

COMMISSION OF THE EUROPEAN COMMUNITIES

COM (89) 592 final - SYN 132

Brussels, 29 November 1989

Re-examined proposal for a Council directive (EEC) amending 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(1)

(presented by the Commission pursuant to Article 149(2)(d) of the EEC Treaty)

**Re-examined proposal for a Council directive (EEC) amending 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(1)**

(Presented by the Commission pursuant to Article 149(2)(d)
of the EEC Treaty on 1989)

Steps in the Procedure

The Council adopted on 1 June 1989 a common position as contained in document 7135/89 dated 27 June 1989, CONSON 29, Pro-Coop 104, which the Commission accepted in order to achieve agreement(2).

On 30 August 1989 the Legal Affairs and Citizens' Rights Committee of Parliament approved a Recommendation for a Second Reading, as contained in the draft presented by the Rapporteur Mr G HOON(3), proposing important amendments to the Council's common position.

On 10 October 1989 in plenary debate in Parliament the Commission rejected all the amendments, except No 6, taking the view that the derogations relating to standard costs, the methods of calculation which already exist and provisions relating to penalty payments are fully justified.

The Commission thus supports the Council's common position and, in so doing, proposes for purposes of explanation or clarification :

- that the fourth recital should read as follows :

"Whereas in certain Member States other methods have been introduced and are used in practice; whereas the immediate introduction of a Community method in those Member States might disturb the sectorial interests involved and also the consumers, and create legal uncertainty; whereas accordingly, during a specified period of transition, Member States which before the date of notification of this directive apply laws which permit the use of another method of calculating the annual percentage rate of charge should be allowed to continue to apply those laws;"

- that the fifth recital should read as follows :

"Whereas before the expiry of the transitional period the Commission will present to the Council a report concerning the experience obtained in the matter, accompanied, if necessary, by a proposal setting out the way in which the mathematical formula contained in Annex II is to be applied, or, if necessary, adapting it to the requirements then obtaining;"

- that paragraph 5(b) of Article 1a should read as follows :

"Six months before the expiry of the time limit laid down in point (a), the Commission shall submit to the Council a report and, if adjudged necessary, by a proposal which will make it possible, in the light of experience, to apply a single Community method for calculating the annual percentage rate of charge."

- that in paragraph 3(b) of Article 1a the reference to paragraph 5(c) should be replaced by a reference to paragraph 5.

Further, the Commission accepts the amendment proposed by Parliament in respect of Article 2(2). The Commission accordingly proposes to modify this provision as follows :

"Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field governed by this directive. The texts shall refer expressly to this directive and also to directive 87/102/EEC.

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- (1) OJ No C155, 14.6.1988, p 10
 - (2) See also document PE 133.731, 28.7.1989
 - (3) Document PE 132.490, 7.8.1989

Re-examined proposal for a Council Directive amending Directive 87/102/EEC of 22 December 1986 on the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit ⁽¹⁾

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[Submitted by the Commission pursuant to Article 149 (2) (d) of the EEC Treaty on 4 December 1989]

(90/C 30/07)

⁽¹⁾ OJ No C 155, 14. 6. 1988, p. 10.

COMMON POSITION OF THE COUNCIL

TEXT AMENDED BY THE COMMITTEE ON
LEGAL AFFAIRS AND CITIZENS' RIGHTS

AMENDMENT No 1

Fourth recital

Whereas, during a transitional period, Member States which prior to the date of notification of this Directive, apply laws which permit the use of another mathematical formula for calculating the annual percentage rate of charge may continue to apply such laws;

Fourth recital

Delete this recital

AMENDMENT No 2

Fifth recital

Whereas, before expiry of the transitional period and in the light of experience, the Council will, on the basis of a proposal from the Commission, take a decision which will make it possible to apply a single Community mathematical formula;

Fifth recital

Delete this recital

COMMON POSITION OF THE COUNCIL

TEXT AMENDED BY THE COMMITTEE ON
LEGAL AFFAIRS AND CITIZENS' RIGHTS

AMENDMENT No 3

*Article 1 (2) — Article 1a (3)(a) and (b)**Article 1 (2) — Article 1a (3)(a) and (b)*

3. (a) Where credit transactions referred to in this Directive are subject to the provisions of national laws in force on... which impose maximum limits on the annual percentage rate of charge for such transactions and, where such provisions permit standard costs other than those described in paragraph 2(i) to (v) not to be included in those maximum limits, Member States may, solely in respect of such transactions, not include the aforementioned costs when calculating the annual percentage rate of charge, as stipulated in this Directive, provided that there is a requirement, in the cases mentioned in Article 3 and in the credit agreement, that the consumer be informed of the amount and inclusion thereof in the payments to be made.

Delete the whole of paragraph 3

- (b) Member States may no longer apply point (a) from the date of entry into force of the single mathematical formula for calculating the annual percentage rate of charge in the Community, pursuant to the provisions of paragraph 5(c)

AMENDMENT No 4

*Article 1 (2) — Article 1a (5)(a), (b) and (c)**Article 1 (2) — Article 1a (5)(a), (b) and (c)*

5. (a) As a transitional measure, notwithstanding the provisions of paragraph 1(a), Member States which, prior to ..., applied legal provisions whereby a mathematical formula different from that given in Annex II could be used for calculating the annual percentage rate of charge, may continue applying that formula within their territory for a period of three years starting from 1 January 1993. Member States shall take the appropriate measures to ensure that only one mathematical formula for calculating the annual percentage rate of charge is used within their territory.

Delete the whole of paragraph 5

- (b) Six months before the expiry of the time limit laid down in point (a) the Commission shall submit to the Council a report, accompanied by a proposal, which will make it possible in the light of experience, to apply a single Community mathematical formula for calculating the annual percentage rate of charge.

- (c) The Council shall, acting by a qualified majority on the basis of the proposal of the Commission, take a decision before 1 January 1996.

COMMON POSITION OF THE COUNCIL

TEXT AMENDED BY THE COMMITTEE ON
LEGAL AFFAIRS AND CITIZENS' RIGHTS

AMENDMENT No 5

Article 1 (4) — Article 4 (2)(d)

2. The written agreement shall include:...
- (d) a statement of the cost items referred to in Article 1a (2) with the exception of expenditure related to the breach of contractual obligations which were not included in the calculation of the annual percentage rate of charge but which have to be paid by the consumer in given circumstances, together with a statement identifying such circumstances. Where the exact amount of those items is known, that sum is to be indicated; if that is not the case, either a method of calculation or as accurate an estimate as possible is to be provided where possible.

Article 1 (4) — Article 4 (2)(d)

2. The written agreement shall include:...
- (d) a statement of the cost items referred to in Article 1a (2), *which were not included in the calculation of the annual percentage interest charge, but which have to be paid by the consumer in given circumstances, together with a statement identifying such circumstances.* Where the exact amount of those items is known, that sum is to be indicated; if that is not the case, either a method of calculation or as accurate an estimate as possible is to be provided where possible.

AMENDMENT No 6

Article 2 (2)

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

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2. Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field governed by this Directive. *The said texts shall contain an express reference to this Directive and to Directive 87/102/EEC.*

EXPLANATORY STATEMENT

1. In its initial proposal for a Council Directive amending Directive 87/102/EEC for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit (OJ No C 155, 14.6.88, p.10), the Commission proposed a single mathematical formula for calculating the annual percentage rate of charge for credit without any proposals, at that stage, for determining the cost items that should or should not come into computation.

2. In its Opinion of 15 March 1989 on this Commission proposal (OJ No C 96, 17.4.89, p.87), the Parliament agreed with the suggested single mathematical formula and proposed new provisions, setting out the cost items to be taken into account for the purpose of calculating the annual percentage rate of charge.

3. In its common position the Council, as well as agreeing to a single mathematical formula, has followed Parliament in including provisions concerning the cost items to be taken into computation, but the Council:

(1) is prepared to allow, until the end of 1995, Member States to maintain in force any national provisions, by which standard costs, not covered by Article 1a (2)(i) to (v), are permitted to be excluded from the calculation of the annual rate of charge where a national maximum limit of the annual rate of charge is imposed (cf. Article 1a (3)(a) and (b));

(2) is prepared to postpone, until the end of 1995, the imposition of a single mathematical formula, thereby giving France and the Federal Republic of Germany a further three years to adapt its legislation over and above the three year time span (until the end of 1992) provided for the implementation of this directive.

4. Amendments 1-4 seek to re-establish, with effect from 1 January 1993, a single mathematical formula for the calculation of the annual rate of charge and the uniform application of the rules governing the cost items to be taken into account for the purpose of the said calculation.

5. Amendment 5 attempts to ensure that the charges payable in the event of breach of contract are spelt out to the consumer.

6. Amendment 6 is included to facilitate the consumer's right to invoke the directly applicable provisions of the directives concerned before a national court, in the event of a Member State failing properly to transpose into its national legal order the provisions of these directives.

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