**EUROPEAN ECONOMIC COMMUNITY**

**EUROPEAN ATOMIC ENERGY COMMUNITY**

# ECONOMIC AND SOCIAL COMMITTEE

DOSSIER ENV/66

Brussels, 14 January 1980

REPORT

of the
of the Section for Protection of the Environment,
Public Health and Consumer Affairs
on the
Proposal for a Council Directive relating to the
Approximation of the Laws, Regulations and
Administrative Provisions of the Member States
concerning Consumer Credit
(COM (79) 59 final)

Rapporteur: Mr. Ramaekers

CES 1192/79 fin

## 1. INTRODUCTION

In a letter dated 12 March 1979 the Council of the European Communities, acting under Article 100 of the Treaty establishing the European Economic Community, asked the Economic and Social Committee for an Opinion on the

> Proposal for a Council Directive relating to the Approximation of the Laws, Regulations and Administrative Provisions of the Member States concerning Consumer Credit
> (COM(79) 69 final).

On 22 March 1979, the Committee's Bureau instructed the Section for Protection of the Environment, Public Health and Consumer Affairs to draw up an Opinion and a Report on the matter.

On 24 April 1979 the Section set up a nine-member Study Group, with Mr MILLER as Chairman and Mr RAMAEKERS as Rapporteur.

## 2. GIST OF THE PROPOSAL FOR A DIRECTIVE

The Commission's proposal forms part of the programme of consumer protection adopted in 1975, one of whose priorities was action on consumer credit.

There is considerable variation from one Member State to another in the laws governing consumer credit, which

hinders the establishment of a common credit market. The Commission's proposal aims to harmonize these laws in order to encourage such a market and also to protect consumers from possible abuses.

To achieve this objective, the proposal recommends that :

- the consumer should be given at least the minimum of information needed to make a rational selection from among the offers of credit made. He should therefore know in advance, not only the rate of interest, but also the other costs attached to the loan and the period for which the credit is available;

- credit agreements should be in writing with the relevant particulars spelled out so that the consumer is perfectly aware of the commitments he must keep;

- credit organizations must either be licensed or subject to inspection by the competent authorities, or a body must be set up in each Member State to receive consumers' complaints about credit agreements;

- in the event of a link between the creditor and the supplier, both parties should be responsible for supplying goods or services which accord with the agreement entered into with the consumer. If this is not done, the creditor and the supplier should be jointly liable for reimbursing the consumer for the total amount expended;

- in the event that the creditor assigns his rights to a third party, the consumer's position must be safeguarded and the original credit agreement observed;

- consumers should be free to terminate credit agreements before the date specified. In such cases, they should be entitled to a refund.

The Directive prohibits the consumer from waiving his rights by means of a term in the contract.

Therefore, any term designed to modify these rights would be ineffective. Moreover, the Directive is intended to raise the degree of consumer protection to a certain minimum level for all credit transactions. However, the Member States may introduce a higher level of protection in keeping with their obligations under the Treaty of Rome.

## 3. GENERAL COMMENTS

### 3.1. Desirability of a proposal for a Directive on consumer credit

Some members point to the considerable importance of consumer credit in present-day society and to its exceptional growth over the last twenty years in terms of both volume and new forms of credit. They are conscious that excessive growth of consumer credit may possibly lead to consumers getting too far into debt and that there may be imbalance between the parties to consumer credit agreements. But they stress that the rapid expansion of consumer credit has had the direct result of enabling consumers to buy new goods and services and in so doing improve their standard of living.

In this context, they approve the Commission's joint objective of using the measures proposed in the Directive to protect consumers and preserve fair competition between credit establishments.

Other members approve the principle of bringing in rules on consumer credit. They agree that the rules should be global, having regard to the fluidity of the market, but consider that a case has not been made for one set of rules for all credit transactions and that the rules should not go too far. There is a risk that new and more dangerous forms of credit will arise to evade the rules and that the

flexibility of transactions will be impeded, which would result in certain sources of consumer credit drying up altogether. In addition, the rules risk making the consumer who buys on credit better protected than the consumer who pays in cash.

Another group of members considers that the field of consumer credit does not require uniform legal provisions throughout the European Community. They consider that most Member States already have adequate consumer protection laws and that the differences between such laws are minimal and do not result in distortions of competition. In addition, harmonization of law to cover all areas of consumer credit raises numerous problems. They consider that this is evidenced by the numerous areas which the proposal leaves to national law, viz. calculation of the effective annual rate of interest, canvassing, sanctions in the event of failure to reduce the agreement to writing, measures relating to repossession and early payment and the fact that the Member States are empowered to lay down stricter requirements than those enshrined in the proposal.

These members consider that prior investigation of the status quo would have enabled a better assessment to have been made of the issues and more appropriate solutions to be found for certain matters covered by the proposal.

3.2. Content of the proposal for a Directive

Some members consider that there are gaps in the measures proposed by the Commission. For instance, they regret the absence of provisions on important matters which were dealt with in the OECD's proposals (*), e.g. the issue of free access to credit and the corollary of a ban on discrimination on the grounds of race, sex, marital status or nationality; data banks and measures to ensure privacy. They also deplore the lack of specific measures, such as provision for a cooling-off period so as to avoid consumers getting too far into debt and the ability to suspend payments in the event of the consumer getting into social difficulties. These members consider that these matters should be able to be tackled in the proposal for a Directive. In any event, they consider that they should be dealt with by the Commission in future work.

Other members consider that these matters go beyond consumer credit and should not be tackled by the proposal for a Directive in view of the technical difficulties which this might involve.

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(*) Consumer Protection in the Field of Consumer Credit - Report of the Consumer Policy Committee, OECD, Paris, 1977.

3.3. Consumer credit and economic policy

Some members observe that Member States utilize consumer credit as an economic policy instrument - it is encouraged in periods of deflation and curbed in periods of inflation. They question whether such an approach to consumer credit is legitimate having regard to its impact on the less well-off and their ability to procure the goods they need, particularly since the real effectiveness of tinkering with consumer credit is unknown.

3.4. The Section considers that the proposal for a Directive contains concepts whose legal signification is too vague. It would like certain terms to be made clearer and the translation of the various concepts in the various language versions to be revised (e.g. the terms "broker", "advance on a current account", "any other charges"). Some members point out that the comments accompanying the proposal for a Directive seem to give an interpretation which is different from or more favourable to the consumer than the Articles would suggest.

4. SPECIFIC COMMENTS

4.1. Scope of the Directive (Articles 1 and 2)

4.1.1. Definition of "consumer" (Article 1(2)(a))

Some members consider that the term "predominantly" should be rendered more clearly on the ground that it will lead to legal uncertainty. The wording of this Article is based on

the use to which the credit is to be put whereas this cannot always be determined when the agreement is made.

They propose that the offending terms should be deleted or that there should be a system whereby the consumer declares that he is or is not acting in a professional capacity.

Other members consider that the term "consumer" should be reserved for natural persons acting in an exclusively private capacity.

Another group of members approve the proposed definition of "consumer". They consider that the definition not only demarcates the scope of the Directive - inter alia by excluding legal persons and persons acting in a commercial or professional capacity - it does so subtly by specifying that only persons acting predominantly in such capacities are excluded. The definition thus provides a guideline for the courts in borderline cases and will enable case law on the key question of the scope of the Directive to be standardized. It will also obviate any undermining of the Directive.

4.1.2. Definition of "credit agreement" (Article 1(2)(c))

Some members consider that subjecting all credit agreements to the Directive would be a considerable drag on credit techniques whose flexibility benefits consumers, e.g. advances on current account. They further consider that agreements should

only fall within the scope of the Directive where repayment is to be made in more than a certain number of instalments. They also point out that credit agreements which provide that the sum due is to be repaid in one instalment are not covered by the Directive and that the Article is worded in such a way that transactions where a sum is paid on account followed by the balance of the sum due will be liable to be deemed credit agreements. Lastly, they point out that the expressions "other financial accommodation" and "deferred payment" are insufficiently concrete and clear.

Other members approve this definition. As far as fundamentals are concerned and after making the necessary exceptions (e.g. as regards current accounts), it covers all types of credit. They stress that it is important that the consumer should enjoy equal protection in all cases and that all distortions of competition should be avoided; no form of credit should be advantaged with respect to others.

4.1.3. Application of the Directive to agreements for the supply of goods or the provision of services (Article 1(3))

Some members hold that, as regards the "cooperation" between creditor and supplier which is stipulated by the Directive, one should not take the rules too far for fear that this type of credit will disappear. In their view, before cooperation is deemed to exist within the meaning of the Directive there must be active, real cooperation, which implies the existence of a direct link between the credit establishment and the supplier.

Other members approve of this Article provided that cooperation is deemed to be a "uniform economic process", a concept which has been developed in the case law of some Member States, and that it is understood that the parties concerned should always be acting in concert in an agreed manner in each case.

Other members approve the proposed inclusion within the scope of the Directive of agreements for the supply of goods or services which are financed by means of a credit agreement between a creditor and a consumer, insofar as the creditor cooperates with the supplier in the performance of the agreement for the supply of goods or services. They point out that, in the consumer's eyes, a credit agreement relating to the purchase of goods or services is a single transaction by means of which he acquires the goods or services and obtains credit. They agree with the Commission that, primarily, everything will hinge on the particular facts of any given case. All the same, they consider that, generally speaking, there should be deemed to be "cooperation" between the supplier and the creditor whenever they cooperate knowingly, e.g. where the creditor knows the use which is to be made of the loan.

4.1.4. Application of the Directive to brokers (Article 1(4))

The Section considers that the wording of this provision is not clear. No definition is provided of the term "broker",

and it is incorrect to speak of a credit agreement made between a broker and a consumer. The contract is always between the creditor and the consumer.

Some members consider that it should be stipulated that the Directive only applies to agreements made through an intermediary to the extent that the agreements themselves fall within the provisions of the Directive.

In addition, other members consider that the term "broker" ought to be given its widest possible meaning. The Directive should be operative whatever the intermediary, agent or broker. The only consideration must be that all credit agreements - whether made immediately or mediately with the creditor - must be subject to the Directive.

4.1.5. Matters excluded from the Directive's scope (Article 2)

On a general note, some members point out that the present proposal differs considerably from one of the earlier versions (*) which only excluded credit for the acquisition of property rights in land or buildings and agreements under which the consumer had less than three months to pay the price. Other members consider that all the credit agreements excluded by Article 2 should come within the scope of the Directive on the ground that the number of exceptions is liable to detract from its importance.

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(*) Document of March 1977, reference ENV/176/77-F rev.

4.1.5.1. Exclusion of credit for the acquisition of property rights in land or buildings (Article 2(1)(a))

Some members approve this provision on the grounds that this type of credit agreement necessitates in most Member States the intervention of a notaire or some other law officer and that such agreements are usually made in the form of a mortgage. In view of regulations which apply to such agreements and the way in which they are made, consumers are, in fact, protected. Moreover, they consider that there is no doubt that the financing of extensions and other improvements is also excluded from the scope of the Directive without there being a need to mention this in terms. This, they hold, is also true of linked transactions and payments which are made in liaison with a building loan, such as the payment of insurance premiums by the borrower. Also the exclusion should not be restricted to ownership of land but should cover all interests in land, such as easements, leaseholds and superficies.

Other members consider that, in this connection, the form of the loan - i.e. mortgage as opposed to other forms of credit - should be distinguished from the use to which it is to be put. The latter is much more difficult to determine and restrict and should not be a criterion of the Directive.

Accordingly, they consider that what should be excluded is mortgage loans, which are already the subject of specific regulations.

Other members consider that the intervention of a notaire does not constitute a guarantee, since the notaire does not specifically make sure that the consumer is well informed of the terms of the transaction. Either all agreements covered by Article 2(1)(a) should be within the scope of the Directive or agreements intended to finance the renovation or improvement of buildings ought to be distinguished and those agreements only should be included within the Directive's scope. Additionally, some members consider that a specific Directive is called for on the ground that credit intended solely for the acquisition of property rights in land or buildings is a very particular and complex area covering agreements for the purchase of buildings and the acquisition of shares in real estate companies by means of a loan.

4.1.5.2. Exclusion of hiring agreements (Article 2(1)(b))

Some members interpret this provision as excluding leasing and hire purchase agreements from the scope of the Directive, given that, as a matter of fact and as a matter of law, leasing contracts are comparable to hiring contracts.

Other members consider that pure hire contracts and a fortiori leasing and hire purchase agreements ought not to be excluded. They consider that to keep in this type of exception is to run the risk that the Directive will be evaded.

Other members consider that, whilst some sort of protection should be envisaged in connection with hiring agreements having regard to the potential abuses, the legal rules brought into play by a pure hiring contract differ so much from those

which apply to the ordinary type of consumer credit that there could be no question of including such agreements within the scope of the Directive. They consider that the only solution would be a specific Directive. However, they emphasize that, in any event, the exclusion of leasing and hire purchase agreements must not encourage the development of such agreements.

4.1.5.3. Exclusion of agreements covering amounts outside upper and lower cut-off points (Article 2(1)(e))

Some members do not see why agreements covering small amounts are not covered by the Directive. They state that there are firms which specialize in such agreements in order not to be subject to the rules.

Other members consider this provision to be vital for the sound operation of credit establishments. Some members consider that the amounts should be set by the Member States so as to take account of the varying economic situations in the different countries.

Other members approve of the proposed procedure whereby the Commission could only exclude such contracts at the request of the Member State concerned. They consider that this procedure will not detract from the necessary coordination at European level while enabling account to be taken of the relevant national requirements.

4.1.5.4. Exclusion of agreements under which the consumer has three months or less in which to pay the price Article 2(1)(c))

Some members strongly deplore the exclusion of short-term agreements. These are sometimes very onerous and their rates are very high, sometimes extortionate. These members consider

that another criterion should be employed, that of the number of instalments, since this would be less subject to abuse.

Other members approve of the provision on the ground that it is in the consumer's interest that certain loans should have their flexibility unimpaired.

Some members consider that the procedure adopted in respect of Article 2(1)(e) (exclusion of agreements covering amounts outside upper and lower cut-off points) should also apply to Article 2(1)(c) (exclusion of agreements under which the consumer has three months or less in which to pay the price). Their grounds are the same as those given in paragraph 2.1.5.4.

They point out that excluding agreements on the basis of their value or duration has implications of which account must be taken at national economic level, e.g. as an instrument of economic policy.

4.1.5.5. Obligation on Member States to ensure that the Directive is not circumvented (Article 2(2))

The Section approves the principle behind this provision but considers that it should apply to the whole series of exclusions and not merely to the exclusion of agreements covering amounts outside upper and lower cut-off points.

It further considers that express recourse to the Member States is unnecessary since that it is in the very nature of a Directive to lay down objectives for the Member States to incorporate in legislation. It considers that it is enough to stipulate that the provisions of the Directive apply when an attempt is made to circumvent it by means of the exclusions.

4.1.5.6. Exclusion of agreements not excluded by the Directive

Some members consider that it would be expedient to exclude from the Directive's scope credit agreements accorded by certain establishments whose rates are very low and whose nature is essentially non-commercial and loans granted on special terms by employers to their employees. It is unlikely that the consumer runs a risk in connection with such contracts.

4.1.6. Advances on a current account (Article 2(1)(d) and Article 8)

Some members discern a contradiction between excluding advances on current account from the scope of the Directive and simultaneously applying to them such sweeping provisions as those laid down in Article 8 (particulars to be provided in writing). They consider that these provisions will not deter consumers from overdrawing, will considerably increase the cost of this kind

of credit and will detract from its flexibility. In view of these difficulties, they suggest that the requirements laid down in Article 8 should be deleted and replaced by a requirement for credit institutions to display the terms of this type of credit on the notice boards which show interest rates.

Other members consider that advances on current account are an important form of consumer credit which should be covered by the Directive.

However, they approve the Commission's proposal that advances on current account should be subject to special requirements given their particular characteristics. They stress the importance of information and that it is essential that such information be kept up to date. They consider that the use of statements is well suited to the requirements of this type of credit. Lastly, they stress that it is important not to exempt advances on a current account for less than three months' duration from the requirements of the Directive since numerous loans are for less than ten weeks.

4.1.7. Credit cards (Article 6(2)(b))

The Section stresses that a distinction should be made between payment cards and credit cards proper. The differences lies in the time for repayment and whether payment can be made in instalments. The Section points out that there exist hybrid cards which offer both facilities.

In this connection, the Section notes that payment cards proper are excluded from the scope of the Directive because of Article 1(2)(c) (agreements only to be credit agreements if there is more than one instalment) and Article 2(1) (c) (agreements under which consumer has less than three months to pay excluded).

Some members consider that all credit cards should be excluded. In their view, credit cards are only a type of advance on current account which is already excluded. In any event, credit cards ought to be excluded because they are designed to facilitate cashless payments and not credit agreements.

Other members stress that credit cards encourage spending and entail serious risks of consumers getting too far into debt. Consumers should be protected from these dangers. Accordingly, they consider that both credit cards and payment cards must be subject to the requirement for a written agreement.

Another group of members point out that the Directive should not be undermined by having credit cards excluded from its scope. However, they consider that, in view of the way in which they operate, credit cards should be subject to special information requirements. The information required should be as little and as effective as possible. They compare the operation of credit cards to that of advances on current account and consider that the information should be given in the same way as for current accounts and that

Article 8 and Article 2(1)(d) should be amended accordingly. Thus information would be given in writing on termination of the agreement and by means of statements during the contract.

4.2. Definition of "effective annual rate of interest"

Some members point out that three types of problem arise in connection with the "effective annual rate of interest". The first is what is meant by effective annual rate of interest ? The second is what mathematical formula should be used (proportional method or the pure actuarial method) ? The third concerns application (e.g., in the case of a current account, future changes in the balance are ignored).

As regards the concept of the effective annual rate of interest, some members consider that the terms "all other charges" should be clarified so as to show which costs should be deemed credit costs and included in the calculation of the effective annual rate of interest. In addition, they consider that a degree of limitation of such charges should be envisaged.

Other members stress that it is important that the consumer should be informed of the total cost of the credit so that he has all the facts before he enters into the credit agreement.

Other members consider that both the terms of the proposed definition and the nature of the concept will be liable to result in a distortion of consumer information. They therefore propose that it be replaced by "rate of charge"

or "annual percentage charge". The concept of rate of charge or annual percentage charge encompasses the various charges for credit but does not mix them up with the rate of interest, which is the return on the money lent. They consider that this rate of charge can provide the consumer with information which approximates more closely to the real state of affairs. Changeover to rate of charge will not make the situation look worse than it is and suggest that the interest rate is extortionate.

As respects the calculation of the effective annual rate of interest, some members consider that it is imperative that the Directive should prescribe, from the outset, a single formula for use at European level since this represents the consumer's only possibility of making price comparisons. Moreover, they consider that it should be stipulated that the Member States should lay down a maximum annual rate for each form of credit.

Other members consider that a single formula for use at European level ought to be sought. They query the compatibility of this objective and the Directive's leaving it to the Member States to lay down the rules for calculating the effective annual rate. They consider that clarity must be introduced in this connection at European level for the sake of equality of citizens before European law and for the sake of obviating distortions. It is not for the Economic and Social Committee but for experts to select an appropriate formula. They hold that selecting such formula should not delay the adoption of the proposal for a Directive by the Member States. Accordingly, they suggest that the choice of formula should be made by the Commission within the same

timescale as the Member States have to adapt their law in line with the Directive. They propose that the Member States should then have two extra years before they have to apply the Commission's chosen formula.

A further group of members consider that, in any event, the lapse of time between the application of the Directive by the Member States and the adoption of a single calculation formula at European level must not be too long. Pending this, there should be a requirement for the adoption of a single formula at national level. They consider that this way of proceeding would minimize the difficulties involved in working out a calculation formula at European level later on.

4.3. Consumer protection on the making of the agreement

4.3.1. Consumer information

Advertising (Article 3)

Some members consider that Article 3 requires excessively detailed information to be given about all the costs relating to the credit. There will be too much information, which will confuse the consumer, and the consumer will have difficulty in comparing the advertisements of the various credit establishments. They therefore consider that this Article should stipulate only that the effective annual rate of interest be displayed, this concept having the added advantage of being similar in the various Member States.

Other members consider that whilst the interest rate must be displayed in all cases, the total cost and the effective annual rate should also appear in advertising, since these particulars are essential if the consumer is to be properly informed.

Another group of members emphasize that they approve the idea behind this Article, namely that the public should not be misled by the information given to it. Accordingly, they agree that indication of the total costs and the effective annual rate of interest should only be required when costs relating to credit or a percentage are mentioned in the advertising. They point out, however, that it will be impossible to indicate the total cost of the credit where the duration or object of the credit is not known. They therefore propose that it should still be possible to provide the consumer with as much information as possible about the cost of the credit, e.g. the annual rate of interest. They consider that this Article must not have the effect of reducing information to the consumer.

Display of annual rate of interest and credit costs (Article 5)

Some members consider that this provision is liable to come down too heavily on small suppliers of goods and services and banks.

They also point out that it is sometimes impossible to indicate credit costs, since these depend, for instance, on who the borrower is and the goods for which the credit is being granted. Moreover, in their view, the proposed system is liable to raise legal problems as regards offers.

Other members approve this provision. It will ensure market transparency and will be of key importance to consumers who wish to make their choice with a full knowledge of the facts.

Other members agree that the provisions relating to displaying the annual rate of interest and credit costs are liable to entail an excessively heavy burden for credit establishments. In their view, this Article should be aligned on the more restrictive model of Article 3 (advertising).

Accordingly, they consider that the annual rate of interest and other costs relating to credit should only be required to be displayed in business premises to which the public has access when rates or costs are actually mentioned in displays. Where such information is displayed it should be fair and complete vis-à-vis consumers and other creditors.

They also consider that in this case the provisions of the Directive will not be difficult for banks and credit establishments to apply and that the latter will supply the necessary material to the small trader.

Agreements to be in writing (Articles 6 and 7)

Some members consider that, on a general level, Article 6 fails to distinguish between three sources of finance : consumer credit linked to the supply of goods and services, personal loans and credit cards. They also point out that the rate of interest may always be varied and that the requirement for a written agreement mentioning the rate of interest will be liable to put an end to this practice.

Other members approve the Commission's proposal that credit agreements be made in writing. They consider that written contracts are the most effective means of ensuring that the parties are informed of their respective rights and obligations.

However, they are against the written agreement only containing the "essential contractual conditions" (*). This could be a source of confusion and distortions which would inevitably prejudice the consumer.

They also point to serious omissions in the list of particulars having to be included in the contract, e.g. date, place, names and addresses of the parties.

As regards credit agreements concerning the supply of goods or services, some members consider that various amendments should be made to the drafting. In Article 6(2)(a)(ii) the words "if any" should be inserted between "credit price" and "where this differs". In Article 6(2)(a)(iv) the words "or interval" should be inserted between "the due dates" and "the number and amount of the instalments". As regards Article 6(2)(a)(v), it is pointed out that in the case of a mortgage it is the mortgagor who has to pay a re-investment indemnity. The words "where the property in the goods does not pass immediately to the consumer" should be added at the beginning of Article 6(2)(a)(vi). The term "details" in Article 6(2)(a)(vii) should be defined or replaced by the wider term "indications".

On the subject of Article 6(2)(b) concerning credit cards, members refer back to 2.1.7. of the present Report.

As respects Article 6(2)(c), "other credit agreements", some members point out that interest rates are not fixed and that it would be worthwhile laying down the circumstances in which interest rates may be altered. The term "indication" in Article 6(2)(c)(iv) should be defined.

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(*) Translator's Note : the translation of "clauses" (Fr.) by "conditions" is the Commission's.

Some members point out that in the case of mail order sales pursuant to current accounts Article 6 would result in a fresh agreement having to be drawn up in writing each time a sale is made after the opening of the account. This would cause considerable difficulties in practice.

They therefore propose either amending Article 6 so that it does not apply to credit agreements relating to the supply of goods or services financed by credit which was opened at an earlier date pursuant to an agreement between the supplier and the consumer, or deeming Article 6 to apply where the main terms of the agreement (Article 6(2)) are set out in a sales contract which is available to the consumer.

Other members consider that whilst a solution should be found to the special difficulties raised by mail order sales, such solution cannot be extended to cover all supplies of goods and services, since this would undermine the Directive. They point out that the issue is above all one of consumer information. The question of the physical medium for the information is of less importance as long as the information is actually provided.

They therefore propose that a special paragraph deal with mail order, stipulating that signature of a simplified contract on the opening of the credit will suffice provided that detailed information about all the credit arrangements is provided in the catalogue or in an equivalent document.

The particulars to be set out in the catalogue should be listed by the proposal for a Directive and should, in all cases, include the cost of the credit.

As regards the Directive's laying down sanctions in the event of non-observance of the provisions relating to the written agreement, the Section considers that, in the case of harmonization of law, it is important that Directives should clearly lay down the objectives of the harmonization. The objectives cannot be left to the Member States as the present wording provides. The Section points out that it is for the Directive and not the Member States to determine the objectives of the legislation. It is then for the Member States to take the necessary legal measures in order to attain these objectives.

Some members propose that the objectives should consist in the agreement being held absolutely or relatively void depending on the importance of the provisions which are not observed.

Other members are opposed to contracts being held to be relatively or absolutely void, since this is difficult and awkward to apply.

4.3.2. Specific measures to protect the consumer

Cooling-off period

Some members regret that the Directive makes no provision for a cooling-off period albeit it is the most appropriate means of curbing impetuous buying. The cooling-off period should be applied as widely as possible within the framework of the Directive on consumer credit.

Other members consider that a cooling-off period is not indispensable on the ground that every consumer is capable of assessing the extent of his commitments.

Some members consider that there are difficulties in implementing a cooling-off period and that it is not easy, economically or legally, to apply such a measure uniformly and generally to all consumer credit transactions.

They consider that the danger of impulsive buying is increased by consumer credit and that the danger is likely to increase having regard to the new forms of credit.

Therefore, in order to avoid consumers getting too far into debt and to check impetuous buying, they recommend that the Commission examine the specific issue of the cooling-off period. The issue is wider than consumer credit and so this exercise should not be limited to the Directive on consumer credit but should be more broadly based in its cover of commercial practices.

Canvassing (Article 4)

Referring to the earlier wording of the draft Directive, some members consider that the ban on canvassing should be obligatory and that, in any event, canvassing should only be permitted where the consumer asks to be visited by a representative. They consider that this practice is particularly dangerous in connection with consumer credit.

They consider that the term "unsollicited" could facilitate circumvention of the Directive since the canvasser can easily seek to be asked. Moreover leaving it to the Member States to take action in this sphere is not compatible with the Directive's objective of harmonization.

Other members approve the proposal to leave this to the Member States since some of them already have rules requiring, for instance, supervisory bodies to be set up or a cooling-off period to be respected. They also consider that it would be enough to subject canvassing to certain conditions or restrictions, it being understood that a mere visit may not constitute sufficient psychological pressure to justify a ban.

Other members point out that the present wording of Article 4 would result in a substantial reduction of catalogue sales in some Member States. They point out that the proposal for a Directive on doorstep trading will protect consumers against the unsollicited sale of goods or services. They also emphasize that this Article is merely an application of Article 16, whereby Member States may apply more stringent requirements in general to those laid down in the Directive. They therefore propose that Article 4 should only apply to offers of credit which are not linked with the purchase of goods or services and that, rather than banning this type of sale, the Directive should propose regulating it more tightly.

Another group of members consider that credit agreements relating to the supply of goods and services cannot be exonerated thus advantaging certain forms of credit vis-à-vis other forms. They stress that the agressive commercial practice of canvassing, coupled with more than one type of consumer credit, can be very dangerous for the consumer. They therefore propose that the Directive should provide that all canvassing should be forbidden except where the consumer is given a sufficiently long cooling-off period. They consider that canvassing in connection with consumer credit should not be subject to an out-and-out ban but that a cooling-off period is vital if purchases made in such circumstances are not to be rash.

Ban on bills of exchange and promissory notes (Article 12)

Some members are against the Directive's banning the use of bills of exchange, on the ground that they are widely used and are the most important means of re-finance. They observe that, whilst ethical and social considerations justify the Commission's proposal, it is at odds with current practice in two Member States. The said practice does not create difficulties for bona fide contracting parties and is considered to be vital in order to enable all kinds of purchases to be made which would otherwise not have been possible. But these members agree that the use of bills of exchange may be coupled with prior consumer information and that there could be certain exceptions to Article 12 to cover those countries where bills of exchange are widely used. In addition, they ask whether the proposed measure is consistent with the Geneva Convention of 7 June 1930, which applies to all the Member States and to a majority of the countries which were independent at the time of the signing of the Convention.

Other members approve of this ban. They consider that it is essential in order to avoid the various protective measures laid down in the Directive being made nugatory. Commercial instruments, such as bills of exchange and promissory notes, would allow the credit to be recovered direct from the consumer without his being able to avail himself of his rights under the initial sale-of-goods and credit agreement.

They stress, however, that the ban applies solely to transactions between businessmen and consumers and not to transactions between men of business alone, which would be completely absurd given that commercial instruments' function is to facilitate business transactions.

4.4. Protection of the consumer on execution of the agreement

Retention of title (Article 9)

Some members regret that, unlike the earlier version, the Directive does not provide that the creditor cannot repossess where the consumer has paid a quarter of the credit price. They consider that the new text gives too much power to the creditor since, as a result of this provision, he could exercise his right of ownership right up until payment of the last instalment.

Other members consider that the adoption by the Member States of the necessary measures to guarantee that repossession will not unjustifiably disadvantage one of the parties concerned will raise serious difficulties and will result in a great deal of litigation for several years to come.

They also consider that the Article is too general ("repossession of goods") and enables any creditors to terminate the agreement. They point to the loose wording of the Article and observe that it is incorrect in law to provide that repossession shall result in the contract being automatically avoided since each party's obligations have not necessarily been carried out at that time. Also it should be made clear that both credit for the acquisition of goods and services and credit for other purposes are covered.

4.4.1. Specific measures

Early payment (Article 10)

Referring to the earlier wording of the proposal for a Directive, some members urge that the concept of proportional repayment be adopted in the Directive for reasons of equity.

Other members approve the underlying principle but consider that technical barriers to trade could arise if the Member States adopt different measures. They therefore suggest that the Article be struck out or, failing this, amended in order to bring out the distinctions as to the nature of the expenses reimbursed and the quantum of the repayment.

Another group of members point out that they propose the concept of the "rate of charge" or "annual percentage charge". This would allow a breakdown of all of the following : rate of interest, which would be reimbursable, fixed charges, covering, for instance, the charge for opening the file and insurance, which would not be refundable, and charges pro rata temporis which could be reimbursed.

They consider that this concept is particularly appropriate in the event of early repayment of credit. It avoids any confusion about refunding "other credit charges".

They further consider that information as to the refundable or non-refundable character of credit charges ought to be given to the consumer when the contract is made so as to make sure both parties are informed when they are at arms' length.

They are against this matter being left to the Member States, since this entails a risk of technical barriers to trade being created and to damage being done to the harmonization of legislation.

Assignment of rights (Article 11)

Some members consider that the words "including set-off" should be deleted since they are unable to see how the debtor could recover from a third party sums already paid to the creditor.

Interdependence of the credit agreement and the agreement for the supply of the relevant goods or services
Article 13

Some members consider that the provisions of Article 13 are inadequate and that cases other than failure to supply or non-conformity with the agreement ought to be taken into account, e.g. late delivery of the goods. They also consider that provision should be made for repayment of the expense to which the consumer is put because of the agreement being carried out badly as well as for recovery of the payments he has made.

They also consider that the consumer ought to be reimbursed by the supplier where the creditor refuses to give a loan.

They observe that in cases such as the two covered by the Directive the transactions for the supply of goods or services, on the one hand, and for credit to finance the same, on the other, are intrinsically linked in the consumer's mind albeit, legally, they are two separate transactions.

Other members consider that the concept of "conformity" mentioned in Article 13(2) is very difficult to assess, that it would entail excessive costs for credit establishments and that it would be liable to provide a pretext for borrowers acting in bad faith.

As regards joint and several liability of the creditor and the supplier for any repayment of sums paid, the Section considers that recourse should be made in the first instance against the supplier since the cases covered by the Directive concern the supply of goods/services.

4.4.2. Supervisory machinery

Some members ask that the terms "official authorization" (Article 14(1)(a)) and "official body" (Article 14(1)(b)) be defined. They consider that the chief object of such should be consumer protection and that the body responsible for examining complaints from consumers should be made up mostly or solely of consumer representatives.

Other members disagree with this interpretation of the aim of the "official body". They consider that other aspects such as monetary and credit policy must be taken into account when granting official authorization.

They trust that the term "consumer organizations" will be more clearly defined.

They also consider that there is no justification for setting up a body of the kind proposed in the Directive since the courts ought to keep sole responsibility for settling complaints from consumer and consumer organizations.

Some members consider that the various supervisory measures set out in the Directive ought to be cumulative rather than alternatives. Firstly, they consider that obtaining official authorization and inspection by an official body go hand in hand, since inspection has to entail withdrawal of authorization if the activities are not in conformity with the provisions of the

Directive. Secondly, they consider that the existence of a body responsible for examining complaints from consumers and consumer organizations is essential if the protection measures embodied in the Directive are to be respected and actually put into practice. In addition, they consider that one authorization should suffice in the case of organizations employing agents. The Directive should speak clearly on this matter. Lastly, they hold that the term "consumer organization" should be defined in the Directive.

Finally, as regards the banking approval which establishments satisfying the definition in Article 1 of the first Directive on banking must obtain in order to get official authorization to exercise their activities in the field of consumer credit, some members point out that this provision will create difficulties for Member States where certain institutions satisfy Article 1 of the banking Directive but fail to obtain banking approval. They consider that a solution must be found to this difficulty.

4.4.3. Ability of the Member States to have more stringent provisions

Some members would like this provision to be deleted since it will enable other consumer protection measures to be brought in which would be liable to undermine the harmonization sought by the Directive.

4.5. Entry into force (Article 17)

The Section considers that the time limit for the entry into force of the Directive in the Member States should be extended to 24 months. It considers that the Member States should have all the time necessary to adapt their legislation.

The Chairman
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the Environment, Public Health
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Eirlys ROBERTS

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