



COMMISSION OF THE EUROPEAN COMMUNITIES

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Report on the operation of Directive 87/102 for the approximation of laws, regulations and administrative provisions of the Member States concerning consumer credit - COM(95) 117 final of 11.05.95

Summary Report of Reactions & Comments

(presented by the Commission)

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I. INTRODUCTION AND SUMMARY

I.1 Background

I.1.1 Report on the Functioning of Directive 87/102/EEC

1. Article 17 of Council Directive 87/102/EEC on the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit required the Commission to present a Report to the Council on the operation of this Directive within five years of its entry into effect.

2. In conformity with the remit of Article 17, a questionnaire addressing different aspects of the consumer credit market was distributed in June 1994 (letter D02058 of 24 June 1994) to Member States and to European associations of creditors, traders and consumers. Opinions were also invited from the academic community. Based on the responses received and on a number of studies which the Commission had commissioned concerning the transposition of the Directive and the functioning of the market, a Report was prepared and was adopted by the Commission on 11 May 1995, document COM (95) 117 final.

3. This Report was intended as a *discussion document* and the subjects raised in the Report were therefore not "proposals" but rather a discussion of the theme "consumer credit" and, in some instances where the Commission already had reflected on the issues, a statement of the Commission's tentative opinion. In other words, the Report did not constitute a legislative program, but one element among several for the preparation of an overhaul of directive 87/102/EEC with later amendments.

I.1.2 Consultations on the Report

4. The Report was formally transmitted to the European Parliament and the Council on 11 May 1995.

I.1.2.1 European Parliament

The Legal Affairs Committee was appointed lead committee; the Environment, Public Health & Consumer Protection Committee was associated.

I.1.2.1.1 Environment, Public Health & Consumer Protection Committee

Ms. Annemarie Kuhn (PSE/D) was *rapporteur*; her draft Opinion, adopted on 25 April 1996, is to a large extent favourable to the arguments put forth in the Report regarding the amendment of Directive 87/102 (extension of the scope, advertising and information, types of credit agreement, the cooling-off period, etc.) and to its points of view on mortgage credit.

I.1.2.1.2 Legal Affairs Committee

Mr Ernesto Caccavale (UPE/IT) was appointed Rapporteur; his preliminary draft report, a Working Document, was discussed at a Public Hearing organised by the Legal Affairs Committee on 22 April 1996 and by the Legal Affairs Committee as such on 22-23 July, 28 October and 26 November 1996. The draft Report was approved on 17 December 1996, but only voted by the EP's Plenary session of 11 March 1997. The *resolution adopted* is enclosed in Annex 2.

I.1.2.2 Council

The Report was discussed by the Working Party on Protection and Information of Consumers at meetings during September and October 1995. The Council of 9 November 1995 adopted a Resolution welcoming the Report, and invited the Commission to "take into account the comments received on its Report..., a summary of which should be made available".

This Summary Report constitutes the Commission's fulfilling of the request by the Council.

I.1.2.3 Other

In addition to the formal consultation procedure outlined above, the Summary Report is based on the following consultation measures:

a) The Report COM(95) 117 final was sent in June 1995 to EEA Member States through their Permanent Representations, and directly to certain national authorities in charge of consumer affairs (Ombudsmen). National authorities were invited to comment on the Report and a 'reminder' letter to this effect was sent in January 1996, requesting responses by mid-March 1996. A further 'reminder' letter was sent in June 1996, requesting responses by mid-July 1996. Responses have been received from Belgium, Denmark, Germany, Spain, France, Ireland, Luxembourg, the Netherlands, Austria, Portugal, Finland, Sweden, the United Kingdom, Iceland, and Norway. Of these, Luxembourg and Norway had no comments at all to make on the Report.¹ Italy, evoking "*structural difficulties and lack of co-ordination*" was in no position to give an assessment of the application of Directive. Greece replied to the original questionnaire distributed in 1994, on which the Report COM(95) 117 final was based.

b) Moreover, the Report was distributed to financial, retail and consumer organisations, in short all those involved in the original consultation process (the questionnaire) as well as any other potentially interested parties. A list of the responses received is attached in Annex 1.

I.2 Conclusions of the Summary Report

5. The Summary Report outlines comments received on a list of issues raised by the Report COM(95) 117 final, namely:

- extension of the scope of Directive 87/102/EEC,
- advertising targeted at young consumers,

¹ Iceland being the only EEA Member State that made a contribution, its comments on each issue are mentioned separately right after EU Member States' comments.

- obligation on consumers to give information and on professionals to give advice,
- rules on overdrafts,
- inquiry into consumers circumstances before ordering repossession,
- early repayment,
- bills of exchange,
- subsidiary liability,
- creation of bodies authorised to receive consumer complaints,
- cooling-off periods,
- consequences of non-execution of consumer credit contracts,
- usury,
- credit intermediaries,
- data protection,
- guarantors,
- over-indebtedness, and
- other general issues.

6. From the remarks received on these subjects the following conclusions can be reached:

- Member States are more or less divided over the suggestions of the Report COM (95) 117 with the UK, the Netherlands and Germany appearing more sceptical and Portugal, Ireland, Spain and Sweden appearing more supportive;
- Iceland is generally supportive of the Commission's suggestions;
- financial services industry generally prefer to keep the status quo and point out difficulties related to the introduction of new rules, but are more supportive as regards codes of conduct;
- consumer and money advice groups on the other hand generally welcome the proposals and stress the need for legislative measures rather than codes of conduct.

II. SUBJECTS RAISED BY THE REPORT COM(95) 117 FINAL

II.1 Extension of the scope (Articles 1 & 2).

II.1.1 Financial limits (>200 and <20 000 ECU)

7. The scope of the Directive is consumer credit amounts above 200 ECU, but below 20 000 ECU. The Directive states that the Council shall periodically review such limits. As certain Member States have not used the limits in the Directive, the Report in paragraphs 24 and 155, proposed the upward revision or abolition of the 20 000 ECU ceiling in the Directive.

8. Member State responses were divided on the subject of the upper limit, with UK and Netherlands accepting an increase but not removal, France wishing the upper limit to be retained while Austria stated that experience has shown that no difficulties arise even if the upper limit is removed, and others - considering that consumers also need protection for large credit amounts - are either in favour of the removal of the upper limit (Finland, Spain, Portugal, Sweden), or have not set any financial limits in their legislation (Germany, Ireland). Iceland favours the removal of the upper limit.

9. Responses from the financial services industry opposed the removal of the upper limit but were prepared to accept increases in line with indexation. Others opposed any extension of the scope upwards, for various reasons including the "difficulty in calculating APRs for larger amounts" and their view that a borrower who borrows more than 20 000 ECU is generally in a better bargaining position and should continue to benefit from free play of competition. The Finance & Leasing Association, FLA, went further in stating that "if there is a review, this should be to a fixed limit, determined nationally by individual Member States, not in ECU". The European Banking Federation, EBF, stated that those Member States which did not use the ceiling should be encouraged to align themselves with the level established in the Directive.

10. Consumer and money advice groups, on the contrary, supported the abolition of the limits as "it would mean more transactions (including mortgages) would be regulated".

11. The financial services industry also opposed the removal of the lower limit as "it would place considerable cost burdens on finance providers for purchases below 200 ECU".

II.1.2 Credit for starting up a business

12. In paragraphs 21 and 108, the possibility of including credit taken out by consumers with a view to starting up a business was raised.

13. As can be seen in enclosure 2, this concept also was of great interest to the European Parliament.

14. A number of Member States opposed this suggestion (The Netherlands, the UK, Denmark, Spain, France). Others have either extended the scope of their legislation to cover consumer credit whose purpose is to launch a business (Germany) or could support this idea (Portugal, Finland, Sweden²). Iceland is supportive of this suggestion, too.

2 Sweden can support broadening of the scope only to include legal entities of consumers.

15. The financial services industry and the American Chamber of Commerce also opposed this on the grounds that such borrowers have more professional advice and less need of protection; they need more flexibility than regulation would allow and might actually see their opportunities for credit reduced if they were to be covered by the Directive.

16. Others also stated that any change in the definition of the consumer in this Directive would conflict with the definitions of consumers in the other consumer Directives.

17. Although the Danish Consumer Council (Forbrugerrådet) sees no reason for the scope to be extended as suggested above, it could support the idea of widening it to include legal persons that make up a class of consumers (e.g. co-operatives).

II.1.3 Contracts with a purchase option

18. In paragraphs 18 and 125, the Report proposed the extension of the scope of the Directive to contracts with a purchase option.

19. The Netherlands felt that this area could be examined, perhaps to restrict the exemption in the Directive to straightforward hiring agreements where no ownership passes. Other Member States have included hiring agreements with a purchase option in their legislation (Spain, France, Ireland, Sweden). Iceland is rather sceptical about this suggestion.

20. Eurofinas and Eurolease strongly opposed the proposal as they feel that leasing is very different from credit (and that no APR can be calculated for leasing). The FLA pointed out that this is one of the reasons for the proposal in the UK to remove small businesses from the scope of the Consumer Credit Act.

21. The Consumers in Europe Group felt that the Directive should be extended to consumer hire as there is no inherent difference between a loan for a purchase and a loan for hire, while other money advice organisations agreed that the exemption should be removed.

II.1.4 Building loans / mortgages

22. In paragraph 121 of the Report, there was a discussion of the extension of the scope of the Directive to loans for building work not secured against a mortgage and the advisability of a Directive relating to mortgage was also considered.

23. While the Netherlands agreed that consumers need protection in this area, it preferred a code to legislation (as in the Netherlands). Some Member States (UK, Denmark) also did not feel that mortgage credit should be regulated at European level whereas others (Finland, Spain, France, Ireland, Austria), felt that it is particularly important to cover consumers in relation to housing loans; they have, therefore, included in their legislation loans for building work not secured against mortgage and support the suggestion of legislative intervention in the field of mortgage credit.³ Portugal and

3 Spain: separate Directive; France: modification of 87/102/EEC.

Sweden also welcome the suggestions of the Report. Iceland while supportive of the suggestions thinks, nevertheless, that more information is needed before deciding on the feasibility of a directive on mortgage credit.

24. Similarly, money advice and consumer groups felt that such loans should be included in the scope of the Directive and that only loans or credit agreements used to secure an interest in property should be secured against the property as it is inequitable that a default on an unsecured credit card agreement should result in the loss of a family home, as is possible in the UK. The Consumers in Europe Group pointed out that while some companies are deterred from offering cross-border mortgages by differences in legislation e.g. on property purchase, others do offer such mortgages and they therefore feel that consumers should be entitled to at least basic protection in this area (e.g. information on terms, availability of redress, a comparator⁴...).

25. The financial services industry were opposed to the regulation of mortgages in the Directive due to the differences in national legislation and the impossibility of establishing equal treatment in such conditions. They also pointed out that the Commission cannot regulate civil law e.g. property registration, repossession rules... Others stated that consumers doing renovation work will already have taken professional advice and do not therefore need protection, while protection will already have been provided in national legislation for certain aspects (notary, surveyor...). Loans for building work were felt to be an investment, not a consumer loan, irrespective of the security for the loan.

II.1.5 The list of exceptions in Article 2

26. In paragraphs 18 and 119-163, it was proposed to shorten the list of exceptions in Article 2 of the Directive. Generally, the UK and UK financial services industry opposed this idea as these are not considered as derogation but as rational and justifiable limitations to the scope of the Directive and as such have been included in the Exempt Agreements Order.⁵ Sweden on the other hand could support the Commission's proposal to examine - with the eventual aim of deletion - whether the derogation relating to agreements concerning credit repayable in four instalments is of interest to the Member States which have included it in their national legislation.

27. The Danish Consumer Council considers that most of the exemptions of Article 2(1) should be abolished as arbitrary.

28. Concerning "free credit", the Money Advice and Budgeting Service (MABS) of Ireland⁶, claiming that there is no such thing, would support an initiative to provide consumers with full details of free credit offers in order to allow them to make clear and valued decisions.

⁴ A yardstick enabling consumers to make comparisons.

⁵ The 1989 Consumer Credit (Exempt Agreements) Order made under section 16(5) of the Consumer Credit Act exempts certain credit agreements from the effects of the Act.

⁶ Established by the Department of Social Welfare to combat the problems faced by people who borrow from moneylenders.

II.2 Advertising targeted at young consumers

29. In paragraphs 22 and 171, the Report raised the issue of whether a Code of conduct for credit advertising targeted at young people is necessary. Legislation in certain Member States already regulates this issue.

30. Member States' responses varied from support (from Belgium, which already has such a code; Spain; France, which supports legislative measures of general character in this field; Austria, which supports the introduction of general provisions for the protection of young people going beyond advertising; Finland; Sweden, which feels that such a code should not be restricted to marketing activities aimed at the young) to opposition (the UK wanted evidence of the existence of problems and in any case preferred self-regulation by businesses in whose interest it is to act responsibly). The Netherlands, although it has a more protective legislation, does not think that advertising addressed to minors should be specifically regulated. Iceland, whose legislation contains a general provision to this purpose, supports the suggestions of the Report.

31. Financial and marketing organisations did not generally object to codes although some were not convinced of the need since banks would, in their own interest, limit risky behaviour by young consumers. Citicorp, in particular, believes that, with the exception of uniform disclosure requirements and misleading advertising provisions, any restrictions on credit advertising reduce transparency and constitute regulatory barriers that retard competition.

32. Consumer and money advice groups - with the exception of the Danish Consumer Council and MABS that support a code of good practice - felt that any regulation of the area should be by legislation rather than codes as, in not being respected, these legitimise abuses, and that any Code should be closely monitored for compliance. The Consumers in Europe Group felt that *all* consumers could benefit from such a code.

II.3 Obligation on consumers to give information and on professionals to give advice

33. In paragraphs 23 and 180, the Report raised the issue of the establishment of an obligation on the consumer to provide information (i.e. all particulars necessary for a credit transaction) and on the professional to provide advice (i.e. taking into account the consumer's financial circumstances).

34. There appears to have been some ambiguity on this point, with many industry groups fearing that 'advice' required them to give detailed advice, leading to information overload (or the need to give information on competitors' products⁷), conflict of interests and the possibility of negligence suits. The intention of the chapter was not to go so far; the word 'advice' was used in a general sense, meaning a reasonable level of advice to enable the consumer to make an informed decision, whether in a shop or a financial institution. The Report also made clear that any such information requirements must be *reciprocal*.

35. Member States pointed out various problems in that advice must be customised to each borrower's personal circumstances so that only general rules could be considered,

7 Although it should be noted that a recent Danish law apparently requires lenders to do just that!

although some Member States e.g. Belgium had already introduced such a requirement. Therefore certain Member States either are hesitant about or do not favour the establishment of such a reciprocal information obligation (Denmark, Germany, Austria, the UK). Others are either in favour (Spain, Portugal, Finland) or could go along with such a suggestion provided that the Commission's proposals become more specific (France, Sweden).

36. Financial services industry generally opposed the proposal (though perhaps due to a misunderstanding), stating that it would remove decision-making responsibility from the borrower, or that no such obligation was necessary as it would in any case be in the interests of the lender.

37. Consumer and money advice organisations welcomed the proposal but stressed that advice and information should be proportionate and emphasised the importance (as did several banks) of independent advice for consumers.

II.4 Rules on overdrafts (Articles 2.1e and 6)

38. Paragraphs 25 and 150 of the Report proposed the amendment of Article 6 of the Directive in order to cover credit lines linked to a card. At present, such credit (usually a credit line attached to a current account which can be accessed by a card) is unregulated either because it is repaid within 3 months or because national legislation does not consider such cards to be credit cards unless the credit to which it provides access is part of the same agreement.

39. Member States' responses varied from the situation in Belgium and Sweden, where this proposal has already been implemented, to the UK preference for new general rules to take into account developments in the market and to Germany which does not see the necessity for additional rules. A large number of Member States favour the adaptation of the Directive to the multitude of operations of credit cards (Denmark, Spain, France, Ireland, the Netherlands⁸, Austria, Portugal, Finland). Iceland on the other hand thinks that the issue should be further studied.

40. The financial services industry generally preferred to keep the status quo and pointing out difficulties in providing details of repayment schedules, whereas the consumer and money advice sector supported specification of the rules in relation to credit cards (e.g. costs, minimum amounts to be reimbursed, repayment schedules...).

41. Certain consumer groups on the other hand either support the abolition of Article 2. 1(e) so that credit in the form of advances on a current account is included in the scope (the Danish Consumer Council), or could go along with the proposal of the Report to further specify the rules governing credit cards (Consumer DebtNet, MABS).

II.5 Inquiry into consumers' circumstances before ordering repossession (Article 7)

42. In paragraph 188 of the Report, discussing repossession, it was considered advisable that courts be given the power to review the circumstances (financial and other) of consumers before ordering repossession of goods in order to avoid cases of unjust enrichment.

⁸ NL feel that only credit facilities whose duration exceeds three months should come into play.

43. While the Netherlands and several industry groups felt that this was a matter of subsidiarity, other industry organisations feared the US situation of 'individual bankruptcy' where lenders are unable to recover financed goods. The UK believes that national legislation handles quite adequately this issue, while Sweden, although sceptical of such an idea, nevertheless proposes the introduction of rules for determining the value of goods when they are repossessed and the cancellation of debts. In Iceland the situation is well regulated, but national authorities can go along with the idea of further guidance for courts.

44. Certain consumer and money advice organisations (The Consumer DebtNet network, the Danish Consumer Council, MABS), on the other hand, agreed with the proposal of the Report.

II.6 Early repayment (Article 8)

45. Paragraph 193 of the Report stresses the fact that early repayment provisions that give consumers the right to rescind ongoing credit agreements ahead of schedule, become more important in the context of monetary union.

46. Member States, with the exception of the Netherlands which felt that their legislation is adequate, did not make any comments on this issue. Iceland, too, thinks that its legislation adequately covers the matter.

47. Citicorp echoed the concerns of the financial circles emphasising that the possibility that contracts could be rescinded when the Euro is introduced would have a chilling effect on industry.⁹

48. Lastly, Money Advice and Budgeting Service recommend extension of early repayment rebates to mortgages.

II.7 Bills of exchange (Article 10)

49. In paragraphs 26 and 205 of the Report, it was proposed that bills of exchange should be prohibited.

50. Most Member States have already done so, but nevertheless there was some reaction to this proposal. Positive reactions were of course received from Member States whose legislation cover this issue to a varying extent: Belgium, Spain, France, Finland, Sweden; others were less enthusiastic (the Netherlands: no need for more harmonisation in this area), or negative (Austria, UK: no major problems with consumers so far, bills of exchange are a useful commercial instruments); the latter comment does, however, reveal a confusion: it is only the prohibition of bills of exchange for *consumer credit* which is considered and not the commercial instrument (with implications for international trade and existing agreements e.g. UNCITRAL...). Iceland took a negative stance, too.

⁹ It is recalled in connection with Citicorp's remark that 'there is an important difference between the right to early repayment and the principle of continuity of contracts. The former is applicable irrespective of the established currency, i.e. since the advent of the Euro, on 1.1.1999, a consumer discharging his/her obligations before the time fixed by the agreement shall have the right to an equitable reduction in the total cost of credit expressed in Euro. The latter means that the introduction of the Euro should not constitute a justification for the application of clauses permitting the creditor to unilaterally cancel a contract or modify its terms.

II.8 Subsidiary liability (Article 11)

51. Most Member States transposed Article 11 as drafted although some went further. Ambiguity has resulted from the term 'exclusively' - it could rule out the use of the Article if the supplier, for example, occasionally uses another creditor. In paragraph 213 of the Report it was therefore proposed, for the sake of clarity, to remove the word 'exclusively' from the text of Article 11.

52. Only four Member States responded on this point: the Netherlands stated that it is a matter of subsidiarity and civil law, whereas the UK, having recently decided after a review of their national legislation¹⁰, to maintain it as it is, felt that it did not experience the problem. Sweden and France on the other hand agree with the suggestions of the Report with the latter suggesting a modification of Article 11 so that it becomes less restrictive and clearer in meaning.

53. The FLA felt that this proposal, in conjunction with the proposals on the removal of the ceiling and the inclusion of business start-up finance, would create substantial contingent liabilities for credit grantors.

54. The Danish Consumer Council on the other hand agrees with the proposed amendment.

II.9 Creation of bodies authorised to receive consumer complaints (Article 12)

55. While Article 12 of the Directive allowed Member States three options for supervising the implementation of the Directive, the Report suggests, at paragraph 27 and 219, that the third of these options, the creation of bodies authorised to receive consumer complaints relating to consumer credit, should be made mandatory.

56. Certain Member States (Spain, France, the Netherlands, UK) felt that their existing mechanisms were adequate for the purpose of meeting consumer complaints; France, nevertheless, considers the treatment of cross-border disputes to be a priority. Sweden, on the other hand, expressed its support. As regards sanctions, Denmark could go along with the introduction of a framework-Article leaving Member States with a room for manoeuvre. Iceland was supportive regarding the creation of bodies and thinks that co-ordination is reasonable as regards sanctions.

57. The financial services industry felt that existing codes / voluntary arrangements were adequate and that subsidiarity dictates that individual States are best equipped to decide for themselves the complaint-settlement mechanism that best suits them.

58. Consumer and money advice organisations, on the other hand, supported the view expressed and felt that Member States should, in implementing EU legislation, be required to state which bodies would be responsible for its enforcement, and that sanctions were necessary for non-compliance.

59. The Commission is currently examining the exact application of Article 12 in the legislation of Member States as part of its remit to monitor the transposition of directives.

10 Section 75 of the Consumer Credit Act.

II.10 Cooling-off periods

60. As several Member States have introduced forms of cooling-off periods during which consumers may rescind certain types of credit agreements, paragraphs 29 and 266 of the Report proposed that the introduction - where possible - of a harmonised cooling-off period, and enforcement of such a provision, should be studied.

61. Certain Member States expressed misgivings that too general a cooling-off period for all transactions would make them more difficult and would add to the cost of credit and/or cause legal uncertainty (Germany, the Netherlands, Austria, UK). Others either could agree with the idea of a harmonised cooling-off period (Spain, France, Sweden) or thought that the matter needs further study (Denmark). This latter view is shared by Iceland, too.

62. Financial services industry stated that it would lead to unnecessary delays, rebounding on the consumer; that cooling-off periods were specific to the social and economic circumstances in each Member State; that it could not in any event apply to mortgage credit; and that it would provide unscrupulous borrowers with speculation opportunities.

63. Consumer organisations welcomed the move, for e.g. credit exceeding a prescribed amount.

II.11 Consequences of non-execution of consumer credit contracts

64. In paragraphs 30 and 267-270 of the Report, the consequences for consumers of the non-execution of credit agreements (default, penalties, recovery procedures...) were discussed and the need for better balance between parties was proposed. The Report stated that the Commission was examining the possibility of laying down ground-rules, for example in the shape of a code of conduct on debt recovery.

65. In order to have an in-depth knowledge of the problems related to the non-execution of consumer credit contracts, the Commission launched a study whose objective was to analyse the nature and adequacy of control instruments implemented by the 15 Member States in this area. The conclusions of the final report of the study, delivered in December 1996, are the following:

- a) in a general manner uncertainties and lacunae of Member States laws have been filled by jurisprudence to a limited extent;
- b) jurisprudence itself is not satisfactory when it comes to the protection of consumers' interests;
- c) there is a need for remedial action (specified in the study) at European level.

66. Member State responses varied from the Dutch reaction (subsidiarity) to the Finnish description of their existing rules in this area. Austria felt that a harmonised rule is necessary to protect creditors in the event of enforcement in other Member States, while the UK felt that national legislation is sufficient to deal with the problem effectively.

Moreover, other Member States either can support initiatives (Spain, Sweden ¹¹) or have no problems with them provided that they become more precise (France). Iceland on the other hand did not make any comments on the grounds that Commission's intentions in this area were not clear.

67. Financial services industry were divided on the subject of a Code of Conduct, with some groups supporting the idea (provided it had statutory backing) and others stating that it was not necessary as all Member States had different rules on the subject.

68. Money advice and consumer organisations felt that a Code of conduct is urgently needed and called for transparent recovery procedures. The Consumer DebtNet and MABS, although agreeing with a code of conduct as regards recovery practices, are sceptical about assignment of wages and squarely oppose any penalties or interest on arrears in the event of default.

II.12 Usury

69. Usury has been debated in many Member States in recent years. In paragraphs 31 and 297 of the Report, it was suggested that debate should also take place at Community level, particularly in the context of monetary union, since any rules, if they were felt to be necessary, would then be at Community level.

70. Member States' responses were divided, ranging from the Dutch view that any problems can be solved by fixing maximum rates at national level, to the UK conclusion, having abandoned national rates, that they do not work. Some Member States share to a large extent the views expressed in the Report (Spain, Ireland ¹², Portugal, Finland), whereas others, although supportive, believe that the introduction of Community-wide maximum interest rates is difficult (Sweden) or not realistic (Germany). Denmark and France, on the other hand, think that the introduction of Community rules on usury should be avoided. Iceland is generally supportive of the Report's suggestions.

71. BEUC agreed that the subject should be discussed and legislated for at European level, defining a maximum rate. This idea was also shared by MABS which further suggested that the ideal source of credit for low-income families would be small loans offered by Community Banks and Credit Unions. Others, both consumer and industry groups, also welcomed a debate at Community level.

72. Financial services industry, in general, however, advised against the imposition of maximum rates, at national or Community level, for reasons varying from the lack of competence of the Commission to do so to a desire to see a flexible approach which would not cause distortions in the market, and the need to let banks charge rates which reflect the risks. The FLA stated that European debate would be "a waste of time and resource (sic)".

11 Sweden also suggested rules concerning the lender's right to premature payment along the lines of the Swedish Credit Act.

12 Ministry of Social Welfare.

II.13 Credit intermediaries

73. In paragraphs 32 and 302 of the Report, it was announced that a study would be commissioned on the subject of credit intermediaries in order to determine whether or not the rules designed to protect consumers are being effectively enforced.

74. The Member States that made comments (France, Sweden, UK, Spain) generally supported the idea of a study. Spain even favours the creation of a register of credit intermediaries. Iceland is supportive of a study, too.

75. Some respondents expressed interest in this study and stressed the need to reinforce and adapt existing systems to catch all types of "lenders". The Danish Consumer Council believes that there is a need to impose on credit intermediaries the same information requirements as are imposed on credit providers. The British Bankers' Association also suggested that if problems exist in this field in other Member States, it might well make sense to extend to them provisions concerning advertising or licensing, as in the United Kingdom.

76. The main conclusion of the final report of the study, delivered in July 1996, is that credit intermediaries play an undoubtedly useful role, but are often criticised for certain malpractice (lack of correct information to consumers, misleading advertising, usurious interest rates, encouragement to over-indebtedness, etc.). As a result, there is a need at Community level for remedial action; the study makes certain recommendations to that effect.

II.14 Data Protection

77. The Report discussed credit-scoring and credit-referencing in paragraphs 303 - 338. Many Member State responses simply described their national systems / legislation, while others specifically agreed with the statement in the Report that it will be up to Member States to apply the provisions of the framework Directive on the protection of personal data in these areas. The Commission therefore took no particular stance on this subject, other than to describe certain concerns.

78. Consumer and money advice groups shared the concerns about parameters for the use of such data, with the Money Advice Association describing them as "economic criminal records" and stating that remedies for abuse / misuse are "minimal and ineffective".

79. Other responses were varied, ranging from advocating voluntary approaches to welcoming more use of credit-scoring. CGER, the Belgian *Caisse Générale d' Epargne et de Retraite* expressed a preference for negative *centrales*¹³ but opposed the "raising of *centrales* to a European level" while Eurofinas called for a "Europe-wide system of credit-referencing, suitably regulated and controlled".

II.15 Guarantors

80. The Report discussed guarantors in paragraphs 339-345. A guarantor is a third party to a credit agreement, who provides security for the loan, accepting liability in the

¹³ Credit information centers that keep records on consumers' solvency.

event of default by the borrower. As they quite often have less legal protection than the borrower (frequently a friend or relative), and are not covered by Directive 87/102, several Member States have introduced different forms of protection for guarantors. The Report proposes extending to guarantors certain information obligations provided for in the Directive.

81. In their responses to the Report, certain Member States (Austria, Finland) described their national legislation on aspects such as the creditors' obligation to inform the guarantor, or rules governing the degree of affinity. Other Member States (Denmark¹⁴, Spain, France¹⁵, Sweden) along with consumer and money advice organisations supported the Commission's idea of extending certain protections in the Directive to guarantors. The UK thinks that national legislation, coupled with codes of conduct, is enough to tackle any problems. Iceland is supportive of the Report's proposals, too.

82. Financial services industry opposed any moves in this area, pointing out variously that guarantees, not being credit, cannot fall within the scope of a measure regulating consumer credit; that rules of banking secrecy which prevent disclosure to third parties (i.e. the guarantor) of the details of the loan contract; and subsidiarity while stating that their national legislation / Codes of conduct dealt effectively with the situation.

II.16 Over-indebtedness

83. In paragraphs 35 and 364 - 383 of the Report, the subject of over-indebtedness, of increasing concern to Member States in recent years, was described. The Report proposed that the Commission would study the application of the rules on over-indebtedness in Member States, non-regulatory mechanisms which might be proposed, and the need for European intervention, taking into account the principle of subsidiarity.

84. Various Member States, in their responses, described their national systems for regulating over-indebtedness, including the Irish system where the Government tackles the problem at local community level, providing consumers with budget-planning training and access to credit. Several Member States pointed out that wider social problems are involved in over-indebtedness, but the Netherlands stated that it would be justifiable to include provisions in the Directive under which Member States would be obliged to set out measures preventing credit limits from being exceeded. Others supported the proposals made in the Report (Spain, Portugal, Sweden). The UK, on the other hand, felt that the Consumer Credit Directive is not the "appropriate means of promoting wide-ranging social policy initiatives" whereas France thought that it is a subject falling within the competence of Member States. Lastly Iceland, although not disagreeing with the idea of a study of the situation in Member States, could not encourage a Community-wide intervention.

85. Several industry groups referred to subsidiarity, with the Banking Federation stating that "Commission action should be limited to facilitating the exchange of information among interested parties". Bankenfachverband stated that debt is an international but not a cross-border problem, which lies "far outside the scope of

14 The Danish Consumer Council also wishes the total ban of global sureties.

15 France in fact supports a more radical proposal suggesting that guarantors should enjoy the same level of protection as debtors.

consumer credit" and so should be "removed from the scope of the Commission's deliberations".

The Savings Bank Group, though also recommending subsidiarity, made concrete recommendations to provide dependable and responsible advice on credit, an information campaign for consumers on the responsible use of money, awareness of the need for regular savings and "suitable individual solutions and assistance when there is over-indebtedness".

86. The Danish Consumer Council supported the idea of a study. Certain money advice organisations (MABS and the Consumer DebtNet) support the ten fundamental points drawn up by the Consumer Law Group which, inter alia, include better information, the setting up of independent authorities to assist over-indebted households, free legal proceedings, etc.

III. GENERAL ISSUES

87. Many respondents stressed the need for effective transposition and adequate monitoring of national provisions - the UK stated that it hoped that the Commission would "explore the adequacy of enforcement and ensure that adequate national machinery is introduced to make sure that the existing legislation is being properly enforced".

88. Concerning the **general orientation of the Report** (the need to achieve Community-wide harmonisation in the domain of consumer credit) some Member States were supportive (France, Ireland, Spain, Portugal, Finland), but others (Denmark, Germany, the Netherlands), evoking the principle of subsidiarity and/or the small volume of cross border activity, discouraged such an idea.

89. On the consumer side, one should note the Danish Consumer Association's general remarks concerning the need to introduce objective criteria on the circumstances in which a creditor can unilaterally alter the nature of a contract (interest rate, charges, etc.), the need to adopt more stringent provisions concerning the creditor's ability/obligation to better assess the borrower's financial situation, the obligation to inform consumers of the reasons why their applications are turned down and finally the legal basis for the proposal for a Directive. The Swedish Consumer Agency (*Konsumentverket*) on the other hand suggested that an amended version of Directive 87/102 should take on board certain provisions of the Swedish Consumer Credit Act (clear indication of the cash price and credit charges in credit offers, conditions under which interest rates may be altered and information thereof).

90. Since most banking organisations opposed various proposals on the basis of subsidiarity and the essential freedom of choice of consumers and the freedom of the parties to the contract, it is worth mentioning the view of Consumer DebtNet that it should also be stressed that for millions of citizens of the EU living in poverty, freedom of choice is a luxury which they cannot afford.

91. Concerning the **wider legal issues raised by the Report** as regards minimal clauses, harmonisation, "general good"...., the American Chamber of Commerce and Citicorp support the establishment of a true internal market for consumer credit services to be achieved by (a) the total harmonisation at the Community level of certain national consumer credit rules thus pre-empting new national rules that address the same issues (cooling-off, information to consumers, etc.) and - where total harmonisation proves impracticable - (b) the application of the mutual recognition principle to compliance with

consumer credit regulation thus excluding the invocation of the "general good" exception in this area. The Banking Federation, on the other hand, stated that the main obstacle to cross-border transactions is in fact the minimum clause since the wide divergence of national legislation leads to a lack of consumer confidence on the one hand and legal uncertainty for credit providers on the other.

92. Regarding the form of the contract and the possibility of its standardisation, Citicorp, taking stock of US experiences, favours some form of non-compulsory model contracts that would not stifle the freedom of banks to develop new products tailored to the needs of consumers.

93. Some of the negative responses to the Report arise from misunderstandings e.g. some people felt that a discussion of payment cards in the Report amounted to a proposal to include them in the scope of the Directive - this was never the intention.

IV. ASSOCIATED ACTION

94. In addition to the consultation process the Commission has launched a number of studies on issues raised in the Report, cf. the studies already carried out on non-execution of contracts and intermediaries. These studies, covering advertising addressed to young people, the feasibility of subjecting mortgage credit to the measures included in Directive 87/102/EEC, usury, data protection, remote banking, and financial services and door-to-door selling will be carried out in the course of the first 6-8 months of 1997.

V. THE COMMISSION GREEN PAPER AND COMMUNICATION ON FINANCIAL SERVICES

95. Furthermore, the review process of the 1987 Directive cannot be isolated from activities in parallel domains.

The Commission published a Green Paper on "Financial services: meeting consumers' expectations"¹⁶ in May 1996 and, as follow-up to this Green Paper, a Communication on "Financial services: enhancing consumer confidence" in June 1997.¹⁷ The latter sets out the results of the consultation on the Commission's Green Paper and provides the Commission's response. The Communication emphasises the importance of credit intermediaries and the conclusion of the review process on Directive 87/102/EEC; in this context it draws special attention to two of the issues involved in this process, namely mortgage credit and over-indebtedness.

¹⁶ COM(96) 209 final of 22 May 1996.

¹⁷ COM(97) 309 final of 26 June 1997.

VI. ANNEXES

Annex 1: Reactions to the Commission Report on Directive 87/102/EEC

A. Countries

Country	Response
B	25.03.96
DK	30.05.96
D	02.08.95
EL	24.07.96
ES	05.07.96
F	24.07.96
IRL	26.02.06
IT	10.07.96
LUX	12.03.96
NL	15.02.96
Ö	02.05.96
P	16.07.96
SF	11.04.96
SV	05.07.96
UK	07.11.95
ISL	21.6.96
N	23.1.96

B. Financial services industry

Financial services industry	MS	Response
Associazione Bancaria Italiana (M. E. Granata)	<i>IT</i>	Speech 22.04.96
Bankenfachverband (Wacket, Schirnding)	<i>D</i>	Position Paper 12.10.95
Barclays (Mr Andrew MacThomas)	<i>UK</i>	Position Paper 25.10.95
Bayr. Hypotheken und Wechsel-Bank (Dr. H. Bruchner)	<i>D</i>	Speech / Paper 22.04.96
British Bankers' Association (Mr. Geoffrey Cooke)	<i>UK</i>	Position Paper 13.10.95 Speech 22.04.96
CCCS (Mr Malcolm Hurlston)	<i>UK</i>	Speech / Paper 22.04.96
CGER (M. Thierry Maniquet)	<i>B</i>	Speech / Paper 22.04.96
Citicorp (Clint Walker, Peter Kerstens) R. J. Srednicki	<i>EU</i> <i>Intl</i>	Draft Comments 03.10.95 Position Paper 13.11.95 Speech / Paper 22.04.96
Comité Consultatif Conseil National du Crédit	<i>F</i>	Doc 95.39 20.09.95 Doc CC 95.56 14.11.95
Credit Card Research Group (Ms Elizabeth Phillips)	<i>UK</i>	Position Paper 26.10.95
Deutscher Sparkassen und Giroverband (Dr. Berndt)	<i>D</i>	Letter 07.11.95
Eurofinas (Mr. Baert) Mr. Hopkin	<i>EU</i> <i>UK</i>	Position Paper 12.09.95 Speech / Paper 22.04.96
EUROGIRO (Mr John Baden)	<i>EU</i>	Response 11.12.95
Europay International (Mr. Goosse)	<i>EU</i> <i>Intl</i>	Letter 21.08.95
European Association of Co-operative Banks (Mr Ravoet)	<i>EU</i>	Letter 14.03.96
European Federation of Building Societies (Mr Zehnder)	<i>D</i> <i>EU</i>	Position Paper 18.12.95
European Federation of Leasing Companies (Mr. Baert)	<i>EU</i>	Position Paper 19.09.95
European Mortgage Federation (Ms Lambert / Ms Hardt)	<i>EU</i>	Memorandum 22.11.95
European Savings Bank Group (Mr De Noose)	<i>EU</i>	Position Paper 27.11.95
Federation Bancaire (Mr. Bömcke)	<i>EU</i>	Letter 17.10.95

Finance and Leasing Association (Mr Cronin)	<i>UK</i>	Letter 01.09.95 Briefing 06.10.95
Federation Royale des Notaires Belges (M. Deckers)	<i>B</i>	Letter 29.01.96
Finansbolagens Förening (Mr. Hakan Broman)	<i>SV</i>	Letter 21.09.95
Nederlands Associatie voor Direct Marketing, Distance Selling ... (Mr. Geertman)	<i>NL</i>	Comments 21.09.95
The EU Committee of the American Chamber of Commerce (Mr. Seddon-Brown)	<i>EU Intl</i>	Position Paper 14.11.95
Zentraler KreditAusschuss (Mr Fischer)	<i>D</i>	Position 07.11.95

C. Consumer organisations

Consumer Organisations	MS	Response
BEUC (Ms. K. Schweren)	<i>EU</i>	Speech / Paper 22.04.96
Consumer DebtNet (Ms Joan Conlin)	<i>EU Intrl</i>	Position Paper 18.3.96
Consumers in Europe Group (Mr. Stephen Crampton)	<i>UK EU</i>	Submission to House of Commons Select Committee 03.10.95
Credit and Debt Policy Group / Threshold (Ms Mary Higgins)	<i>IRL</i>	Letter 31.01.96
Money Advice Association (Mr Norman Laws)	<i>UK</i>	Position Paper 9.01.96
St. Vincent de Paul (Mr Liam O'Dwyer)	<i>IRL</i>	Position Paper 11.01.96
Forbrugerrådet (Mr Ole Just)	<i>DK</i>	Position Paper 14.06.96
Conseil National du Credit - Comité Consultatif	<i>FR</i>	Position Paper 19.9.95
Money Advice and Budgeting Service - MABS (Ms Maura Dowling)	<i>IRL</i>	Position Paper 26.8.96

**Annex 2: Resolution of the European Parliament on the Commission
Report on the operation of Directive 87/102/EEC**

The European Parliament,

- having regard to the Commission's report (COM(95)0117.- C4-0185/95),
 - having regard to the motion for a resolution, pursuant to Rule 45(2) of the Rules of Procedure, by Mr Vitorino on the protection of citizens who take out loans (B4-0553/95)⁽¹⁾,
 - having regard to the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters¹,
 - having regard to the 1980 Rome Convention on the Law Applicable to Contractual Obligations⁽²⁾,
 - having regard to the 1988 Lugano Convention⁽³⁾,
 - having regard to the report of the Committee on Legal Affairs and Citizens' Rights and the opinion of the Committee on the Environment, Public Health and Consumer Protection (A4-0010/97),
- A. whereas the Commission report is of broad scope, since it covers not only implementation of the Directive but also foreseeable trends on the credit market,
- B. whereas the credit market is rapidly expanding in the Union,
- C. whereas, without prejudice to the concept generally accepted in the European *corpus juris* and solely for the purposes of consumer credit, a new concept of the citizen as consumer should be introduced with a view to extending consumer protection to legal persons such as small undertakings which, in the exercise of their contractual rights, find themselves in a position of objective imbalance comparable to that between small savers and lending institutions,
- D. whereas the limits now imposed on and the costs incurred in cross-border transactions prevent citizens, as consumers, from benefiting from greater opportunities to choose and more competitive prices,
- E. whereas there is a need to guarantee compliance with the rules of free competition in the internal market and whereas consumers must have the right to choose, and to change without incurring a penalty, between different products and suppliers,

⁽¹⁾ OJ C 189, 28.7.1990, p. 2 (in its latest version).

⁽²⁾ OJ L 266, 9.10.1980, p. 1.

⁽³⁾ OJ L 319, 25.11.1988, p. 9.

- F. whereas, given the current state of development of the internal market and the subsidiarity principle, the effectiveness of Community legislation and the role of the Community institutions should be considered,
- G. whereas the effective exercise of freedom of choice and real diversification of supply will make efficient instruments of consumer information and education increasingly necessary, so as to enable consumers to play an active role,
- H. whereas, furthermore, effective free competition in a European credit market will involve diversification of supply, proliferation of suppliers and better dissemination of services between suppliers operating and living in the various regions of the Union,
- I. whereas in the transition to the single currency - particularly in the three or so years of the conversion phase - the principle of contractual continuity will be essential to safeguard the required stability of the financial markets; whereas the welcome prospect of a single currency will call for fuller discussion of the desirability of adopting new, uniform, Union-wide legislation applicable to the whole credit industry;
- J. whereas Union responsibilities in the field of consumer credit are in parallel with and complement the policy pursued by the Member States, in order to protect the safety and economic interests of consumers; whereas, moreover, Community law on consumer credit has helped to encourage the adoption of national legislative measures; whereas the Community will need to take action for:
- the completion of the internal market;
 - protecting the health, safety and economic interests of consumers;
 - the provision of adequate information;
 - a high level of protection (Article 129a of the EC Treaty),
- K. whereas the articles establishing the four fundamental freedoms are today directly applicable; whereas, under the law as it now stands, the Community approach will help to attain a high level of consumer protection by means of measures adopted as part of completion of the internal market; whereas credit policy in the narrow sense is still a matter for the Member States, without prejudice to the obligation of complying with Community law,
- L. whereas the rule laid down in Article 129a of the EC Treaty, in conjunction with Articles 2, 3, and 3b, entitles the Community to intervene by exercising general 'powers of guidance', specifically by charting the objectives to be attained, adopting measures providing for at least some degree of harmonization, and encouraging cooperation among the national authorities concerned,
- M. whereas Article 100a of the EC Treaty is the appropriate legal basis for harmonization measures which have as their object the establishment and functioning of the internal market,
- N. having regard to the powers conferred on the Community institutions under the third pillar,
1. Believes that the Union should employ every legal means provided by the Treaties in order to enable a European credit market to come into being;
 2. Believes that the Union should while upholding the principle of subsidiarity pursue a legislative policy with a view to adopting general rules governing the European credit market in the medium term, laying down standards for expansion of the market without neglecting the need to protect consumers' interests, while also stimulating free competition;

be carefully assessed:

4. Considers that consumers generally do not simply need more protective legislation, but rather legislation that will encourage them to play an active role, and protect their right freely to seek and receive the information that will enable them to act in conditions of contractual equality;
5. Opposes, however, - to prevent disadvantages for the consumer - the Commission proposal to extend the scope of the consumer credit directive to include loans for renovation and modernization work that are not secured by mortgage, since these could then no longer be offered on the (compared with consumer credit, more favourable) interest terms for mortgage loans, or the consumer would have to bear extra costs for the creation and registration of mortgages;
6. Takes the view that every opportunity for setting up national authorities or Ombudsmen of any kind should be looked into, and favours encouraging the maintenance and development of simple and efficient arbitration and court procedures to safeguard consumers' rights, taking into account the importance of cross-border legal disputes;
7. Voices its conviction that self-regulation systems could enable specific standards to be adopted but could not resolve all the existing problems;
8. Stresses that measures to standardize agreements on the basis of voluntary, flexible codes of conduct would be of use if, and only if, variety of supply and the possibility of choice available to the consumer were not adversely affected;
9. Considers that encouragement should be given to all the various means of creating a mutual obligation whereby every contracting party would have to provide accurate, complete, and truthful information;
10. Considers that all forms of advertising and promotion should be the subject of more detailed provisions on such aspects as the content, indication of the nature of the product, the requirement to include instructions, and limits and safeguards on advertising aimed at children, provided that such standards are not already included, or capable of being included, in other specific legal acts;
11. Considers that, in the case of loans for the purchase of consumer goods, debtors should be permitted to exercise the option of early payment, without incurring unwarranted and unnecessary administrative costs;
12. Believes that national rules on the recovery of goods in the event of non-performance of a contract and on the joint and several liability of the creditor and the supplier must be harmonized to the extent shown to be necessary and compatible with the principle of subsidiarity;
13. Considers that the entitlement to benefit from a specified cooling-off period when concluding credit agreements to finance consumer goods should be guaranteed under uniform arrangements and time periods throughout the Community ;
14. Points out that practices such as assignment of credit, the use of securities as collateral and insurance to cover remaining debt should respect the principles of freedom to enter into contract, privacy of contract and legal certainty;

15. Considers that Community measures should prevent phenomena such as indebtedness through consumer information and education; secondly, that credit institutions must be allowed the opportunity to obtain information about a customer's solvency, provided that the law on the right of privacy is respected;
16. Supports the Commission's intention to examine whether and to what extent there are problems in consumers' dealings with credit intermediaries; points out that account needs to be taken of factual differences in comparison with the first-time borrower when extending certain commitments laid down in Directive 87/102/EEC to guarantors and sureties; draws attention to the fact that credit advances in connection with the issue of a credit card are already, notwithstanding the present variety of definitions in this area described by the Commission report, covered by the scope of Directive 87/102/EEC under Article 1(2)(c);
17. Is of the opinion that Community rules should not be adopted to harmonize credit secured by mortgage, because mortgage credit is inseparably connected with security and application procedures, which differ greatly between Member States; European-level regulation of mortgage credit would mean approximating the security and application rules of the Member States at the same time, and hence ultimately EU-wide harmonization of the national civil law provisions;
18. Notes that the most effective way of tackling usury - a disease of a market dominated by the supply side - with any guarantee of success is, in addition to a fully operational market, better consumer information, education and protection and tighter control by the national authorities of the institutions and agencies supplying credit;
19. Underlines the importance of providing effective conciliation and pre-judicial procedures, in so far as these may play a vital role, especially in cross-border disputes, since they are supplementary and capable of preventing costly legal proceedings to establish jurisdiction;
20. Believes that developing and acting on all possible ways of limiting the costs to contracting parties clearly constitutes a priority;
21. Considers, finally, that the best means of protecting individuals is to establish a system guaranteeing freedom of choice under conditions of free competition;
22. Calls on the Commission to brief Parliament regularly on the findings of the different studies and research projects commissioned and to notify Parliament as soon as possible, without allowing this in any way to obstruct the preparation of legislative proposals, of its position on the views adopted in this House on legislative policy;
23. Instructs its President to forward this resolution to the Council and the Commission.

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