement; and

(b) the amount, number and frequency of payments to be made.

However, if the credit agreement falls within the scope of Article 2(3), only the provisions referred to in Article 2(3) shall apply.

3. The pre-contractual information to be provided to the consumer in accordance with this Article may also be discharged by supplying a copy of the draft credit agreement including the information in accordance with Article 9 insofar as this Article applies.

4. The requirements provided for in this Article shall be fulfilled immediately after the conclusion of the credit agreement, if that agreement has been concluded at the consumer's request using a means of distance communication which does not enable providing the information in accordance with this Article.

Article 7 *Exemptions*

~~Paragraphs 1, 2 and 3~~ **Articles 5 and 6 of this Directive shall** not apply to suppliers of goods or services acting as credit intermediaries in an ancillary capacity.

CHAPTER III

PROTECTION OF PRIVACY DATABASE ACCESS

Article 7

Collection and processing of data

~~Personal data obtained from consumers, guarantors or any other person in connection with the conclusion and management of agreements covered by this Directive, and in particular by Article 6 (1), may be processed only for the purpose of assessing the financial situation of those persons and their ability to repay.~~

Article 8

Central ~~d~~Database access

1. ~~Without prejudice to the application of Directive 95/46/EC, Member States shall ensure the operation on their territory of a central database for the purpose of registration of consumers and guarantors who have defaulted. This database may take the form of a network of databases. Creditors must consult the database prior to any commitment on the part of the consumer or guarantor, subject to the restrictions referred to in Article 9. The consumer and, where appropriate, the guarantor shall, if they so request, be informed of the result of any consultation immediately and without charge.~~
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. ~~Access to the central database in another Member State shall be ensured under the same conditions as for firms and individuals in that Member State, either directly or via the central database of the home Member State.~~
The consumer, if he so requests, shall be informed of the result of any database consultation immediately and without charge.
3. ~~Personal data received under paragraph 1 may be processed only for the purpose of assessing the financial situation of the consumer and guarantor and their ability to repay. The data shall be destroyed immediately after the conclusion of the credit or surety agreement or the refusal by the creditor of the application for credit or the proposed surety.~~
4. ~~The central database referred to in paragraph 1 may include the registration of credit agreements and surety agreements.~~

CHAPTER IV
FORMATION OF INFORMATION AND RIGHTS CONCERNING CREDIT AGREEMENTS

Article 9
Responsible lending

~~Where the creditor concludes a credit agreement or surety agreement or increases the total amount of credit or the amount guaranteed, he is assumed to have previously assessed, by any means at his disposal, whether the consumer and, where appropriate, the guarantor can reasonably be expected to discharge their obligations under the agreement.~~

Article 10 2
Information that must be included in credit ~~and surety~~ agreements

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

~~All the contracting parties including the guarantor and the credit intermediary, shall receive a copy of the credit agreement. The guarantor shall receive a copy of the surety agreement.~~

~~Credit a~~Agreements shall **contain information regarding access to** ~~mention the existence or non-existence of out-of-court~~ **dispute resolution** ~~complaint and redress procedures~~ **and shall specify** ~~accessible to consumers who are party to a contract and, if such procedures exist, the formalities for gaining access to them~~ **to be followed if 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 duration of the credit agreement;**
 - (c) **the total amount of credit and the conditions governing the drawdown of the credit;**
 - (d) **the borrowing rate, the conditions governing the application of that rate and, where available, any index, or reference rate applicable to the initial borrowing rate, as well as the periods, conditions and procedures for varying the borrowing rate;**
 - (e) **the annual percentage rate of charge and the total cost of the credit to the consumer, calculated at the time the credit agreement is concluded; all the financial data and assumptions used for calculating that rate shall be mentioned;**

- (f) **the amount, number and frequency of payments to be made, where possible set out in a payment schedule;**
- (g) where capital amortisation **of a credit agreement with a fixed duration and interest 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~~ **such** amounts; ~~the~~ table shall contain a breakdown of each repayment to show capital amortisation, the interest calculated on the basis of the borrowing rate and, where applicable, the additional costs;
- (h) 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;
- (i) **where applicable, the costs of maintaining an account recording both payment transactions and drawdowns, the costs of using a means of payment for both payment transactions and drawdowns, and other costs relating to payment transactions;**
- (j) a statement of the **costs, indicating their purpose and amounts, cost components that 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, ~~under certain circumstances, namely the~~ **interest in case of overdue payments as applicable at the time of conclusion of the agreement and the arrangements for their adjustment** ~~commitment fee, penalties, the charges~~ **or interests on arrears** relating to **an overrunning of unauthorised drawdowns in excess of the total amount of credit, and the charges for defaulting, plus a list setting out the circumstances;**
- (k) **the sureties and insurance required;**
- (l) **the existence or absence of a right of withdrawal, the period during which that right of withdrawal may be exercised, and the procedure to exercise that right;**
- (m) **information concerning the rights resulting from Article 14 as well as the conditions for the exercise of these rights;**
- (n) **the right of entitlement to early repayment, as well as the procedure to be applied by the consumer in order to exercise this right, the procedure for early repayment, and, where applicable, the costs arising therefrom, indicating the amount or the calculation method;**
- (o) **the procedure to be followed to exercise the right of termination of the credit agreement;**
- ~~(b) the data referred to in Article 6 (2), with the annual percentage rate of charge and the lending rate calculated at the time the credit agreement is concluded on the basis of all the financial data and assumptions applicable to the agreement;~~
- ~~(p) where applicable, the goods or services being financed;~~

~~(g) entitlement to early repayment, as well as the procedure to be applied by the consumer in order to exercise this right;~~

~~(h) the procedure to be followed to exercise the right of withdrawal.~~

~~The table referred to in e) shall contain a breakdown of each repayment to show capital amortisation, the interest calculated on the basis of the borrowing rate and, where applicable, the additional costs.~~

~~If, in the case referred to in e), a new drawdown is not possible without the consent of the creditor, the creditor's decision shall be communicated on paper or on another durable medium. It shall be made available to the consumer and contain the amended data to which this paragraph refers.~~

~~Where the exact amount of these components referred to in e) is known, it shall be shown. Otherwise, and as a minimum requirement, these costs must be ascertainable in the credit agreement on the basis of an indication of the percentage linked to a reference rate, a calculation method or the most realistic estimate possible. In such cases the creditor shall make available to the consumer on paper or on another durable medium a breakdown of these costs without delay or, at the latest, when they are to be applied.~~

~~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).~~

3. In the case of a credit agreement 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 an ancillary agreement, the pre-contractual information required under paragraph 2 shall include a clear and concise statement that such credit agreements do not provide for a guarantee of repayment of the total amount of credit drawdown under the credit agreement, unless such a guarantee is given.

Article 14-10

Information on the borrowing rate

~~1. The borrowing rate may be fixed or variable~~

~~2. Where one or a number of fixed borrowing rates have been established, they shall apply for the duration of the period specified in the credit agreement.~~

~~3. A variable borrowing rate may not vary until the end of agreed periods provided for in the credit agreement and may do so only in line with the agreed index of reference rate.~~

~~4. The consumer shall be **periodically** informed of any changes to the borrowing rate, on paper or on another durable medium.~~

This information must include ~~the new annual percentage rate of charge the creditor's new total lending rate and the new amortisation table. The calculation of the new annual percentage rate of charge shall be based on Article 12 (3).~~ **Where the change to that rate is significant, the consumer shall be informed immediately following the date of such change.**

Article 21 11

*Credit agreement in the form of an ~~advance on a current account or a debit account~~ **overdraft facility***

Where a credit agreement covers credit in the form of an ~~advance on a current account or debit account~~ **overdraft facility**, the consumer shall be regularly informed ~~of his debit situation~~ by means of a statement of account, on paper or on another durable medium, containing the following information:

- (a) the precise period to which the statement of account relates;
- (b) the amounts and dates of drawdowns;
- (c) ~~where applicable, the outstanding balance due from the previous statement, and the date thereof;~~
- (d) ~~where applicable, the new balance outstanding;~~
- ~~(d) the date and amount of charges due;~~
- (e) the dates and amounts of payments made by the consumer;
- (f) the last agreed borrowing rate;
- ~~(g) the total amount of interest due;~~
- (g) where applicable, the minimum amount to be paid;
- ~~(h) where applicable, the new balance outstanding;~~
- ~~(j) the new total amount outstanding, including any interest on arrears or penalties.~~

In addition, the consumer shall be notified on paper or any durable medium during the course of the agreement of changes in the borrowing rate or in payable costs immediately following the date of such change.

Article 22 12

*Open-end credit agreements **and long term agreements***

1. Either party may ~~terminate~~ **effect standard termination of** an open-end credit agreement by giving three months' notice drawn up on paper or on another durable medium in accordance with ~~the procedures laid down in the credit agreement and in accordance with national legislation regarding proof.~~

2. **The creditor may terminate without prior notice the consumers' right to draw down on an open-end credit agreement. The creditor shall inform the consumer of such decision on paper or on another durable medium without delay.**
3. **Fixed-term agreements of more than three years may not be renewed without the explicit prior approval of the consumer**

*Article ~~11~~**13**
Right of withdrawal*

1. The consumer shall have a period of fourteen calendar days to withdraw his acceptance ~~of~~**from** the credit agreement without giving any reason.

That ~~is~~ period **of withdrawal** shall begin:

- (a) **either from the day of the conclusion of the credit agreement, or**
 - (b) **from the day on which the consumer receives the contractual terms and conditions and information in accordance with Article 9 (2), if that day is later than the date referred to in point (a).** ~~on the day a copy of the credit agreement concluded is transmitted to the consumer.~~
2. **Before the consumer exercises his right of withdrawal, he may inform the creditor of his intention to withdraw from the credit agreement. This information shall be given within a period of seven calendar days after the beginning of the period of withdrawal according to paragraph 1.**
 3. **If the consumer exercises his right of withdrawal, as provided for in paragraph 1 of this Article, he shall, before the expiry of the deadline referred to in paragraph 1, notify this to the creditor following the information given by the creditor in accordance with Article 9 (2)(1) by means which can be proved in accordance with national law.** ~~The consumer shall notify the creditor of his withdrawal before expiry of the period referred to in paragraph 1 and in accordance with national legislation regarding proof.~~

The deadline shall be deemed to have been observed if this notification, **if it is** ~~which~~ ~~must be~~ on paper or on another durable medium that is available and accessible to the creditor, is dispatched before the deadline expires.

4. **Following the exercise of the right of withdrawal in accordance with paragraph 2, the creditor shall notify the consumer, on paper or another durable medium, of the amount of money to be repaid including the** ~~shall oblige the consumer simultaneously to return to the creditor the sums of money or goods that he has received by virtue of the credit agreement, in so far as provision thereof is governed by the credit agreement. The consumer shall pay interest due for the period during which credit was drawn~~ **down.**

The interest due shall be calculated on the basis of the agreed annual percentage ~~borrowing~~ rate of charge. No other indemnity may be claimed in connection with **exercising the right of** withdrawal.

The consumer shall pay to the creditor that amount of money notified to him under this paragraph. ~~Any down payment effected by the consumer under the credit agreement shall be repaid to the consumer without delay.~~

5. Paragraphs 1, ~~2 and 3~~ **to 4 of this Article** shall not apply **to credit agreements:**

(a) concluded through services of an official, provided that the official confirms that the consumer is guaranteed the rights under Article 5(2) and 9(2) ~~credit agreements secured by a mortgage or similar surety, credit agreements for housing~~

or

(b) credit agreements cancelled under:

- (i) Article 6 of Directive 2002/65/EC ~~[on the distance marketing of financial services to consumers and amending Council Directives 90/619/EC, 97/7/EC and 98/27/EC];~~
- (ii) Article 6 (4) of Directive 97/7/EC of the European Parliament and of the Council¹⁷;
- (iii) Article 7 of Directive 94/47/EC of the European Parliament and of the Council¹⁸;

Article 14 **Linked transactions.**

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

2. Where:

(a) in order to buy goods or obtain services the consumer enters into a credit

¹⁷ OJ L 144, 4.6.1997, p. 19.

¹⁸ OJ L 280, 29.10.1994, p. 83.

agreement with a person other than the supplier of them;

- (b) the creditor and the supplier of the goods or services have a pre-existing agreement whereby credit is made available exclusively by that creditor to customers of that supplier for the acquisition of goods or services from that supplier;
- (c) the consumer referred to in point (a) obtains credit pursuant to that pre-existing agreement;
- (d) the goods or services covered by the credit agreement are not supplied, or are supplied only in part, or are not in conformity with the contract to supply them;
- (e) the consumer has pursued his remedies against the supplier but has failed to obtain the satisfaction to which he is entitled,

the consumer shall have the right to pursue remedies against the creditor. Member States shall determine to what extent and under what conditions these remedies shall be exercisable.

3. Paragraphs 1 and 2 are without prejudice to any national rules according to which a creditor shall be jointly and severally liable for any claim the consumer may have against the supplier where the purchase of goods or services from the supplier has been financed by a credit agreement.

*Article ~~16~~ 15
Early repayment*

- 1. The consumer shall be entitled to discharge fully or partially his obligations under a credit agreement ~~at any time before the time fixed in the credit agreement.~~ In such cases, he shall be entitled to an equitable reduction in the total cost of the credit.
- 2. ~~Any indemnity claimed by the creditor shall be a fair and objective~~ The creditor shall be entitled to claim shall be a fair and objective indemnity for early repayment according to the amount or the calculation method and shall be calculated on the basis of actuarial principles set out in the credit agreement.

However, n~~No~~ indemnity shall be claimed by the creditor:

- (a) for credit agreements where the period used to fix the borrowing rate is less than one year;
- (b) if repayment has been made under an insurance contract intended to provide a conventional credit repayment guarantee.
- ~~(c) for credit agreements which provide for payment of charges and interest without capital amortisation, with the exception of the credit agreements referred to in Article 20.~~

*Article ~~17~~**16***
Assignment of rights

Where the creditor's rights under a credit agreement ~~or surety agreement~~ **or the agreement itself** are assigned to a third party, the consumer and, where applicable, the guarantor, shall be entitled to plead against the assignee ~~of the creditor's rights under that agreement~~ any defence which was available to him against the original creditor, including set-off where the latter is permitted in the Member State concerned.

The consumer shall be informed where the credit agreement has been assigned to a third party except where the assignment is effected for securitisation purposes only and where the original creditor, in agreement with the assignee, still acts on behalf of the assignee as a creditor vis-à-vis the consumer.

Article 18
Ban on the use of bills of exchange and other securities

~~The creditor or assignee of the creditor's rights under a credit agreement or surety agreement shall not require or invite the consumer or guarantor to guarantee payment of their commitments under that agreement by means of a bill of exchange or promissory note.~~

~~Moreover, the consumer shall not be required to sign a cheque guaranteeing repayment, in full or in part, of the amount due.~~

Article 25 17
Overrunning of the total amount of credit ~~and tacit overdraft~~

~~1. In the event of an authorised temporary overrunning of the total amount of credit or a tacit overdraft, the creditor shall inform the consumer without delay, in writing or on another durable medium, of the amount involved and the borrowing rate applicable. No penalties, charges or interest on arrears shall be included.~~

1. **In the event of a significant overrunning of the total amount of credit which exceeds a period of one month,** the creditor shall inform the consumer ~~without delay,~~ **on paper or on another durable medium**

(a) that he has overrun the ~~credit~~ **total amount of credit;**

(b) ~~or is in an unauthorised overdraft situation and shall inform him of the~~ **amount involved;**

(c) ~~of the~~ borrowing rate; and

(d) ~~of any penalties, charges or interest on arrears~~ **charges or penalties** applicable.

2. Any **significant** overrunning **of the total amount of credit** or overdraft as referred to ~~in this article~~ **which exceeds a period of three months** shall be rectified, where necessary through a new credit agreement providing for a higher total amount of credit.

CHAPTER V
ANNUAL PERCENTAGE RATE OF CHARGE ~~AND BORROWING RATE~~

*Article ~~12~~ **18***
Calculation of the annual percentage rate of charge

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

~~Examples of the method of calculation are given in Annex II, by way of illustration.~~

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

The costs of maintaining an account recording both payment transactions and **drawdowns**~~credit transactions~~, the costs of using a ~~card or another~~ means of payment for both payment transactions and drawdowns, and **other**~~the~~ costs relating to payment transactions ~~in general~~ shall be included **in the total costs of credit to the consumer** unless **they are optional and** they have been clearly and separately shown in the credit agreement or in any other agreement concluded with the consumer.

~~Costs relating to insurance premiums shall be included in the total cost of the credit if the insurance is taken out when the credit agreement is concluded.~~

3. The calculation of the annual percentage rate of charge shall be based on the assumption that the credit ~~contract will~~ **agreement is to** remain valid for the period agreed and the creditor and the consumer ~~will~~ **are to** fulfil their obligations under the terms and by the dates agreed **in the credit agreement**.
4. In the case of credit agreements containing clauses allowing variations in the borrowing rate contained in the annual percentage rate of charge but unquantifiable at the time of calculation, the annual percentage rate of charge shall be calculated on the assumption that the borrowing rate and other charges ~~will~~ **are to** remain fixed in relation to the initial level and ~~will~~ **are to** remain applicable until the end of the credit agreement.
5. Where necessary, the following assumptions may be adopted in calculating the annual percentage rate of charge:
 - (a) if a credit agreement gives the consumer freedom of drawdown, the total amount of credit shall **be** deemed to be drawdown immediately and in full;

- (b) if there is no fixed timetable for repayment, and one cannot be deduced from the terms of the **credit** agreement and the means for repaying the credit granted, the duration of the credit shall be deemed to be one year;
- (c) unless otherwise specified, where the **credit** agreement provides for more than one repayment date, the credit **is to** be made available and the repayments made on the earliest date provided for in the agreement;

~~6. — Where a credit agreement is drawn up in the form of a hire agreement with an option to purchase and the agreement provides for a number of dates on which the purchase option may be exercised, the annual percentage rate of charge shall be calculated for each of the these dates.~~

~~Where the residual value cannot be determined, the goods hired shall be subject to linear amortisation that makes its value equal to zero at the end of the normal hire period laid down in the credit agreement.~~

~~7. — Where a credit agreement provides for a prior or simultaneous constitution of savings and the borrowing rate is set in relation to these savings, the annual percentage rate of charge shall be calculated in accordance with the procedure set out in Annex III.~~

CHAPTER VI UNFAIR TERMS

Article 15 *Unfair terms*

~~Without prejudice to the application of Directive 93/13/EEC to the agreement as a whole, terms in a credit agreement or surety agreement shall be regarded as unfair if their object or effect is to:~~

- ~~(a) — impose 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 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;~~
- ~~(c) — vary any contractual costs, indemnities or charges other than the borrowing rate;~~
- ~~(d) — introduce rules on the variability of the borrowing rate that discriminate against the consumer~~
- ~~(e) — introduce a system involving a variable borrowing rate which does not relate to the net initial borrowing rate proposed when the credit agreement was concluded and which would exclude all forms of rebate, reduction or other advantages;~~
- ~~(f) — oblige the consumer to use the same creditor to refinance the residual value and, in general, any final payment on a credit agreement for financing the purchase of movable property or a service;²²~~

CHAPTER VII PERFORMANCE OF A CREDIT AGREEMENT

Article 18

Ban on the use of bills of exchange and other securities

~~The creditor or assignee of the creditor's rights under a credit agreement or surety agreement shall not require or invite the consumer or guarantor to guarantee payment of their commitments under that agreement by means of a bill of exchange or promissory note.~~

~~Moreover, the consumer or guarantor shall not be required to sign a cheque guaranteeing repayment, in full or in part, of the amount due.~~

Article 19

Joint and several liability

- ~~1. Member States shall ensure that the existence of a credit agreement shall not in any way affect the rights of the consumer against the supplier of goods or services purchased by means of such an agreement in cases where the goods or services are not supplied or are otherwise not in conformity with the contract for their supply.~~
- ~~2. If the supplier of goods or services has acted as credit intermediary, the creditor and the supplier shall be jointly and severally liable for indemnifying the consumer where the goods or services the purchase of which has been financed by the credit agreement are not supplied, or are supplied only in part, or are not in conformity with the contract for their supply~~

CHAPTER VIII SPECIFIC CREDIT AGREEMENTS

Article 20

Credit agreement providing constitution of capital

1. ~~If 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, such constitution of capital shall be based on an ancillary agreement attached to the credit agreement.~~
2. ~~The ancillary agreement referred to in paragraph 1 shall provide for an unconditional guarantee of repayment of the total amount of credit drawn down. If the third party providing constitution of capital fails to comply with his obligations, the creditor shall assume the risk.~~
3. ~~Payments, premiums and recurrent or non-recurrent charges payable by the consumer under the ancillary agreement referred to in paragraph 1, together with interest and charges under the credit agreement, shall constitute the total cost of the credit. The annual percentage rate of charge and the total lending rate shall be calculated on the basis of the total commitment subscribed to by the consumer.~~

CHAPTER VII PERFORMANCE OF A SURETY AGREEMENT

Article 23

Performance of a surety agreement

1. ~~A guarantor may conclude a surety agreement guaranteeing repayment under an open-end credit agreement for a period of three years only. This surety may be extended only with the specific agreement of the guarantor at the end of that period.~~
2. ~~The creditor may take action against the guarantor only if the consumer, having defaulted on repayment of the credit, has failed to comply with a default notice within three months. The guarantor must be informed as soon as a default notice has been sent to the consumer.~~
3. ~~The amount guaranteed may only equal the outstanding balance of the total amount of credit and any arrears in accordance with the credit agreement, with the exclusion of any other indemnities or penalties provided for by the credit agreement.~~

CHAPTER X
NON-PERFORMANCE OF A CREDIT AGREEMENT

Article 24
Default notice and enforceability

1. ~~Member States shall ensure that~~
 - (a) ~~creditors, their representatives and any other assignee of the creditor's rights under a credit agreement or surety agreement may not take disproportionate measures to recover amounts due to them in the event of non performance of such agreements;~~
 - (b) ~~the creditor may demand immediate payment in the event of default or invoke a clause providing an express resolute condition only through a prior default notice requesting the consumer or, where applicable, the guarantor to comply with his obligations under the agreement within a reasonable period of time or to apply for rescheduling of the debt;~~
 - (c) ~~the creditor may not suspend the consumer's drawdown rights unless he justifies his decision and is required to inform the consumer without delay;~~
 - (d) ~~in the event of non performance of their obligations or in the event of early repayment, the consumer and the guarantor are entitled, on request and without delay, to receive a detailed statement of account, free of charge, allowing them to verify the charges and interest claimed.~~
2. ~~A default notice as referred to in paragraph 1 (b) is not necessary:~~
 - a) ~~in the event of manifest fraud, evidence of which shall be provided by the creditor or the assignee of the creditor's rights;~~
 - b) ~~where the consumer alienates the property financed before the total amount of credit is repaid or uses the property in a manner inconsistent with the conditions of the credit agreement, and where the creditor or the assignee of the creditor's rights has a preferential claim, right of possession or reservation of title on the property financed, provided that the consumer has been informed of the existence of such preferential claim, right of possession or reservation of title prior to the conclusion of the contract.~~

Article 26
Repossession of goods

~~In the case of credit agreements for the acquisition of goods, Member States shall lay down the conditions under which goods may be repossessed. If the consumer has not given his specific consent at the moment the creditor proceeds for repossession and if he has already made payments corresponding to a third of the total amount of credit, the goods financed may not be repossessed unless by judicial proceedings.~~

Member States shall further ensure that, where the creditor repossesses the goods, the account between the parties is made up so as to ensure that repossession does not entail any unjustified enrichment.

Article 27
Recovery

1. ~~Natural or legal persons who undertake, as their principal or as a secondary activity, and not as part of any court procedure, the recovery of debts arising from a credit agreement or surety agreement, or who intervene in this respect, may not, in any form whatsoever, either directly or indirectly, claim any fee or indemnity from the consumer or guarantor for their intervention, unless such fees or indemnities are specifically agreed in the credit agreement or surety agreement.~~
2. ~~In the context of the recovery of debts arising from a credit agreement or surety agreement, the following shall be prohibited:~~
 - a) ~~any document which, as a result of its appearance, wrongly gives the impression that it is from a judicial or debt mediation authority;~~
 - b) ~~written communications containing incorrect information on the consequences of defaulting on payment;~~
 - c) ~~unauthorised repossession of goods without judicial proceedings or the specific consent referred to in Article 26;~~
 - d) ~~any inscription on an envelope which makes it clear that the correspondence concerns the recovery of a debt;~~
 - e) ~~collection of charges not provided for by the credit agreement or surety agreement;~~
 - f) ~~any contact with the neighbours, relatives or employer of the consumer or guarantor, especially any communication of, or request for, information on the solvency of the consumer or guarantor, without prejudice to actions forming part of statutory seizure procedures as established by Member States;~~
 - g) ~~physical or psychological harassment of a consumer or guarantor;~~
 - h) ~~recovery of a lapsed debt.~~

CHAPTER VI
REGISTRATION, STATUS AND CONTROL OF CREDITORS AND CREDIT
INTERMEDIARIES

Article 28-19

*Registration **Regulation** of creditors and credit intermediaries*

1. ~~Member States shall ensure that creditors and credit intermediaries apply for registration~~

~~The obligation to register does not apply to credit intermediaries for whom a creditor or another credit intermediary assumes responsibility under the terms of his own registration. This assumption of responsibility must be made clear in a notice on the premises of credit intermediaries not required to register.~~

Member States shall ensure that creditors **and credit intermediaries are supervised by a body or authority independent from financial institutions, or regulated.**

2. ~~Member States shall ensure that creditors and credit intermediaries are supervised by a body or authority independent from financial institutions, or regulated.~~

a) ~~ensure that the activities of creditors and credit intermediaries are subject to inspection or monitoring by an institution or official body;~~

b) ~~establish appropriate bodies to receive complaints concerning credit agreements, surety agreements and credit and surety conditions, and to provide consumers and guarantors with relevant information or advice on this subject.~~

3. ~~Member States may stipulate that registration as referred to in the first subparagraph of paragraph 1 of this article shall not be necessary where the creditor or credit intermediary concerned is a "credit institution" within the meaning of Article 1(1) of Directive 2000/12/EC of the European Parliament and of the Council¹⁹ and is authorised in accordance with the provisions of that Directive.~~

~~Where a creditor or credit intermediary is both registered under the provisions of the first subparagraph of paragraph 1 of this article and authorised under the provisions of Directive 2000/12/EC of the European Parliament and of the Council, and the latter authorisation is subsequently withdrawn, the competent authority which has registered the creditor or credit intermediary shall be informed and shall decide whether the creditor or credit intermediary may continue to grant or arrange credit or whether his registration should be cancelled.~~

¹⁹ OJ L 126, 26.5.2000, p. 1.

Article 29 20
Obligations of credit intermediaries

Member States shall ensure that a credit intermediary:

- (a) indicates in advertising and documentation intended for clients the extent of his powers, in particular whether he works exclusively with one or more creditors or as an independent broker;
- ~~(b) communicates to all creditors contacted the total amount of other credit offers he has requested or received for the same consumer or guarantor during the two months preceding conclusion of the credit agreement;~~
- (b) does not receive, directly or indirectly, any fee, in whatever form, from a consumer who has requested his services, unless all the following conditions are met:
 - (i) the amount of the fee is ~~stated in the credit agreement~~ **agreed between the consumer and the credit intermediary on paper or another durable medium;**
 - (ii) the credit intermediary does not receive a fee from the creditor;
 - (iii) the credit agreement for which he has acted is actually concluded;
 - (iv) **the credit intermediary communicates the amount of the fee to the creditor for the purpose of calculation of the annual percentage rate of charge.**

CHAPTER VII IMPLEMENTING MEASURES

Article 30 ~~21~~

Harmonisation, mutual recognition and imperative nature of the Directive ~~Total harmonisation and imperative nature of the Directive's provisions~~

1. **Insofar as this Directive contains harmonised provisions,** Member States may not **maintain or** introduce provisions other than those laid down in this Directive, except with regard to:
 - (a) ~~registration of credit agreements and surety agreements in accordance with Article 8 (4);~~
 - (b) ~~the provisions concerning the burden of proof referred to in Article 33.~~
2. **When implementing and applying Article 5(1), (2) and (5), Article 13, Article 14(1) and (2), Articles 15, 17, 19 and 20, and without prejudice to necessary and proportionate measures which Member States may take on grounds of public policy, Member States shall not restrict the activities of creditors established in another Member State and operating within their territory in accordance with this Directive either through freedom of establishment or free provision of services.**
3. Member States shall ensure that credit agreements ~~and surety agreements~~ do not derogate, to the detriment of the consumer ~~or guarantor~~, from the provisions of national law implementing or corresponding to this directive.
4. Member States shall further ensure that the provisions they adopt in implementation of this ~~d~~Directive cannot be circumvented as a result of the way in which agreements are formulated, in particular by integrating drawdowns or credit agreements falling under the scope of this ~~d~~Directive into credit agreements the character or purpose of which would make it possible to avoid its application.
5. **Member States shall ensure that** consumers ~~and guarantors~~ may not waive the rights conferred on them by this **D**irective.
6. Member States shall take the **necessary** measures ~~needed~~ to ensure that consumers ~~and the guarantor~~ do not lose the protection granted by this Directive by virtue of the choice of the law of a ~~non-member country~~ **third country** as the law applicable to the **credit** agreement, if the **credit** agreement has a close link with the territory of one or more Member States.

Article 31-22
Penalties

~~The~~ Member States shall lay down **the rules on** penalties **applicable to** ~~for~~ infringements of **the** national provisions adopted in application of **pursuant to** this Directive and shall take all necessary measures **necessary** to ensure that **they are implemented**. ~~these are enforced.~~ These penalties **provided for** must be effective, proportionate and constitute a deterrent **dissuasive**. They may provide for the loss of interest and charges by the creditor and continuation of the right of repayment in instalments of the total amount of credit by the consumer, in particular where the creditor does not respect the provisions on responsible lending. Member States shall ~~communicate these~~ **notify those** provisions to the Commission no later than [...] ~~[2 years after the entry into force of this Directive]~~ **by the date specified in Article 24 at the latest and shall notify it without delay of** any subsequent amendments concerning **affecting** them without delay.

Article 32 23
*Out-of-court **dispute resolution** redress*

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

Member States shall encourage **those** bodies responsible for the ~~out-of-court~~ settlement of ~~consumer disputes~~ to cooperate in order to **also** resolve cross-border disputes concerning credit and surety agreements.

Article 33
Burden of proof

~~Member States may provide that the burden of proof in respect of compliance with the consumer information obligations imposed on the creditor and credit intermediary, in respect of the consumer's consent to the conclusion of the contract and, where appropriate, its performance, and in respect of the credit intermediary's remunerated activities may lie with the creditor or credit intermediary. Any term in an agreement which provides that the burden of proof in respect of compliance by the creditor and, where applicable, the credit intermediary with all or part of the obligations incumbent on them pursuant to this Directive should lie with the consumer and, where applicable, the guarantor, shall be an unfair term within the meaning of Directive 93/13/EEC.~~

Article 34
Existing agreements

1. ~~This Directive does not apply to credit agreements existing on the date the national implementing measures enter into force, with the exception of the provisions of Articles 1, 2, 3 and 22, 23 (1) and (2), 24 to 27, and 30 to 35. Article 9 shall apply to such contracts in so far as an increase in the total amount of credit or the amount guaranteed occurs after the national measures implementing this Directive enter into force.~~
2. ~~For agreements existing on the date the national implementing measures enter into force, the amortisation table referred to in Article 10 must be provided to the consumer free of charge as soon as either of the following conditions applies:
 - (a) ~~cancellation of the credit agreement or early repayment;~~
 - b) ~~default on payment.~~~~
3. ~~Member States shall ensure that open-end credit agreements existing on the date the national implementing measures enter into force have to be replaced by new agreements which comply with this Directive are adapted to the requirements of this Directive by means of an addendum to the credit agreement sent by the creditor to the consumer, no later than [...]two years after from the end date of expiry of the transposition period].~~

Article ~~35~~24
Transposition

1. ~~Member States shall adopt and publish, no later than [...]2 years after the entry into force of this Directive]~~ **by [insert date] 2 years after the entry into force of this Directive] at the latest,** the laws, regulations and administrative provisions necessary to comply with this Directive. They shall ~~immediately inform the Commission thereof.~~ **forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.**

They shall apply those provisions from [insert date] **[2 years after the entry into force of this Directive]**.

When Member States adopt these provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. **Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.**
3. **The Commission shall undertake every five years, and for the first time [five years after the entry into force of this Directive] a review of the thresholds in this Directive to assess them in the light of economic trends in the Community**

and the situation of the market concerned. The results of the review will be made known to the European Parliament and the Council accompanied where appropriate by a proposal to modify the thresholds accordingly.

CHAPTER VIII
TRANSITIONAL AND FINAL PROVISIONS

*Article ~~36~~ **25***
Repeal

Directive 87/102/EEC is repealed with effect from the end of the transposition period for this Directive] [*insert date*].

*Article ~~34~~ **26***
Transitional measures

1. This Directive ~~does~~ **shall** not apply to credit agreements existing on the date the national implementing measures enter into force, with the exception of the provisions of Articles ~~1, 2, 3 and 22, 23 (1) and (2), 24 to 27, and 30 to 35.~~ **open-end credit agreements.**
2. Member States shall ensure that **open-end** credit agreements existing on the date the national implementing measures enter into force ~~have to be replaced by new agreements which comply with this Directive~~ **are adapted to the requirements of this Directive by means of an addendum to the credit agreement sent by the creditor to the consumer,** no later than [*insert date*][two years after ~~from~~ **from** the end **date of expiry** of the transposition period].

*Article ~~15~~ **27***
Amendment to Directive 93/13/EEC

In the Annex to Directive 93/13/EEC, the following point 3 is added:

- ‘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) ~~impose~~ **imposing** on the consumer, as a condition for a drawdown, a requirement to leave as surety, in full or in part, the ~~sums~~ **amounts** 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;

* OJ L [...], dd/mm/yyyy, p. [...].

- (b) obliging 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 **to the consumer**;
- (c) obliging the consumer to use the same creditor to refinance ~~the residual value and, in general,~~ any final payment on a credit agreement for financing the purchase of movable property or a service;

*Article ~~37~~ **28***

*Entry into force **and applicability***

This Directive shall enter into force on the twentieth day following **that of** its publication in the Official Journal of the European **Union** ~~Communities~~.

However, with respect to Articles 15 and 17, Article 21(2) shall apply from [insert date][from six years after the date referred to in Article 24].

*Article ~~38~~ **29***

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament
The President*

*For the Council
The President*

ANNEX

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

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

$$\sum_{k=1}^m C_k (1 + X)^{-t_k} = \sum_{l=1}^{m'} D_l (1 + X)^{-s_l}$$

where: **X** is the APR

- **M** is the number of the last drawdown

- **K** is the number of a drawdown, therefore $1 \leq k \leq m$,

C_k is the amount of drawdown **k**,

t_k is the interval, expressed in years and fractions of a year, between the date of the first drawdown and the date of each subsequent drawdown, therefore **t₁ = 0**,

m' is the number of the last repayment or payment of charges,

- **l** is the number of a repayment or payment of charges,

D_l is the amount of a repayment or payment of charges,

s_l is the interval, expressed in years and fractions of a year, between the date of the first drawdown and the date of each repayment or payment of charges.

Remarks

- (a) The amounts paid by both parties at different times shall not necessarily be equal and shall not necessarily be paid at equal intervals.
- (b) The starting date shall be that of the first drawdown.
- (c) Intervals between dates used in the calculations shall be expressed in years or in fractions of a year. A year is presumed to have 365 days (or 366 days for leap years), 52 weeks or 12 equal months. An equal month is presumed to have 30.41666 days (i.e. 365/12) regardless of whether or not it is a leap year.
- (d) The result of the calculation shall be expressed with an accuracy of at least one decimal place. If the figure at the following decimal place is greater than or equal **to 5**, the figure at that particular decimal place shall be increased by one.

- (e) The equation can be rewritten using a single sum and the concept of flows (A_k), which will be positive or negative, in other words either paid or received during periods 1 to k , expressed in years, i.e.:

$$S = \sum_{k=1}^n A_k (1 + X)^{-t_k} ,$$

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

- ~~(f) Member States shall provide that the methods of resolution applicable give a result equal to that of the examples presented in Annexes II and III.~~

ANNEX II

Examples of calculation of the annual percentage rate of charge

Preliminary remarks

Unless otherwise stated, all examples assume a single drawdown of credit equal to the total amount of the credit and placed at the consumer's disposal as soon as the credit agreement is concluded. In this connection, it should be noted that if the credit agreement gives the consumer freedom of drawdown, the total amount of credit is deemed to be drawn down immediately and in full.

Some Member States, in order to express the borrowing rate, have opted for an effective rate and the equivalent conversion method, thus avoiding a situation in which the calculation of periodical interest is carried out in countless ways using different pro rata temporis rules which have only a very vague relationship with the linear nature of time. Other Member States permit a nominal periodic rate using a proportional conversion method. This directive seeks to separate any further regulation of borrowing rates from the regulation of effective rates, simply stating the rate used. The examples in this Annex refer to the method that has been used.

Example 1

Total amount of credit (capital) of € 6 000.00, repayable in four equal annual instalments of € 1 852.00.

The equation becomes:

$$6000 = 1852 \cdot \frac{1 - \frac{1}{(1+X)^4}}{X}$$

or:

$$6000 = 1852 \frac{1}{(1+X)^1} + 1852 \frac{1}{(1+X)^2} + \dots + 1852 \frac{1}{(1+X)^4}$$

giving $X = 9.00000\%$, i.e. an APR of 9.0%.

Example 2

Total amount of credit (capital) € 6 000.00, repayable in 48 equal monthly instalments of € 149.31.

The equation becomes:

$$6000 = 149,31 \frac{1 - \frac{1}{[(1+X)^{1/12}]^{48}}}{(1+X)^{1/12} - 1}$$

or:

$$6000 = 149,31 \frac{1}{(1+X)^{1/12}} + 149,31 \frac{1}{(1+X)^{2/12}} + \dots + 149,31 \frac{1}{(1+X)^{48/12}}$$

giving $X = 9.380593\%$, i.e. an APR of 9.4%.

Example 3

Total amount of credit (capital) of € 6 000.00, repayable in 48 equal monthly instalments of € 149.31. Administrative charges of € 60.00 are payable on conclusion of the contract.

The equation becomes:

$$6000 - 60 = 149,31 \frac{1 - \frac{1}{[(1+X)^{1/12}]^{48}}}{(1+X)^{1/12} - 1}$$

or:

$$5940 = 149,31 \frac{1}{(1+X)^{1/12}} + 149,31 \frac{1}{(1+X)^{2/12}} + \dots + 149,31 \frac{1}{(1+X)^{48/12}}$$

giving $X = 9.954966\%$, i.e. an APR of 10%.

Example 4

Total amount of credit (capital) of € 6 000.00, repayable in 48 equal monthly instalments of € 149.31. Administrative charges of € 60.00 are spread over the repayments. The monthly instalment is therefore $(€ 149.31 + (€ 60/48)) = € 150.56$.

The equation becomes:

$$6000 = 150,56 \frac{1 - \frac{1}{[(1+X)^{1/12}]^{48}}}{(1+X)^{1/12} - 1}$$

or:

$$6000 = 150,56 \frac{1}{(1+X)^{1/12}} + 150,56 \frac{1}{(1+X)^{2/12}} + \dots + 150,56 \frac{1}{(1+X)^{48/12}}$$

giving $X = 9.856689\%$, i.e. an APR of 9.9%.

Example 5

Total amount of credit (capital) of € 6 000.00, repayable in 48 equal monthly instalments of € 149.31. Administrative charges are € 60.00, and insurance € 3.00 per month. The costs associated with insurance premiums must be included in the total cost of the credit if the insurance is taken out when the credit agreement is concluded. The instalment is therefore € 152.31.

The equation becomes:

$$5940 = 152,31 \frac{1 - \frac{1}{[(1+X)^{1/12}]^{48}}}{(1+X)^{1/12} - 1}$$

or:

$$5940 = 152,31 \frac{1}{(1+X)^{1/12}} + 152,31 \frac{1}{(1+X)^{2/12}} + \dots + 152,31 \frac{1}{(1+X)^{48/12}}$$

giving $X = 11.1070115\%$, i.e. an APR of 11.1%.

Example 6

Balloon-type credit agreement for a total amount of credit of € 6 000.00 (purchasing price of a car to be financed), repayable in 47 equal monthly instalments of € 115.02 plus a final payment of € 1 915.02 representing the residual value of 30% of the capital (balloon agreement), plus insurance of € 3.00 per month. Again, the costs associated with insurance premiums must be included in the total cost of the credit if the insurance is taken out when the credit agreement is concluded. The instalment is therefore € 118.02, and the final payment will amount to € 1 918.02.

The equation becomes:

$$6000 = 118,02 \frac{1 - \frac{1}{[(1+X)^{1/12}]^{47}}}{(1+X)^{1/12} - 1} + 1918,02 \frac{1}{[(1+X)^{1/12}]^{48}}$$

or:

$$6000 = 118,02 \frac{1}{(1+X)^{1/12}} + 118,02 \frac{1}{(1+X)^{2/12}} + \dots + 118,02 \frac{1}{(1+X)^{47/12}} + (1800 + 115,02 + 3) \cdot \frac{1}{(1+X)^{48/12}}$$

giving $X = 9.381567\%$, i.e. an APR of 9.4%.

Example 7

Credit agreement for a total amount of credit (capital) of € 6 000.00, with administrative charges of € 60.00 payable on conclusion of the contract, and two payment periods of 22 and 26 months respectively. The second period instalment corresponds to 60% of the first period instalment. The respective monthly instalments are € 186.36 and € 111.82.

The equation becomes:

$$5940 = 186,36 \frac{1 - \frac{1}{[(1+X)^{1/12}]^{22}}}{(1+X)^{1/12} - 1} + \left\{ \left[111,82 \frac{1 - \frac{1}{[(1+X)^{1/12}]^{26}}}{(1+X)^{1/12} - 1} \right] \cdot \frac{1}{[(1+X)^{1/12}]^{22}} \right\}$$

or:

$$5940 = \left[186,36 \frac{1}{(1+X)^{1/12}} + 186,36 \frac{1}{(1+X)^{2/12}} + \dots + 186,36 \frac{1}{(1+X)^{22/12}} \right] + \left\{ \left[111,82 \frac{1}{(1+X)^{1/12}} + 111,82 \frac{1}{(1+X)^{2/12}} + \dots + 111,82 \frac{1}{(1+X)^{26/12}} \right] \cdot \frac{1}{[(1+X)^{1/12}]^{22}} \right\}$$

giving $X = 10.04089\%$, i.e. an APR of 10.0%.

Example 8

Credit agreement for a total amount of credit (capital) of € 6 000.00, with administrative charges of € 60.00 payable on conclusion of the contract, and two payment periods of 22 and 26 months respectively, the first period instalment corresponding to 60% of the second period instalment. The respective monthly instalments are € 112.15 and € 186.91.

The equation becomes:

$$5940 = 112,15 \frac{1 - \frac{1}{[(1+X)^{1/12}]^{22}}}{(1+X)^{1/12} - 1} + \left\{ \left[\frac{186,91 \left(1 - \frac{1}{[(1+X)^{1/12}]^{26}} \right)}{(1+X)^{1/12} - 1} \right] \cdot \frac{1}{[(1+X)^{1/12}]^{22}} \right\}$$

or:

$$5940 = \left[112,15 \frac{1}{(1+X)^{1/12}} + 112,15 \frac{1}{(1+X)^{2/12}} + \dots + 112,15 \frac{1}{(1+X)^{22/12}} \right] + \left\{ \left[186,91 \frac{1}{(1+X)^{1/12}} + 186,91 \frac{1}{(1+X)^{2/12}} + \dots + 186,91 \frac{1}{(1+X)^{26/12}} \right] \cdot \frac{1}{[(1+X)^{1/12}]^{22}} \right\}$$

giving $X = 9.888383\%$, i.e. an APR of 9.9%.

Example 9

Credit agreement for a total amount of credit (price of goods) of € 500.00, repayable in three equal monthly instalments calculated by applying the borrowing rate T of 18% (nominal rate), plus administrative charges of € 30.00 spread over the payments. The monthly instalment is therefore € 171.69 + € 10.00 charges = € 181.69.

The equation becomes:

$$500 = 181,69 \frac{1 - \frac{1}{[(1+X)^{1/12}]^3}}{(1+X)^{1/12} - 1}$$

or:

$$500 = 181,69 \frac{1}{(1+X)^{1/12}} + 181,69 \frac{1}{(1+X)^{2/12}} + 181,69 \frac{1}{(1+X)^{3/12}}$$

giving $X = 68.474596\%$, i.e. an APR of 68.5%.

This example typifies practices still used by certain specialist "vendor credit" establishments.

Example 10

~~Credit agreement for a total amount of credit (capital) of € 1 000, repayable in two instalments of either € 700.00 after one year and € 500.00 after two years, or € 500.00 after one year and € 700.00 after two years~~

The equation becomes:

$$1000 = 700 \frac{1}{[(1+X)^{1/12}]^{12}} + 500 \frac{1}{[(1+X)^{1/12}]^{24}}$$

~~giving X = 13.898663%, i.e. an APR of 13,9%.~~

~~or:~~

$$1000 = 500 \frac{1}{[(1+X)^{1/12}]^{12}} + 700 \frac{1}{[(1+X)^{1/12}]^{24}}$$

~~giving X = 12.321446%, i.e. an APR of 12.3%.~~

~~This example shows that the annual percentage rate of charge depends on the payment periods, and that stating the total cost of the credit in the prior information or in the credit agreement is of no benefit to the consumer. Despite the total cost of credit being € 200 in both cases, there are two different APRs (depending on the speed of repayment).~~

Example 11

~~Credit agreement for a total amount of credit of € 6 000, with a borrowing rate of 9%, repayment in four equal annual instalments of € 1 852.01, and administrative charges of € 60.00 payable on conclusion of the agreement.~~

The equation becomes:

$$5940 = 1852,01 \frac{1 - \frac{1}{(1+X)^4}}{X}$$

~~or:~~

$$5940 = 1852,01 \frac{1}{(1+X)} + 1852,01 \frac{1}{(1+X)^2} + \dots + 1852,01 \frac{1}{(1+X)^4}$$

~~giving X = 9.459052%, i.e. an APR of 9.5%.~~

~~In the event of early repayment, the equations become:~~

After one year:

$$5940 = 6540 \frac{1}{(1+X)}$$

where 6540 is the sum due, including interest, before payment of the first scheduled payment according to the amortisation table,

giving $X = 10.101010\%$, i.e. an APR of 10.1%.

After two years:

$$5940 = 1852,01 \frac{1}{(1+X)} + 5109,91 \frac{1}{(1+X)^2}$$

where 5109.91 is the sum due, including interest, before payment of the second scheduled payment according to the amortisation table,

giving $X = 9.640069\%$, i.e. an APR of 9.6%.

After three years:

$$5940 = 1852,01 \frac{1}{(1+X)} + 1852,01 \frac{1}{(1+X)^2} + 3551,11 \frac{1}{(1+X)^3}$$

where 3551.11 is the sum due, including interest, before payment of the third scheduled payment according to the amortisation table,

giving $X = 9.505315\%$, i.e. an APR of 9.5%

This shows how the provisional APR decreases in the course of time, especially where charges are payable on conclusion of the agreement.

~~This example can also serve to illustrate the case of a mortgage credit intended to refinance current credit agreements where the costs (notary's fees, registration, taxes) are due when the authenticated act is completed and the funds are made available to the consumer from the same date~~

Example 12

Credit agreement for a total amount of credit of € 6 000, with a borrowing rate T of 9% (nominal rate), repayment in 48 monthly instalments of € 149.31 (calculated proportionally), and administrative charges of € 60.00 payable on conclusion of the agreement.

The equation becomes:

$$5940 = 149,31 \frac{1 - \frac{1}{[(1+X)^{1/12}]^{48}}}{(1+X)^{1/12} - 1}$$

or:

$$5940 = 149,31 \frac{1}{(1+X)^{1/12}} + 149,31 \frac{1}{(1+X)^{2/12}} + \dots + 149,31 \frac{1}{(1+X)^{48/12}}$$

giving $X = 9.9954957\%$, i.e. an APR of 10%.

However, in the case of early repayment, this becomes:

After one year:

$$5940 = 149,31 \frac{1 - \frac{1}{[(1+X)^{1/12}]^{11}}}{(1+X)^{1/12} - 1} + 4844,64 \frac{1}{[(1+X)^{1/12}]^{12}}$$

where 4844.64 is the sum due, including interest, before payment of the 12th scheduled payment according to the amortisation table,

giving $X = 10.655907\%$, i.e. an APR of 10.7%.

After two years:

$$5940 = 149,31 \frac{1 - \frac{1}{[(1+X)^{1/12}]^{23}}}{(1+X)^{1/12} - 1} + 3417,58 \frac{1}{[(1+X)^{1/12}]^{24}}$$

where 3417.58 is the sum due, including interest, before payment of the 24th monthly instalment according to the amortisation table,

giving $X = 10.136089\%$, i.e. an APR of 10.1%.

After three years:

$$5940 = 149,31 \frac{1 - \frac{1}{[(1+X)^{1/12}]^{35}}}{(1+X)^{1/12} - 1} + 1856,66 \frac{1}{[(1+X)^{1/12}]^{36}}$$

where 1856.66 is the sum due, including interest, before payment of the 36th monthly instalment according to the amortisation table,

giving $X = 9.991921\%$, i.e. an APR of 10%.

Example 13

Total amount of credit (capital) of € 6 000.00, repayable in four equal annual instalments of € 1 852.00. Let us now assume that the borrowing rate (nominal rate) is variable and increases from 9.00% to 10.00% after the second annual instalment. This results in a new annual instalment of € 1 877.17. Remember that, in calculating the APR, it is normally assumed that the borrowing rate and other costs remain fixed at the initial level and apply until the end of the credit agreement. In that case (example 1), the APR will be 9%.

In the event of any change to the rate, the new APR must be communicated and calculated on the assumption that the credit agreement will remain in force for the rest of the agreed duration, and that the creditor and consumer will fulfil their obligations under the terms and by the dates agreed.

$$5940 = 1852,01 \frac{1 - \frac{1}{(1+X)^2}}{X} + \left[1877,17 \frac{1 - \frac{1}{(1+X)^2}}{X} \cdot \frac{1}{X^2} \right]_{or}$$

The equation becomes:

$$5940 = 1852,01 \frac{1}{(1+X)} + 1852,01 \frac{1}{(1+X)^2} + \left\{ \left[1877,17 \frac{1}{(1+X)^3} + 1877,17 \frac{1}{(1+X)^4} \right] + \frac{1}{X^2} \right\}$$

giving $X = 9.741569$, i.e. an APR of 9.7%.

Example 14

Total amount of credit (capital) of € 6 000.00, repayable in 48 equal monthly instalments of € 149.31, with administrative charges of € 60.00 payable on conclusion of the agreement, plus insurance of € 3.00 per month. The costs associated with insurance premiums must be included in the total cost of the credit if the insurance is taken out when the credit agreement is concluded. The instalment is therefore € 152.31 and the calculation, as in example 5, gives $X = 11.107112$, i.e. an APR of 11.11%.

Let us now assume that the borrowing rate (nominal) is variable and increases to 10% after the 17th payment. This change requires a new APR to be communicated and calculated on the assumption that the credit agreement will remain in force for the rest of the agreed duration, and that the creditor and consumer will fulfil their obligations under the terms and on the dates agreed. The equation becomes:

$$5940 = 151,91 \frac{1 - \frac{1}{[(1+X)^{1/12}]^{17}}}{(1+X)^{1/12} - 1} + \left[154,22 \frac{1 - \frac{1}{[(1+X)^{1/12}]^{31}}}{(1+X)^{1/12} - 1} \cdot \frac{1}{[(1+X)^{1/12}]^{17}} \right] \text{ or:}$$

$$5940 = \left[151,91 \frac{1}{(1+X)^{1/12}} + 151,91 \frac{1}{(1+X)^{2/12}} + \dots + 151,91 \frac{1}{(1+X)^{17/12}} \right] + \left[154,22 \frac{1}{(1+X)^{1/12}} + 154,22 \frac{1}{(1+X)^{2/12}} + \dots + 154,22 \frac{1}{(1+X)^{31/12}} \right] \cdot \frac{1}{[(1+X)^{1/12}]^{17}}$$

$$4107,06 = 153,06 \frac{1 - \frac{1}{[(1+X)^{1/12}]^{31}}}{(1+X)^{1/12} - 1}$$

or:

$$4107,06 = 153,06 \frac{1}{(1+X)^{1/12}} + 153,06 \frac{1}{(1+X)^{2/12}} + \dots + 153,06 \frac{1}{(1+X)^{31/12}}$$

giving $X = 11.542740\%$, i.e. an APR of 11,5%.

Example 15

Credit agreement of the "leasing" type for a car with a value of € 15 000.00. The agreement stipulates 48 monthly instalments of € 350. The first monthly instalment is payable as soon as the car is placed at the consumer's disposal. At the end of the 48 months the purchase option may be taken up by paying the residual value of € 1 250.

The equation becomes:

$$14650 = 350 \frac{1 - \frac{1}{[(1+X)^{1/12}]^{47}}}{(1+X)^{1/12} - 1} + 1250 \frac{1}{[(1+X)^{1/12}]^{48}}$$

or:

$$14650 = 350 \frac{1}{(1+X)^{1/12}} + 350 \frac{1}{(1+X)^{2/12}} + \dots + 350 \frac{1}{(1+X)^{47/12}} + 1250 \frac{1}{(1+X)^{48/12}}$$

giving $X = 9.541856\%$, i.e. an APR of 9.5%.

Example 1611

Credit agreement of the “financing”, “vendor credit” or “hire purchase” type for goods with a value of € 2 500. The credit agreement provides for a down payment of € 500 plus 24 monthly instalments of € 100, the first of which must be paid within 20 days of the goods being placed at the consumer’s disposal.

In such cases the down payment is never part of the financing operation.

The equation becomes:

$$(2500 - 500) \cdot \frac{1}{\left[(1 + X)^{1/365} \right]^{\left[\frac{365}{12} - 20 \right]}} = 100 \frac{1 - \frac{1}{\left[(1 + X)^{1/12} \right]^{24}}}{(1 + X)^{1/12} - 1}$$

or:

$$\frac{2000 \cdot \frac{1}{(1 + X)^{\frac{10,4316}{365}}}}{(1 + X)^{\frac{10,4316}{365}}} = 100 \frac{1}{(1 + X)^{1/12}} + 100 \frac{1}{(1 + X)^{2/12}} + \dots + 100 \frac{1}{(1 + X)^{24/12}}$$

giving $X = 20.395287\%$, or an APR of 20.4%.

Example 17

Credit agreement for a credit line of € 2 500 for a period of six months. The credit agreement provides for payment of the total cost of the credit every month and repayment of the total amount of the credit at the end of the agreement. The annual borrowing rate (effective rate) is 8 %, and the charges amount to 0.25 % per month. The assumption that the amount of credit is drawn down immediately and in full applies here.

The monthly borrowing interest payment is calculated on the basis of an equivalent monthly rate, using the equation:

$$a = 2500 \cdot \left\{ \left[(1,08)^{1/12} - 1 \right] + 0,25 \right\}$$

or:

$$a = 2500 \cdot (0,006434 + 0,0025) = 22,34$$

This becomes:

$$2500 = 22,34 \frac{1 - \frac{1}{\left[(1+X)^{1/12} \right]^6}}{(1+X)^{1/12} - 1} + 2500 \frac{1}{(1+X)^{6/12}}$$

or:

$$2500 = 22,34 \frac{1}{(1+X)^{1/12}} + 22,34 \frac{1}{(1+X)^{2/12}} + \dots + 22,34 \frac{1}{(1+X)^{6/12}} + 2500 \frac{1}{(1+X)^{6/12}}$$

giving $X = 11.263633$ i.e. an APR of 11.3%.

Example 13

Credit agreement for an open end credit line of € 2 500. The agreement provides for a minimum half-yearly payment of 25% of the outstanding balance (capital and interest), with a minimum of € 25. The annual borrowing rate (effective rate) is 12%, and the administrative charge payable on conclusion of the agreement is € 50.

(The equivalent monthly rate is obtained by the equation:

$$i = (1 + 0,12)^{6/12} - 1 = 0,00583$$

or 5.83%).

The 19 half-yearly repayments (D1) can be obtained from an amortisation table, giving D1 = 661.44; D2 = 525; D3 = 416.71; D4 = 330.75; D5 = 262.52; D6 = 208.37; D7 = 165.39; D8 = 208.37; D9 = 104.20; D10 = 82.70; D11 = 65.64; D12 = 52.1; D13 = 41.36; D14 = 32.82; D15 = 25; D16 = 25; D17 = 25; D18 = 25; D19 = 15.28.

The equation becomes:

$$2500 - 50 = 661,44 \frac{1}{(1+X)^{6/12}} + 525 \frac{1}{(1+X)^{12/12}} + \dots + 25 \frac{1}{(1+X)^{108/12}} + 15,28 \frac{1}{(1+X)^{114/12}}$$

Giving $X = 13.151744\%$, i.e. an APR of 13.2%.

Example 19

~~Credit agreement for an open end credit line involving the use of a card for drawdowns. Total amount of the credit: € 700. The agreement provides for a minimum monthly payment of 5% of the outstanding balance (capital and interest), and the scheduled instalment (a) may not be less than € 25. The annual cost of the card is € 20. The annual borrowing rate (effective rate) is 0% for the first instalment and 12% for the subsequent instalments.~~

~~The 31 monthly repayment amounts (D1) can be obtained from an amortisation table, giving D1 = 55.00; D2 = 33.57; D3 = 32.19; D4 = 30.87; D5 = 29.61; D6 = 28.39; D7 = 27.23; D8 = 26.11; D9 = 25.04; D10 à D12 = 25.00; D13 = 45; D14 à D24 = 25,00 ; D25 = 45 ; D26 à D30 = 25.00; D31 = 2.25.~~

The equation becomes:

$$700 = 55 \frac{1}{(1+X)^{1/12}} + 33,57 \frac{1}{(1+X)^{2/12}} + \dots + 25 \frac{1}{(1+X)^{30/12}} + 2,25 \frac{1}{(1+X)^{31/12}}$$

giving $X = 18.470574$, i.e. an APR of 18.5%

Example 20

~~Open end credit line in the form of an overdraft advance on a current account. Total amount of credit: € 2 500. The credit agreement does not impose any requirements in terms of repayment of capital, but provides for monthly payment of the total cost of the credit. The annual borrowing rate is 8% (effective rate). The monthly charges amount to € 2.50.~~

~~It is assumed that the full amount of credit will be drawn down, with repayment in theory after one year.~~

First of all, the theoretical scheduled payment of interest and charges (a) is calculated

$$a = \{2500 \cdot [(1,08)^{1/12} - 1] + 2,50\}$$

then:

$$2500 = 18,59 \frac{1 - \frac{1}{[(1+X)^{1/12}]^{12}}}{(1+X)^{1/12} - 1} + 2500 \frac{1}{(1+X^{1/12})^{12}}$$

i.e.:

$$2500 = 18,59 \frac{1}{(1+X)^{1/12}} + 18,59 \frac{1}{(1+X)^{2/12}} + \dots + 18,59 \frac{1}{(1+X)^{12/12}} + 2500 \frac{1}{(1+X)^{12/12}}$$

giving $X = 9.295804$, i.e. an APR of 9.3%

ANNEX III— Calculation of the annual percentage rate of charge for a contract requiring advance or accompanying savings and for which the borrowing rate is set to reflect the level of savings

Symbols used:

— C = Capital

— N = duration in years

— T = annual borrowing rate

— A = annuity

— F = periodicity

— n = duration in periods

— t = periodic borrowing rate

— a = periodic repayment.

— M = saving period

1. — MIXED CREDIT AGREEMENT WITH (COMPULSORY) SAVINGS IN ADVANCE

First example

The granting of a credit C totalling € 6000 over N = two years is subject to the saving in advance over M = two years of half of the said amount, i.e. € 3000 in all, of which the final amount saved is € 125 and is deposited one month prior to the drawdown of the credit. The savings in question attract no interest but the borrowing rate for the credit agreement will amount to no more than T = 6% at a time when market conditions are setting a rate of 9% instead. The amount saved each month is e = € 125.00, the monthly repayment a = € 140.91, the APR, excluding savings, is 6.17% or 6.2%.

To find the annual percentage rate applicable to the transaction as a whole the formula is as follows

$$6000 + 3000 = \left[\frac{1 - \frac{1}{[(1+X)^{1/12}]^{24}}}{(1+X)^{1/12} - 1} \cdot [(1+X)^{1/12}]^{25} \right] + \left[\frac{1 - \frac{1}{[(1+X)^{1/12}]^{48}}}{(1+X)^{1/12} - 1} \right] \cdot 140,91$$

or:

$$6000 + 3000 = \left\{ \left[125 \frac{1}{(1+X)^{1/12}} + 125 \frac{1}{(1+X)^{2/12}} + \dots + 125 \frac{1}{(1+X)^{24/12}} \right] \cdot [(1+X)^{1/12}]^{25} \right\}$$

$$+ \left[140,91 \frac{1}{(1+X)^{1/12}} + 140,91 \frac{1}{(1+X)^{2/12}} + \dots + 140,91 \frac{1}{(1+X)^{48/12}} \right]$$

To solve the equation using a recursive method, let $X_1 = 0.062$, and the value of the first member calculated as 170.5,

then $X_2 = 0.063$ and the value of the first member is calculated as 163.3

and so forth

then $X_{26} = 0.087$ and the value of the first member is calculated at 6.0

then $X_{27} = 0.088$ and the value of the first member is calculated at 0.1

then $X_{28} = 0.089$ and the value of the first member is calculated at -5.7.

The correct solution is $X = 8.802245\%$, or 8.8% and this is the APR to be given to the consumer as the APR for the credit agreement involving an amount to be saved in advance.

Second example

The granting of a credit C totalling € 6000 over $N =$ two years is subject to the saving in advance over $M =$ two years of half of the said amount, i.e. € 3000 in all, of which the final amount saved is € 125 and is deposited one month prior to the drawdown of the credit. These savings attract a lending rate of $S = 3\%$ and the borrowing rate is only $T = 6\%$ at a time when market conditions set rates at 9%.

The amount saved each month is $e =$ € 125.00, the monthly repayment $a =$ € 140.91, the APR, excluding savings is 6.17% or 6.2%.

The updated future value of M will be M' calculated according to the following formula:

$$M' = 125 \cdot \frac{(1+i)^n - 1}{i}, \text{ where}$$

$$i = (1+S)^{1/12} - 1$$

and $n = 24$ months

or:

$$M'(t_{-1}) = 125 \cdot \frac{(1.03)^{24/12} - 1}{(1.03)^{1/12} - 1} = 3086,65$$

and

$$M'(t_0) = 3086,65 \cdot (1.03)^{1/12} = 3094,26$$

where t_0 = time of credit drawdown.

To find the APR for the transaction as a whole:

$$3094,26 + 6000 = \left[125 \frac{1 - \frac{1}{[(1+X)^{1/12}]^{24}}}{(1+X)^{1/12} - 1} \cdot [(1+X)^{1/12}]^{25} \right] + \left[140,91 \frac{1 - \frac{1}{[(1+X)^{1/12}]^{48}}}{(1+X)^{1/12} - 1} \right] \text{ or:}$$

$$3094,26 + 6000 = \left\{ \left[125 \frac{1}{(1+X)^{1/12}} + 125 \frac{1}{(1+X)^{2/12}} + \dots + 125 \frac{1}{(1+X)^{24/12}} \right] \cdot [(1+X)^{1/12}]^{25} \right\}$$

$$+ \left[140,91 \frac{1}{(1+X)^{1/12}} + 140,91 \frac{1}{(1+X)^{2/12}} + \dots + 140,91 \frac{1}{(1+X)^{48/12}} \right]$$

To solve the equation a recursive method can again be used with $X = 7.484710$, or an APR of 7.5%.

2. ~~Mixed agreement with accompanying savings~~

2.1. ~~Mixed credit agreement with optional savings (advances to current account)~~

~~See Annex II, example 20. Savings do not form part of the APR calculation~~

~~2.2. Credit agreement with mixed life assurance~~

~~These are endowment type mortgages such as those referred to in Article 20 of this directive, where saving forms part of the agreement.~~

~~Let the total amount of credit be € 6000 to be repaid in four annuities at a borrowing rate of 9% but structured as repayments *in fine*. Suppose that the manager of the fund has paid at the end of each of the three first years an amount of € 1200.00 and that this amount saved has attracted 4%. The balance of this account, before the final repayment is due, will be € 3895.76. It will then be necessary for him to add an additional € 2104.24. His timetable will be for three annuities at € 1740.00 and one at € 2644.24 for a capital of € 6000.~~

~~The formula:~~

$$6000 = 1740 \cdot \frac{1 - \frac{1}{(1+X)^3}}{X} + 2644,24 \cdot \frac{1}{(1+X)^4}$$

~~or:~~

$$6000 = 1740 \cdot \frac{1}{(1+X)^1} + 1740 \cdot \frac{1}{(1+X)^2} + 1740 \cdot \frac{1}{(1+X)^3} + 2644,24 \cdot \frac{1}{(1+X)^4}$$

~~and $X = 10.955466$, or an APR of 10.96%~~