

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(79) 69 final

Brussels, 23 February 1979

PROPOSAL FOR A COUNCIL DIRECTIVE RELATING TO THE
APPROXIMATION OF THE LAWS, REGULATIONS AND ADMINISTRATIVE
PROVISIONS OF THE MEMBER STATES CONCERNING CONSUMER
CREDIT

(presented by the Commission to the Council)

COM(79) 69 final.

Explanatory memorandum

I. General

1. Credit taken out by consumers to meet private needs has always been given special attention by the Member States. In general it is accepted that a consumer who takes out credit has to be protected against unfair conditions of credit. The consumer's greater need for protection in the field of consumer credit in comparison with cash payment agreements arises from two factors; firstly, the consumer enters into payment obligations which he normally cannot meet immediately on conclusion of the contract, but needs a lengthy period to settle. The financial commitment thus normally represents a considerable burden on the consumer. Secondly, the consumer needs protection because he needs money and is therefore more inclined to accept the credit terms of anyone who is prepared to make that money available. In return, the consumer commits himself to periodic payments in the future, without being able to be absolutely certain that certain circumstances such as sickness, unemployment or family circumstances, will not prevent him from discharging his payment obligations on time and in accordance with the agreement.

2. The consumer needs protection both in the case of traditional forms of credit, in particular instalment purchases and loans for a specified purpose, and of forms of credit which have only recently become widespread or which have become available to new categories of consumers, such as credit granted by means of a credit card, overdrafts and advances on current accounts. Even with these last mentioned forms of credit, the consumer enters into a commitment, the fulfilment of which is dependent on uncertain future developments in his personal and economic situation.

II. The legal position in the Member States

3. The laws of a majority of the Member States do not deal with consumer credit as a whole, but regulate various aspects of the overall question, in particular purchases on deferred terms and similar agreements. In several Member States there are plans to adapt the laws hitherto in force to the latest developments in consumer credit.
4. In Belgium, a law adopted in 1957 and amended in 1965 governs many of the questions connected with consumer credit. The law covers purchases on deferred terms and loans for the acquisition of goods or services. It lays down that such agreements must be in writing, requires certain particulars to be indicated in the agreement and grants consumers a right of cancellation in certain cases.
5. In France, several laws and decrees adopted since 1955 lay down rules governing advertising, maximum permissible interest rates and information to be passed on to the consumer with regard to consumer credit. These provisions have been adapted to current developments on several occasions. A law of 10 January 1978 lays down rules for informing and protecting the consumer in the field of certain credit operations.
6. In Luxembourg, two laws of 1961 and 1965 govern purchases on deferred terms. These laws lay down that agreements for the purchase of goods on deferred terms must be in writing, govern the duration of the credit and grant the consumer a period of two days in which to exercise a right of cancellation.
7. In the Netherlands, the 1972 law "op konsumptief geldkrediet" governs consumer credit. This law requires credit agreements to be in writing, and prescribes particulars which must be contained in the agreement with the consumer. It prohibits door-to-door canvassing by creditors and contains several other provisions to protect the borrower. Purchases on deferred terms are governed specifically by the law on purchases on deferred terms of 1961.

8. In Germany, the version of the law on purchases on deferred terms, which has applied since 1974 covers the purchase of goods on deferred terms and similar agreements. The law lays down that the intentions of the purchaser must be expressed in writing, grants the purchaser a right of cancellation within one week, and contains various other provisions to protect the purchaser. It does not apply where the purchaser is a registered business.

9. In Italy, the general provisions of the Codice civile apply to consumer credit.

10. In Denmark, loans and similar transactions are governed by the general laws. Purchases on deferred terms are covered by a special law which regulates details of the conclusion and content of the agreement, the question of a deposit and repayment before the due date and similar questions. A reform of the law has been in preparation for a long time.

11. In Ireland, laws of 1946 and 1960 regulate purchases on deferred terms and various legislation governs loans and similar agreements. In the case of purchases on deferred terms, the agreement must be in writing and contain certain particulars which are important for the consumer. Preparation is being made for the law to be reformed.

12. In the United Kingdom, the Consumer Credit Act, which covers all forms of consumer credit, has been in force since 1974. The Act, which in parts has still to be supplemented by implementing orders, provides for a general licensing system for creditors, regulates the form and content of credit agreements above and below a certain value, advertising and the business practices of creditors and the rights and duties of the parties to the agreement, and contains provisions on the performance of the agreement.

III. Observations on the Directive

1. General

13. The present Directive is based on Article 100 of the EEC Treaty. The differences between the various laws of the Member States on consumer credit directly affect the functioning of the common market.

14. One of the tasks of the Community is to promote a harmonious development of economic activities and an accelerated raising of the standard of living of its population. Variations in the extent of consumer protection from one State to another hinder or prevent the attainment of these objectives. A consumer who knows that he is protected by law against unfavourable credit conditions will also be more inclined to take out credit to meet his needs than a consumer who does not enjoy this cover. The fact that there are differences between the various laws therefore influences the volume and type of credit taken out by consumers and thus hinders harmonious development throughout the Community.

These differences also affect free competition between creditors. While interest rates may differ between Member States, provisions on advertising, the form and content of credit agreements, the right of cancellation, questions of liability also have an effect on the creditor's costing and thus contribute, especially in the border areas between several Member States, to differing offers of credit to the consumers. Competition which is protected from distortion is one of the fundamental principles of the common market.

15. On 14 April 1975, the Council of Ministers of the European Communities adopted the "Preliminary Programme for a consumer protection and information policy"¹. Points 18, 19 (i), 20 and 21 of this Programme provide that priority should be given to adopting Community measures to harmonize the general conditions of consumer credit and to protect the

¹OJ No C 92, 25.4.1975, p.1

consumer from unfair conditions of credit.

16. The Proposal for a Directive carries out this task. It attempts to cover as far as possible all forms of consumer credit. It has been found that it is not rare for a particular form of consumer credit such as purchases on deferred terms to be viewed less favourably by the creditor because it is governed by legal provisions, unlike other forms of credit which are not regulated under law, or are only partly regulated. Thus, protection of the consumer, which is the aim of the law, is often not attained.

17. The Proposal for a Directive sets out minimum provisions concerning consumer information and protection. The purpose of the provisions on consumer information is to increase market transparency and make it easier for the consumer to select the most favourable offer from among those made by various creditors. They should also enable him to become acquainted with the various contractual rights and obligations before the conclusion and during the currency of the agreement and as a result to adopt an appropriate course of action. The provisions which are aimed more at protecting the consumer are intended to produce a balance in the overall conditions of the agreement so that it takes account of his interests.

18. Since the views of the Member States on the extent to which protection is necessary differ and are dependent on many economic, financial and social considerations and considerations of social policy, the provisions of the Directive can only be minimum provisions for the protection of the consumer. Member States must be allowed to adopt more stringent provisions if they consider them necessary for the protection of the consumer.

19. A working party of governmental experts from the Member States set up by the Commission has discussed the various versions of the Proposal for a Directive on numerous occasions since 1974. The interested business associations of industry, trade, banks and insurance companies and trade unions and consumer organizations have had the opportunity of expressing an opinion on the drafts. The Commission's Consumers' Consultative Committee has also worked on the drafts and prepared an opinion. Many national associations have also submitted their views on the drafts in writing or in discussions with the Commission departments concerned.

20. Since the implementation of the Directive would result in changes in laws in several Member States, consultation of the European Parliament and the Economic and Social Committee is necessary (second paragraph of Article 100 of the EEC Treaty).

2. Explanatory notes on the individual Articles

Article 1

This Article lays down the scope of the Directive. Subject to the exceptions under Article 2, the Directive covers all credit agreements between a consumer and a creditor. Its provisions apply mutatis mutandis to agreements between a person arranging credit and a consumer (paragraph 4), since the consumer's need for protection and information is just as great as in the case of an agreement with a creditor.

The definitions of "consumer" and "creditor" have been kept general, to give the Directive the widest possible scope. Only natural persons are considered to be consumers. The term "creditor", however, covers both natural and legal persons and groups of such persons insofar as they grant credit in the course of a commercial activity or business.

The definition of "credit agreement" is also broad. It is intended to cover both credit agreements for the supply of goods or the provision of services on credit, and loans, overdrafts and other forms of consumer credit. The definition also covers credit cards issued by a finance institution, a department store or other issuer in the form of a permit, card, etc., which entitles the consumer to acquire goods, services or cash on credit from the issuer or a third party.

Interest and all charges must be taken into account when calculating the "effective annual rate of interest". Opinion on which of these charges should be included in the cost of the "credit" varies from one Member State to another. It is essential to achieve a uniform rule for the Community, for example through the drawing up of a single mathematical formula. However, this harmonization is not possible at present. The calculation of the effective annual rate of interest and the decision as to which individual charges should be included in the calculation must therefore be left to the Member States.

Article 1(3) provides that an agreement for the supply of goods or the provision of services on credit should be regarded as a credit agreement even where the credit agreement with the consumer is contained not in the agreement for the supply itself, but in a legally separate agreement; if the agreement for the supply of the goods or services itself contains a credit agreement, it is covered by Article 1(2)(c). Article 1(3)(a) covers those cases in which the credit agreement is concluded between the consumer and the supplier himself.

Article 1(3)(b), however, covers those cases in which the consumer has concluded a credit agreement with a creditor other than the supplier. In this case the consumer, from a legal point of view, pays cash to the supplier for the goods or services supplied, so that normally there is no reason to regard the agreement between the consumer and the supplier as a credit agreement. The position is, however, somewhat different where the creditor co-operates with the supplier with regard to the agreement for the supply of goods or services. In this case the legally separate agreements between the consumer and the supplier and the consumer and the creditor respectively are connected by the commercial co-operation between the supplier and the creditor. It is, therefore, necessary to consider the supply agreement as a credit agreement in this case also, a fact which among other things has an effect on the content of the agreement (Article 6). In any event, the credit agreement falls within the scope of Article 1(2) (c) in this case.

The question of whether such co-operation exists between the supplier and the creditor depends on the circumstances of the individual case. Article 1(3)(b) does not, however, relate to detailed circumstances, which the consumer would often have difficulty in recognizing, but to the objective criterion of co-operation. A general co-operation agreement between the supplier and the creditor suffices; it is not necessary for the agreement to relate to a certain contract specified in detail.

Article 2

This Article covers cases not falling within the scope of the Directive. Article 2(1)(a) essentially excludes credit secured on immovable property from the scope of the Directive. It is true that the consumer does need protection in this field, since in most cases the amount in question is very considerable. The problems connected with credit secured on immovable property are, at the moment, so specific, and national provisions and practices are so different, that it would appear more appropriate not to include provisions on the protection of the consumer in that field in this general framework for consumer credit.

Article 2(1)(b) stipulates that hiring agreements are not included in the scope of the Directive. Where, however, it is a question of an agreement under which title to an item of hired property is transferred to the consumer at the end of the contractual period, the agreement does come within the scope of the Directive, because in this case the consideration to be paid by the consumer is not for the mere use of the property.

Article 2(1)(c) excludes from the scope of the Directive agreements of short duration, where the danger of a disadvantage to the consumer is minor.

Given the specific nature of the overdrafts which are granted or accepted by financial institutions, it seemed appropriate to group all the provisions concerning them in Article 8 (Article 2(1)(d)).

Article 2 paragraph 1(e) institutes a procedure which permits exclusion of credit agreements above or below a certain value from the scope of the directive. In the case of credit for small amounts, it might be inappropriate to require, for example, the conclusion of a written agreement.

Article 3

This Article lays down the minimum information that must be given in advertisements where a creditor or a person arranging credit quotes figures or percentages. The provision is designed to ensure that the consumer is not misled by data selected at random relating to the cost of or interest charge for the credit.

Article 4

This Article allows Member States to prohibit unsolicited canvassing of the consumer to induce him to conclude one of the credit agreements governed by the Directive, and in particular loan agreements. Such business practices can be particularly unfair on the consumer because he is not prepared for the visit and has no opportunity to compare the offer made to him with other credit offers. The consumer is also in need of protection even if he already has a business relationship with the creditor, for example if he holds a bank account with him.

Article 5

The purpose of this provision is to ensure that the consumer is given an opportunity, before he starts to negotiate the agreement with the creditor, to acquaint himself with the terms on which he may obtain credit. The consumer can thus compare the creditor's offer with other offers and thus decide freely whether or not he wishes to enter into negotiations with the creditor.

If the creditor is also a supplier of goods or services, a notice in one place on the business premises will suffice. It is not necessary to display notices, say, on every floor of a department store.

Article 6

Because of the importance which credit agreements have for the consumer, it is essential to lay down a requirement that they be in writing. This is the only way of ensuring that the consumer is sufficiently informed of the content of the agreement and is given an opportunity to ascertain his rights and obligations from the contract document itself. Even in those Member States in which there is at present no requirement that agreements be in writing, the consumer is usually required, when concluding a credit agreement, to sign a document or statement by which he is bound and in which his obligations in particular are laid down. Quite often, however, such documents or statements inform the consumer of the creditor's rights but not of his own. This makes it more difficult for the consumer to gain an overall impression of the agreement before and during conclusion of the agreement and during its currency.

Article 6 does not stipulate whether, in the circumstances postulated in Article 1(3), the particulars provided for in Article 6 must be included in a contract for the supply of goods or the provision of services or in an agreement financing such a contract. This will usually depend on the facts of each case.

Paragraph 2 lays down the principle that the written agreement must contain the most important contractual conditions. A number of especially important particulars are listed, a distinction being drawn between various types of agreement. Subparagraph (c) is a general provision covering all types of credit agreement, which are not expressly listed.

Article 7

In view of the considerable importance of the written agreement as a means of informing and protecting the consumer, the penalties for infringement of the stipulation as to written form must be severe. This is the only way of ensuring compliance with Article 6(1). It is not enough to entitle the consumer to rescind the agreement if the requirement of writing is not complied with, or to deem it unenforceable. Most consumers, particularly those in the lower income groups, are unaware of their right to rescind contracts or to refuse payment. Even if they are aware of their rights, they are reluctant to exercise them, since they wish to avoid unpleasantness and delays, especially where they have agreed with the creditor not to conclude the agreement in writing. However, in order to allow Member States to choose the appropriate penalty in accordance with their own legal systems, the law of each Member State will determine the legal consequences of failure to respect Article 6.

Article 8

This Article contains the provisions of the Directive which apply to credit in the form of an advance on a current account, granted or accepted by a credit or a financial institution. It provides for the consumer to be given certain information concerning the conditions applying to the credit. The period of three months laid down in respect of accidental overdrafts corresponds to the period of three months laid down in Article 2(1)(c) of the Proposal.

Article 9

The purpose of this Article is to prevent the creditor, in the event of a delay in payment by the consumer, from recovering possession of the goods supplied on credit until he receives payment of the full instalment price, thereby depriving the consumer of use of the goods yet compelling him to pay the agreed price.

Article 10

In view of the considerable importance of a credit agreement for the consumer, he must be permitted to perform the contract before the time fixed. Interest and other charges should be refunded to him in proportion to the period during which he does not avail himself of the credit.

Article 11

This provision safeguards the consumer's position in the event of the rights under a credit agreement being assigned to a third party.

Article 12

Negotiable instruments were created primarily to facilitate commercial relations between businessmen, merchants in particular. Negotiable instruments place the consumer at great risk because the pecuniary claim based upon them can be enforced without regard to his rights under the agreement. Bills of exchange (with the exception of cheques) and promissory notes should therefore not be used in the creditor-consumer relationship. The provision therefore restricts acceptance of negotiable instruments in the field of consumer credit. Cheques should be excluded from this restriction because of their function as a means of payment. They simplify cashless money movements. However, to prevent cheques from assuming other functions of negotiable instruments, their use as security must be prohibited.

This Article does not affect the transferability of negotiable instruments issued in infringement of Article 12 of this Directive. On the contrary, the way the Article is worded makes it clear that the prohibition applies to the creditor and makes him and the consumer responsible for not putting negotiable instruments other than bank-notes or cheques into circulation. Compliance with the provision is to be ensured by the Member States in an appropriate manner, such as by the adoption of administrative or penal measures.

Since the transferability of negotiable instruments issued in infringement of Article 12 of this Directive is not affected, there is no breach of the 1930 Geneva Convention on Bills of Exchange and Cheques, to which most of the Member States have acceded.

Article 13

This provision concerns cooperation between a creditor and a supplier (Article 1(3)(b)). It entitles the consumer in two cases to refuse to make payments to the creditor and to recover any payments made, even if they have been made to the supplier. If goods or services are not supplied, or if they are supplied but are not as laid down in the agreement, a consumer may refuse to make payments to a creditor who is cooperating with a supplier and recover the payments he has made provided he has a similar right against the supplier. In such cases the creditor cannot invoke the legal distinction between the supply contract and the credit agreement. The limited liability of the creditor is justified because both he and the supplier stand to gain financially from the legal relationship with the consumer. On the other hand, the creditor is not liable under the Directive for any damage caused by the goods supplied to the consumer's property. In such cases, the consumer must have recourse to the supplier.

Article 14

This provision is designed to ensure a certain amount of control over creditors and persons who arrange credit. To this end it provides for a licensing system, or a system involving inspection of creditors'

activities, or a body set up to receive consumers' complaints about credit. The provisions have deliberately been kept general so that every Member State can choose the system best suited to it. Since the body to which consumers can address complaints has only limited scope for effective action, the tasks to be assigned to it had to be defined more accurately (paragraph 2).

Article 15

This Article prohibits derogations from the provisions of the Directive by means of contractual agreements. If the consumer were able to waive his rights under the Directive, he would frequently be induced to do so when faced with the greater negotiating strength of the creditor.

Article 16

This Article stipulates that the Member States may introduce or retain more stringent provisions to protect consumers. The proposed Directive is intended to raise the degree of consumer protection in the Community to a certain minimum level without harmonising it entirely, an objective which cannot at present be achieved.

II

(Preparatory Acts)

COMMISSION

Proposal for a Council Directive relating to the approximation of the laws, regulations
and administrative provisions of the Member States concerning consumer credit

(Submitted by the Commission to the Council on 27 February 1979)

THE COUNCIL OF THE EUROPEAN
COMMUNITIES,

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

Having regard to the proposal from the
Commission,

Having regard to the opinion of the European
Parliament,

Having regard to the opinion of the Economic and
Social Committee,

Whereas wide differences exist between the laws in
force in the Member States of the European
Economic Community in matters of consumer
credit;

Whereas these differences in the national legal
provisions are liable to jeopardize the establishment
of a system which ensures that competition between
creditors is not distorted in the common market;

Whereas these differences lead to disparities in the
degree of consumer protection in the various
Member States, limit the opportunities the consumer
has to obtain credit in another Member State, affect
the volume and the nature of the credit sought, and
also the purchase of goods and services;

Whereas, in consequence, these differences have an
influence on the free movement of goods and
services obtained on credit and thus hinder the

harmonious development of economic activities
throughout the Community;

Whereas the Preliminary Programme of the
European Economic Community for a consumer
protection and information policy⁽¹⁾ provides *inter
alia* that the consumer should be protected from
unfair credit terms and that a harmonization of the
general conditions governing consumer credit should
be undertaken as a priority; whereas for the
foregoing reasons the laws in force in Member States
concerning consumer credit directly affect the
functioning of the common market;

Whereas in the European Community the demand
for consumer credit in order to meet private needs
has increased considerably in recent decades;
whereas it continues to show this overall tendency;

Whereas the type of credit taken out has changed
over a period of time; whereas new forms have
emerged and continue to develop;

Whereas the consumer does not always receive
sufficient information on the conditions and cost of
credit and the nature of his obligations; whereas the
terms of credit agreements are often disadvantageous
to the consumer;

Whereas better protection of consumers can be
achieved by adopting certain minimum requirements
for all forms of credit; whereas, nevertheless, specific
rules governing overdrafts granted or accepted by
banks and other finance institutions should be laid
down;

⁽¹⁾ OJ No C 92, 25. 4. 1975, p. 1.

Whereas it may be necessary to fix different financial limits above or below which the provisions of this Directive shall not apply in light of their different economic effects in each Member State; whereas such financial limits have to be determined in accordance with a Community procedure;

Whereas the provision of information on the cost of credit in advertising and at the business premises of the creditor or credit broker can make it easier for the consumer to compare different offers; whereas Member States should be permitted to completely prohibit the unsolicited canvassing of consumers for the purpose of offering personal credit;

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

Whereas, in the event of default in payments on the part of the consumer, the creditor should not be permitted to repossess goods supplied on credit where the consumer remains liable for payment; whereas provisions should be made for credit agreements to be deemed to be terminated where the creditor repossesses the goods;

Whereas, in view of the considerable bearing which credit has on the consumer's economic and, in many cases, personal situation, he should be allowed to discharge his obligations before the due date; whereas the interest and other charges paid should then be refunded in accordance with the provisions adopted by the Member State;

Whereas the assignment of rights arising from credit agreements should not be allowed to weaken the position of the consumer;

Whereas the use of negotiable instruments in credit agreements with a consumer should be restricted; whereas cheques should be used only as a means of payment;

Whereas, in the event of cooperation between a creditor and a supplier, they should be jointly and severally liable to the consumer for the payments made by him if the goods are not supplied or are not in accordance with the terms of the agreement; whereas liability should not also be imposed on the creditor in respect of damage caused by a defective item to other property of the consumer or of a third party;

Whereas suitable measures to be chosen by the Member States should be adopted for supervising creditors;

Whereas contractual clauses excluding the application of the provisions adopted pursuant to this Directive must not be permitted;

Whereas the provisions of this Directive shall not prevent Member States from adopting other measures to protect consumers, with due regard for their obligations under the Treaty establishing the European Economic Community and in particular the rules on the free movement of goods, the freedom to provide services, and competition,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. This Directive shall apply to credit agreements.
2. For the purposes of this Directive:
 - (a) 'consumer' means a natural person not acting predominantly in a commercial or professional capacity;
 - (b) 'creditor' means a natural or legal person who grants credit in the course of his commercial activity or business, or a group of such persons;
 - (c) 'credit agreement' means an agreement whereby a creditor grants a consumer credit in the form of deferred payment, a loan or a promise to grant a loan or other financial accommodation and under which the consumer repays the credit, including any interest and charges, in more than one instalment;
 - (d) 'effective annual rate of interest' means the total cost of the credit expressed as an annual percentage of the amount of the credit granted, including interest and all other charges; the effective annual rate of interest shall be calculated in accordance with the rules laid down by the Member States.
3. An agreement for the supply of goods or the provision of services concluded with a consumer
 - (a) which is financed by means of a credit agreement between a supplier and a consumer, or
 - (b) which is financed by means of a credit agreement between a creditor and a consumer,

in so far as the creditor cooperates with the supplier in the performance of the agreement for the supply of goods or the provision of services, shall also be deemed to be a credit agreement within the meaning of paragraph 2.

4. Member States shall adjust the provisions of this Directive in applying them to credit agreements between a broker and a consumer.

Article 2

1. This Directive shall not apply to:
 - (a) credit agreements or agreements promising to grant credit intended primarily for the purpose of acquiring property rights in land or in an existing or projected building or intended for the purpose of renovating or improving a building;
 - (b) hiring agreements;
 - (c) agreements, in particular for the supply of goods or the provision of services, under which the consumer is granted a period not exceeding three months within which to pay the price stipulated in the agreement;
 - (d) subject to the provisions of Article 8, credit in the form of advances on a current account granted or accepted by a credit institution or financial institution, other than credit cards;
 - (e) amounts greater or less than particular sums to be fixed by the Commission for a Member State which so requests after consultation with that Member State.
2. Where the provisions of paragraph 1 (e) above are applied, Member States concerned shall take steps to ensure that the provisions on consumer credit are not circumvented as a result of the way in which agreements are formulated, in particular by the device of distributing the amount of credit over several agreements.

Article 3

Without prejudice to the general rules on misleading and unfair advertising, any advertisement in which a person offers to conclude or arrange credit agreements, and in which costs relating to the credit are indicated, shall show the total cost.

Where a percentage is given, the effective annual rate of interest must also be indicated.

Article 4

Member States may prohibit unsolicited visits to a consumer at his home, at his place of work or elsewhere for the purpose of proposing to him the conclusion of a credit agreement.

Article 5

Any person offering to conclude or arrange credit agreements shall clearly display, at those of his business premises to which the public has access, the annual rate of interest and other costs relating to the credit which he grants or arranges, and/or a notice to the effect that the consumer may request an offer which shall be binding on such a person if he grants the credit. He shall in both cases give examples of the effective annual rate of interest in respect of given sums.

Article 6

1. Credit agreements shall be made in writing. All credit agreements shall be signed by both parties. The facsimile signature of the creditor shall suffice. The consumer shall receive a copy of the written agreement.
2. The written agreement shall contain the essential contractual conditions and at least the following particulars:
 - (a) for credit agreements for the supply of goods or the provision of services:
 - (i) a description of the goods or services covered by the agreement;
 - (ii) the cash price and the credit price where this differs from the cash price;
 - (iii) the effective annual rate of interest; where the cash price and the credit price are different;
 - (iv) the amount of the deposit (if any) and the due dates, the number and amount of the instalments;
 - (v) the terms covering any rebate for early repayment;
 - (vi) who owns the goods and the terms under which the consumer becomes the owner of the goods;
 - (vii) details of the security required (if any);

- (b) for credit agreements in the form of credit cards:
- (i) a means of identifying the credit card;
 - (ii) the credit limit (if any);
 - (iii) annual rate of interest (if any) and the amount of any charges;
 - (iv) the terms of repayment;
- (c) for other credit agreements falling within the scope of this Directive:
- (i) the amount or limit of the credit or — in the case of a promise to grant credit — the amount or limit of the credit proposed;
 - (ii) the annual rate of interest and any other charges;
 - (iii) the effective annual rate of interest unless a promise of a loan is concerned, in which case that rate shall be specified at the date when the loan is taken up;
 - (iv) and indication of the security required (if any);
 - (v) the terms of repayment.

Article 7

The laws of each Member State shall lay down the legal consequences of failure to respect the provisions of Article 6.

Article 8

Notwithstanding the exclusion provided for in Article 2 (1) (d), the consumer shall be informed in writing in the case of credit in the form of an advance on a current account within the meaning of Article 2 (1) (d):

- (a) at the time the agreement is concluded,
 - of the credit limit (if any);
 - of the annual rate of interest and the charges applicable from the time the agreement is concluded and the conditions under which it may be amended;
 - of the procedure for terminating the agreement;
- (b) during the period of the contract credit agreement, of any change in the annual rate of interest or in the relevant charges at the time it occurs. Such information may be given in a bank statement if such statements are sent at intervals of one month or less;

- (c) when a tacitly accepted overdraft extends beyond a period of three months of the annual rate of interest and any relevant charges, and of any amendment thereto.

Article 9

1. A credit agreement shall be void from the time the creditor repossesses, either on the basis of a right of ownership or of any other right, the goods supplied under a credit agreement.

2. Member States shall lay down rules to ensure that repossession of goods does not lead to unjustified disadvantages to any of the parties involved.

Article 10

The consumer shall be entitled to discharge his obligations under a credit agreement before the time fixed by the agreement; in this case, interest and other charges shall be refunded in accordance with the provisions adopted by the Member States.

Article 11

Where the creditor assigns to a third person his rights against the consumer under a credit agreement, the consumer shall be entitled to plead against the third party any defence — including set-off — which is or would have been available to him against the creditor before the assignment.

Article 12

In the operation of credit agreements:

- (a) bills of exchange, other than cheques, and promissory notes may not be used either as security or as a means of payment;
- (b) cheques may be used only as a means of payment.

Article 13

1. Where the consumer proves the existence of cooperation as referred to in Article 1 (3) (b), and where the goods are not supplied or the services are not provided, and where he is not responsible for such failure to supply the goods or services, he shall, provided he has the right under the laws of the

Member State concerned to recover from the supplier payments made by him and to refuse further payment, enjoy the same right in relation to the creditor.

2. The consumer shall have the same rights under the conditions specified in paragraph 1 where the goods supplied or services provided do not conform to the agreement.

3. In the cases referred to in paragraphs 1 and 2, the supplier and creditor shall be jointly and severally liable to the consumer for any repayment of sums paid.

4. This Article shall not prejudice any other rights of the consumer against the supplier or rights of the creditor against the supplier.

Article 14

1. Member States shall provide that:

- (a) persons offering to conclude or arrange credit agreements shall obtain official authorization; or
- (b) persons concluding or arranging credit agreements shall be subject to inspection of their activities by an official body; or
- (c) a body be set up to examine complaints from individual consumers concerning credit agreements entered into by or offered to them as well as to receive complaints from consumer organizations concerning credit agreements or credit conditions offered to consumers;
- (d) if persons referred to in paragraph (a) above satisfy the definition in Article 1 of the First Coordinating Directive on Banking Activities⁽¹⁾, they may not receive official authorization to exercise their activity before they have received banking authorization.

(¹) OJ No L 322, 17. 12. 1977 p. 30.

Where banking authorization is withdrawn, official authorization to carry on their activities in the consumer credit field shall also be withdrawn.

2. The body referred to in paragraph 1 (c) shall be empowered to examine the complaints it receives, to advise consumers on the legal protection to which they are entitled and to institute legal proceedings on their behalf where they do not wish to exercise their rights but are willing to let the body act for them.

Article 15

No contractual agreement shall derogate, to the disadvantage of the consumer, from the provisions adopted in application of this Directive.

Article 16

Member States may lay down or retain more stringent provisions to protect consumers consistent with their obligations under the Treaty.

Article 17

1. The Member States shall bring into force the measures necessary to comply with this Directive within 18 months of its notification and shall forthwith inform the Commission thereof.

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

Article 18

This Directive is addressed to the Member States.