

Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit, Official Journal L 042 , 12/02/1987 P. 0048 - 0053

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas wide differences exist in the laws of the Member States in the field of consumer credit;

Whereas these differences of law can lead to distortions of competition between grantors of credit in the common market;

Whereas these differences limit the opportunities the consumer has to obtain credit in other Member States; whereas they affect the volume and the nature of the credit sought, and also the purchase of goods and services;

Whereas, as a result, these differences have an influence on the free movement of goods and services obtainable by consumers on credit and thus directly affect the functioning of the common market;

Whereas, given the increasing volume of credit granted in the Community to consumers, the establishment of a common market in consumer credit would benefit alike consumers, grantors of credit, manufacturers, wholesalers and retailers of goods and providers of services;

Whereas the programmes of the European Economic Community for a consumer protection and information policy (4) provide, inter alia, that the consumer should be protected against unfair credit terms and that a harmonization of the general conditions governing consumer credit should be undertaken as a priority;

Whereas differences of law and practice result in unequal consumer protection in the field of consumer credit from one Member State to another;

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

Whereas the consumer should receive adequate information on the conditions and cost of credit and on his obligations; whereas this information should include, inter alia, the annual percentage rate of charge for credit, or, failing that, the total amount that the consumer must pay for credit; whereas, pending a decision on a Community method or methods of calculating the annual percentage rate of charge, Member States should be able to retain

existing methods or practices for calculating this rate, or failing that, should establish provisions for indicating the total cost of the credit to the consumer;

Whereas the terms of credit may be disadvantageous to the consumer; whereas better protection of consumers can be achieved by adopting certain requirements which are to apply to all forms of credit;

Whereas, having regard to the character of certain credit agreements or types of transaction, these agreements or transactions should be partially or entirely excluded from the field of application of this Directive;

Whereas it should be possible for Member States, in consultation with the Commission, to exempt from the Directive certain forms of credit of a non-commercial character granted under particular conditions;

Whereas the practices existing in some Member States in respect of authentic acts drawn up before a notary or judge are such as to render the application of certain provisions of this Directive unnecessary in the case of such acts; whereas it should therefore be possible for Member States to exempt such acts from those provisions;

Whereas credit agreements for very large financial amounts tend to differ from the usual consumer credit agreements; whereas the application of the provisions of this Directive to agreements for very small amounts could create unnecessary administrative burdens both for consumers and grantors of credit; whereas therefore, agreements above or below specified financial limits should be excluded from the Directive;

Whereas the provision of information on the cost of credit in advertising and at the business premises of the creditor or credit broker can make it easier for the consumer to compare different offers;

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

Whereas, in the case of credit granted for the acquisition of goods, Member States should lay down the conditions in which goods may be repossessed, particularly if the consumer has not given his consent; whereas the account between the parties should upon repossession be made up in such manner as to ensure that the repossession does not entail any unjustified enrichment;

Whereas the consumer should be allowed to discharge his obligations before the due date; whereas the consumer should then be entitled to an equitable reduction in the total cost of the credit;

Whereas the assignment of the creditor's rights arising under a credit agreement should not be allowed to weaken the position of the consumer;

Whereas those Member States which permit consumers to use bills of exchange, promissory notes or cheques in connection with credit agreements should ensure that the consumer is suitably protected when so using such instruments;

Whereas, as regards goods or services which the consumer has contracted to acquire on credit, the consumer should, at least in the circumstances defined below, have rights vis-à-vis the grantor of credit which are in addition to his normal contractual rights against him and against the supplier of the goods or services; whereas the circumstances referred to above are those where the grantor of credit and the supplier of goods or services have a pre-existing agreement whereunder credit is made available exclusively by that grantor of credit to customers of that supplier for the purpose of enabling the consumer to acquire goods or services from the latter;

Whereas the ECU is as defined in Council Regulation (EEC) No 3180/78 (1), as last amended by Regulation (EEC) No 2626/84 (2); whereas Member States should to a limited extent be at liberty to round off the amounts in national currency resulting from the conversion of amounts of this Directive expressed in ECU; whereas the amounts in this Directive should be periodically re-examined in the light of economic and monetary trends in the Community, and, if need be, revised;

Whereas suitable measures should be adopted by Member States for authorizing persons offering credit or offering to arrange credit agreements or for inspecting or monitoring the activities of persons granting credit or arranging for credit to be granted or for enabling consumers to complain about credit agreements or credit conditions;

Whereas credit agreements should not derogate, to the detriment of the consumer, from the provisions adopted in implementation of this Directive or corresponding to its provisions; whereas those provisions should not be circumvented as a result of the way in which agreements are formulated;

Whereas, since this Directive provides for a certain degree of approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit and for a certain level of consumer protection, Member States should not be prevented from retaining or adopting more stringent measures to protect the consumer, with due regard for their obligations under the Treaty;

Whereas, not later than 1 January 1995, the Commission should present to the Council a report concerning the operation of this Directive,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. This Directive applies to credit agreements.

2. For the purpose of this Directive:

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

(b) 'creditor' means a natural or legal person who grants credit in the course of his trade, business or profession, or a group of such persons;

(c) 'credit agreement' means an agreement whereby a creditor grants or promises to grant to a consumer a credit in the form of a deferred payment, a loan or other similar financial accommodation.

Agreements for the provision on a continuing basis of a service or a utility, where the consumer has the right to pay for them, for the duration of their provision, by means of instalments, are not deemed to be credit agreements for the purpose of this Directive;

(d) 'total cost of the credit to the consumer' means all the costs of the credit including interest and other charges directly connected with the credit agreement, determined in accordance with the provisions or practices existing in, or to be established by, the Member States.

(e) 'annual percentage rate of charge' means the total cost of the credit to the consumer expressed as an annual percentage of the amount of the credit granted and calculated according to existing methods of the Member States.

Article 2

1. This Directive shall not apply to:

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

- intended primarily for the purpose of acquiring or retaining property rights in land or in an existing or projected building,

- intended for the purpose of renovating or improving a building as such;

(b) hiring agreements except where these provide that the title will pass ultimately to the hirer;

(c) credit granted or made available without payment of interest or any other charge;

(d) credit agreements under which no interest is charged provided the consumer agrees to repay the credit in a single payment;

(e) credit in the form of advances on a current account granted by a credit institution or financial institution other than on credit card accounts.

Nevertheless, the provisions of Article 6 shall apply to such credits;

(f) credit agreements involving amounts less than 200 ECU or more than 20 000 ECU;

(g) credit agreements under which the consumer is required to repay the credit:

- either, within a period not exceeding three months,

- or, by a maximum number of four payments within a period not exceeding 12 months.

2. A Member State may, in consultation with the Commission, exempt from the application of this Directive certain types of credit which fulfil the following conditions:

- they are granted at rates of charge below those prevailing in the market, and

- they are not offered to the public generally.

3. The provisions of Article 4 and of Articles 6 to 12 shall not apply to credit agreements or agreements promising to grant credit, secured by mortgage on immovable property, in so far as these are not already excluded from the Directive under paragraph 1 (a) of this Article.

4. Member States may exempt from the provisions of Articles 6 to 12 credit agreements in the form of an authentic act signed before a notary or judge.

Article 3

Without prejudice to Council Directive 84/450/EEC of 10 September 1984 relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising (1), and to the rules and principles applicable to unfair advertising, any advertisement, or any offer which is displayed at business premises, in which a person offers credit or offers to arrange a credit agreement and in which a rate of interest or any figures relating to the cost of the credit are indicated, shall also include a statement of the annual percentage rate of charge, by means of a representative example if no other means is practicable.

Article 4

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

2. The written agreement shall include:

(a) a statement of the annual percentage rate of charge;

(b) a statement of the conditions under which the annual percentage rate of charge may be amended.

In cases where it is not possible to state the annual percentage rate of charge, the consumer shall be provided with adequate information in the written agreement. This information shall at least include the information provided for in the second indent of Article 6 (1).

3. The written agreement shall further include the other essential terms of the contract.

By way of illustration, the Annex to this Directive contains a list of terms which Member States may require to be included in the written agreement as being essential.

Article 5

By way of derogation from Articles 3 and 4 (2), and pending a decision on the introduction of a Community method or methods of calculating the annual percentage rate of charge, those Member States which, at the time of notification of this Directive, do not require the annual percentage rate of charge to be shown or which do not have an established method for its calculation, shall at least require the total cost of the credit to the consumer to be indicated.

Article 6

1. Notwithstanding the exclusion provided for in Article 2 (1) (e), where there is an agreement between a credit institution or financial institution and a consumer for the granting of credit in the form of an advance on a current account, other than on credit card accounts, the consumer shall be informed at the time or before the agreement is concluded:

- of the credit limit, if any,
- of the annual rate of interest and the charges applicable from the time the agreement is concluded and the conditions under which these may be amended,
- of the procedure for terminating the agreement.

This information shall be confirmed in writing.

2. Furthermore, during the period of the agreement, the consumer shall be informed of any change in the annual rate of interest or in the relevant charges at the time it occurs. Such information may be given in a statement of account or in any other manner acceptable to Member States.

3. In Member States where tacitly accepted overdrafts are permissible, the Member States concerned shall ensure that the consumer is informed of the annual rate of interest and the charges applicable, and of any amendment thereof, where the overdraft extends beyond a period of three months.

Article 7

In the case of credit granted for the acquisition of goods, Member States shall lay down the conditions under which goods may be repossessed, in particular if the consumer has not given his consent. They shall further ensure that where the creditor recovers possession of the goods the account between the parties shall be made up so as to ensure that the repossession does not entail any unjustified enrichment.

Article 8

The consumer shall be entitled to discharge his obligations under a credit agreement before the time fixed by the agreement. In this event, in accordance with the rules laid down by the Member States, the consumer shall be entitled to an equitable reduction in the total cost of the credit.

Article 9

Where the creditor's rights under a credit agreement are assigned to a third person, the consumer shall be entitled to plead against that third person any defence which was available to him against the original creditor, including set-off where the latter is permitted in the Member State concerned.

Article 10

The Member States which, in connection with credit agreements, permit the consumer:

- (a) to make payment by means of bills of exchange including promissory notes;

(b) to give security by means of bills of exchange including promissory notes and cheques, shall ensure that the consumer is suitably protected when using these instruments in those ways.

Article 11

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. Where:

(a) in order to buy goods or obtain services the consumer enters into a credit agreement with a person other than the supplier of them;

and

(b) the grantor of the credit and the supplier of the goods or services have a pre-existing agreement whereunder credit is made available exclusively by that grantor of credit to customers of that supplier for the acquisition of goods or services from that supplier; and

(c) the consumer referred to in subparagraph (a) obtains his credit pursuant to that pre-existing agreement; and

(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 for supply of them; and

(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 grantor of credit. Member States shall determine to what extent and under what conditions these remedies shall be exercisable.

3. Paragraph 2 shall not apply where the individual transaction in question is for an amount less than the equivalent of 200 ECU.

Article 12

1. Member States shall:

(a) ensure that persons offering credit or offering to arrange credit agreements shall obtain official authorization to do so, either specifically or as suppliers of goods and services; or

(b) ensure that persons granting credit or arranging for credit to be granted shall be subject to inspection or monitoring of their activities by an institution or official body; or

(c) promote the establishment of appropriate bodies to receive complaints concerning credit agreements or credit conditions and to provide relevant information or advice to consumers regarding them.

2. Member States may provide that the authorization referred to in paragraph 1 (a) shall not be required where persons offering to conclude or arrange credit agreements satisfy the definition in Article 1 of the first Council Directive of 12 December 1977 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions (1) and are authorized in accordance with the provisions of that Directive.

Where persons granting credit or arranging for credit to be granted have been authorized both specifically, under the provisions of paragraph 1 (a) and also under the provisions of the aforementioned Directive, but the latter authorization is subsequently withdrawn, the competent authority responsible for issuing the specific authorization to grant credit under paragraph 1 (a) shall be informed and shall decide whether the persons concerned may continue to grant credit, or arrange for credit to be granted, or whether the specific authorization granted under paragraph 1 (a) should be withdrawn.

Article 13

1. For the purposes of this Directive, the ECU shall be that defined by Regulation (EEC) No 3180/78, as amended by Regulation (EEC) No 2626/84. The equivalent in national currency shall initially be calculated at the rate obtaining on the date of adoption of this Directive.

Member States may round off the amounts in national currency resulting from the conversion of the amounts in ECU provided such rounding off does not exceed 10 ECU.

2. Every five years, and for the first time in 1995, the Council, acting on a proposal from the Commission, shall examine and, if need be, revise the amounts in this Directive, in the light of economic and monetary trends in the Community.

Article 14

1. Member States shall ensure that credit agreements shall not derogate, to the detriment of the consumer, from the provisions of national law implementing or corresponding to this Directive.

2. Member States shall further ensure that the provisions which they adopt in implementation of this directive are not circumvented as a result of the way in which agreements are formulated, in particular by the device of distributing the amount of credit over several agreements.

Article 15

This Directive shall not preclude Member States from retaining or adopting more stringent provisions to protect consumers consistent with their obligations under the Treaty.

Article 16

1. Member States shall bring into force the measures necessary to comply with this Directive not later than 1 January 1990 and shall forthwith inform the Commission thereof.

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

Article 17

Not later than 1 January 1995 the Commission shall present a report to the Council concerning the operation of this Directive.

Article 18

This Directive is addressed to the Member States.

Done at Brussels, 22 December 1986.

For the Council

The President

G. SHAW

(1) OJ No C 80, 27. 3. 1979, p. 4 and

OJ No C 183, 10. 7. 1984, p. 4.

(2) OJ No C 242, 12. 9. 1983, p. 10.

(3) OJ No C 113, 7. 5. 1980, p. 22.

(4) OJ No C 92, 25. 4. 1975, p. 1 and

OJ No C 133, 3. 6. 1981, p. 1.

(1) OJ No L 379, 30. 12. 1978, p. 1.

(2) OJ No L 247, 16. 9. 1984, p. 1.

(1) OJ No L 250, 19. 9. 1984, p. 17.

(1) OJ No L 322, 17. 12. 1977, p. 30.

ANNEX

LIST OF TERMS REFERRED TO IN ARTICLE 4 (3)

1. Credit agreements for financing the supply of particular goods or services:

1.2 // (i) // a description of the goods or services covered by the agreement; // (ii) // the cash price and the price payable under the credit agreement; // (iii) // the amount of the deposit, if

any, the number and amount of instalments and the dates on which they fall due, or the method of ascertaining any of the same if unknown at the time the agreement is concluded; // (iv) // an indication that the consumer will be entitled, as provided in Article 8, to a reduction if he repays early; // (v) // who owns the goods (if ownership does not pass immediately to the consumer) and the terms on which the consumer becomes the owner of them; // (vi) // a description of the security required, if any; // (vii) // the cooling-off period, if any; // (viii) // an indication of the insurance (s) required, if any, and, when the choice of insurer is not left to the consumer, an indication of the cost thereof.

2. Credit agreements operated by credit cards:

1.2 // (i) // the amount of the credit limit, if any; // (ii) // the terms of repayment or the means of determining them; // (iii) // the cooling-off period, if any.

3. Credit agreements operated by running account which are not otherwise covered by the Directive:

1.2 // (i) // the amount of the credit limit, if any, or the method of determining it; // (ii) // the terms of use and repayment; // (iii) // the cooling-off period, if any.

4. Other credit agreements covered by the Directive:

1.2 // (i) // the amount of the credit limit, if any; // (ii) // an indication of the security required, if any; // (iii) // the terms of repayment; // (iv) // the cooling-off period, if any; // (v) // an indication that the consumer will be entitled, as provided in Article 8, to a reduction if he repays early.