

Consumer credit

Directive 87/102/EEC concerning consumer credit amended in 1990 (90/88/EEC) and in 1988 (98/7/EC), established the community framework for consumer credit with a view to promoting the setting-up of a common market for credit and establishing minimum community rules to protect consumers.

1) OBJECTIVE

To harmonise the rules governing consumer credit while ensuring a high level of consumer protection.

2) ACT

Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit [Official Journal L 42 of 12.02.1987].

Amended by the following measures:

Council Directive 90/88/EEC of 22 February 1990 [Official Journal L 61 of 10.3.1990];
European Parliament and Council Directive 98/7/EC of 16 February 1998 [Official Journal L 101 of 01.04.1998].

3) SUMMARY

The Directive aims to bring about a certain degree of approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit.

The Directive does not cover:

- credit agreements for the purpose of acquiring or retaining property rights in land or a building;
- credit agreements for the purpose of renovating or improving a building;
- hiring agreements which do not provide for the title passing to the hirer;
- credit free of interest or any other charge;
- interest-free credit agreements where the consumer repays the credit in a single payment;
- credit in the form of advances on a current account granted by a credit institution or financial institution, with the exception of credit card accounts;
- credit agreements involving amounts less than EUR 200 or more than EUR 20 000;
- credit agreements whereby the consumer undertakes to repay the credit either within three months or by a maximum of four payments within a 12-month period.

Member States may also exclude from the scope of the Directive certain types of credit which are granted at rates of charge below those prevailing in the market and which are not offered to the public generally.

Any credit-related advertising which indicates some aspect of the cost of the credit must also include a statement of the annual percentage rate of charge.

Credit agreements are to be made in writing. Besides the essential terms of the contract, an agreement must state the annual percentage rate of charge and the conditions under which it may be amended.

Where credit is granted in the form of an advance on a current account, the consumer is to be informed in writing, at or before the time the agreement is concluded:

- of the credit limit, if any,
- of the annual rate of interest and the charges applicable,
- of the procedure for terminating the agreement.

Any change in the annual rate of interest or in the relevant charges, during the period of the agreement, must be notified to the consumer at the time it occurs.

In the case of credit granted for the acquisition of goods, Member States must lay down the conditions under which the goods may be repossessed and are to ensure that neither of the parties gains any unjustified enrichment.

The consumer may discharge his or her obligations under a credit agreement before the time fixed by the agreement. In this event, the consumer is entitled to an equitable reduction in the cost of the credit.

Where the creditor's rights are assigned to a third person, the consumer's rights remain unaffected and action to enforce any claim may be taken against that third person.

The Member States must ensure:

- that consumers using bills of exchange are suitably protected, when such practices are allowed;
- that the existence of a credit agreement does not affect the rights of the consumer vis-à-vis the supplier of goods or services purchased by means of such an agreement in cases where the goods or services are not supplied or are not in conformity with the contract.

The consumer may seek redress against the grantor of credit when the following conditions are fulfilled:

- the consumer has entered into a credit agreement with a person other than the supplier of the goods or services purchased;
- the grantor of the credit and the supplier of the goods or services have a pre-existing agreement under which credit is made available exclusively by the former;
- the consumer obtains his or her credit pursuant to that pre-existing agreement;
- the goods or services covered by the credit agreement are not supplied or are not in conformity with the contract;
- the consumer has sought redress against the supplier but has failed to obtain satisfaction.

The Member States are to:

- ensure that persons offering credit obtain official authorisation to do so;
- ensure that the persons in question are subject to inspection by an official body;
- promote the establishment of appropriate bodies for providing information and advice to consumers in respect of credit agreements and for receiving associated complaints.

The Council is required to revise the amounts laid down in the Directive, for the first time in 1995, and every five years thereafter.

The Member States must ensure that the rules set out in the Directive:

- are complied with in credit agreements;
- are not circumvented as a result of the way in which agreements are formulated, e.g. by the device of distributing the amount of credit over several agreements.

The Member States may introduce more stringent rules than those laid down in the Directive.

Directive [90/88/EEC](#) sets out a single mathematical formula for calculating the annual percentage rate of charge throughout the Community and for determining credit cost items to be used in the calculation.

Directive [98/7/EC](#) focuses on the calculation of the annual percentage rate of credit charge.

Act	Date of entry into force	Final date for implementation in the Member States
Directive 87/102/EEC	12.01.1987	01.01.1990
Directive 90/88/EEC	01.03.1990	31.12.1992
Directive 97/7/EC	04.06.1997	04.06.2000

4) IMPLEMENTING MEASURES

Proposal for a Directive of the European Parliament and of the Council on the harmonisation of the laws, regulations and administrative provisions of the Member States concerning credit for consumers [[COM\(2002\) 443](#) - Official Journal C 331 of 31.12.2002].

This proposal seeks to repeal Directive [87/102/EEC](#) by harmonising legislation in the different Member States, with the aim of enhancing consumer protection in relation to cross-border transactions so as to achieve an internal market in the consumer credit sector.

The proposal is underpinned by eight guidelines:

1. Harmonisation of consumer-related rules in the different Member States, which will not be allowed to add anything to the new rules.
2. Extension of the scope to cover all consumer credit. Only home loans are not covered.
3. Consumer's right of withdrawal within 14 days of signing the credit agreement, with no need to give a reason or pay additional costs.
4. Easier comparison between available forms of credit through the introduction of three rates expressing, respectively, the capital cost ("borrowing rate"), the sum levied by the creditor ("total lending rate" or TLR) and the total cost to the consumer including, for example, insurance.
5. The lender is obliged to advise the consumer on the products offered and to satisfy himself about a client's solvency before granting credit. The consumer also benefits from fuller information on costs, clauses and conditions of the product.
6. A personal guarantor is entitled to the same information as a borrower. In the event of consumers failing to fulfil their contractual obligations, there are ground rules for repossession of goods and debt recovery.

7. Registration of lenders and credit intermediaries, with ground rules laid down for the activities of intermediaries.
8. Where suppliers of goods and services act as credit intermediaries for lenders, the latter will be held jointly liable if obligations towards consumers are not met.

Report [COM(97) 465 final - Not published in the Official Journal].

Commission Report dated 24 September 1997 [COM(95) 117 final].

Summary report of reactions and comments. This document follows on from the Commission Report of 11 May 1995 on the application of Directive 87/102 for the approximation of laws, regulations and administrative provisions of the Member States concerning consumer credit (COM(95) 117 final, see above). It gives an overview of the comments made by the Member States, the financial services industry and consumer groups on the problems raised in the Report COM(05) 117 final.

The general thrust of the Report, favouring Community-level harmonisation of provisions governing credit for consumers, is not endorsed by all the Member States, for reasons to do with subsidiarity and the volume of cross-border operations. Moreover, whilst representatives of the financial services industry are in favour of introducing codes of conduct, consumer groups would prefer the implementation of legislative measures. Lastly, the deliberations on consumer credit must take into account analyses carried out in parallel areas.

Report [COM(96) 79 final - Not published in the Official Journal].

Commission Report of 12 April 1996 on the operation of Directive 90/88/EEC.

As far as the method for calculating the annual percentage rate of charge is concerned, the formula set out in Directive 90/88/EEC (Annex II) has been adopted by all the Member States except Germany, France and Finland.

As regards the elements of the cost of credit to be included in the calculation, the transposal of Directive 90/88/EEC into national legislation has resulted in a minimum harmonised level of protection for all the European Community's consumers.

Report [COM(95) 117 final - Not published in the Official Journal].

Commission Report of 11 May 1995 on the operation of Directive 87/102/EEC for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit.

In this Report, the Commission notes that most of the Member States have adopted more stringent provisions than those laid down in the Directive for the protection of consumers. It covers the following aspects:

- extension of the scope of Directive 87/102/EEC;
- advertising aimed at young consumers;
- requirement for consumers to supply information and for professionals to give advice;
- bank overdraft rules;
- review of 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.