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RECOMMENDATION FOR SECOND READING

on the Council common position for adopting a directive of the European Parliament and of the Council on credit agreements for consumers and repealing Council Directive 87/102/EEC
(9948/2/2007 – C6-0315/2007 – 2002/0222(COD))

Committee on the Internal Market and Consumer Protection

Rapporteur: Kurt Lechner

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the Council common position for adopting a directive of the European Parliament and of the Council on credit agreements for consumers, and repealing Council Directive 87/102/EEC
(9948/2/2007 – C6-0315/2007 – 2002/0222(COD))**

(Codecision procedure: second reading)

The European Parliament,

- having regard to the Council common position (9948/2/2007 – C6-0315/2007),
 - having regard to its position at first reading¹ on the Commission proposal to Parliament and the Council (COM(2002)0443)²,
 - having regard to the amended Commission proposals (COM(2004)0747, COM(2005)0483),
 - having regard to Article 251(2) of the EC Treaty,
 - having regard to Rule 62 of its Rules of Procedure,
 - having regard to the recommendation for second reading of the Committee on the Internal Market and Consumer Protection (A6-0504/2007),
1. Approves the common position as amended;
 2. Instructs its President to forward its position to the Council and Commission.

Council common position

Amendments by Parliament

Amendment 1
Recital 10

(10) The definitions contained in this Directive determine the scope of harmonisation. The obligation on Member States to implement the provisions of this Directive should therefore be limited to its scope as determined by those definitions. However, this Directive should be without prejudice to the application by Member States, in accordance with Community law,

(10) The definitions contained in this Directive determine the scope of harmonisation. The obligation on Member States to implement the provisions of this Directive should therefore be limited to its scope as determined by those definitions. However, this Directive should be without prejudice to the application by Member States, in accordance with Community law,

¹ OJ C 104 E, 30.4.2004, p. 233.

² OJ C 331 E, 31.12.2002, p. 200.

of the provisions of this Directive to areas not covered by its scope. A Member State could thereby maintain or introduce national legislation corresponding to the provisions of this Directive or certain of its provisions on credit agreements outside the scope of this Directive, for instance on credit agreements involving amounts less than EUR 200 or more than **EUR 100 000**. Furthermore, Member States could also apply the provisions of this Directive to linked credit which does not fall within the definition of a linked credit agreement as contained in this Directive. Thus, the provisions on linked credit agreements could be applied to credit agreements that serve only partially to finance a contract for the supply of goods or provision of a service.

of the provisions of this Directive to areas not covered by its scope. A Member State could thereby maintain or introduce national legislation corresponding to the provisions of this Directive or certain of its provisions on credit agreements outside the scope of this Directive, for instance on credit agreements involving amounts less than EUR 200 or more than **EUR 50 000**. Furthermore, Member States could also apply the provisions of this Directive to linked credit which does not fall within the definition of a linked credit agreement as contained in this Directive. Thus, the provisions on linked credit agreements could be applied to credit agreements that serve only partially to finance a contract for the supply of goods or provision of a service.

Justification

Credits over EUR 50 000 are rarely typical consumer credits, thus the scope could be lowered. Keeping the scope at EUR 200 allows for the CCD to include SMS-loans. A new type of "quick-loans" that has come to be a rapidly growing problem for especially teenagers in Sweden. The loans can be obtained over the phone and you normally have the money in your account within 15 minutes. With regard to the possibility that this form of loans can spread over Europe and the amount of financial difficulties it has created for teenagers it would be advisable to leave the scope at EUR 200. Please see Article 2 paragraph 2 point (c).

Amendment 2 Recital 12 a (new)

(12a) This Directive does not apply to certain types of credit agreements, such as deferred payment cards (charge cards), which do not impose interest, other than for non-compliance with their terms, and for which only fixed service fees that do not vary in relation to the amount spent on such cards are levied. For these credit agreements, Member States should be able to maintain or introduce separate national provisions.

Justification

Charge cards (also known as deferred payment cards) are not strictly speaking a real credit

instrument but rather deferred payments from the customer to the issuer. The issuer pays the supplier on behalf of the customer and the latter repays the issuer in full, on a monthly basis, upon receipt of the statement. In addition, charge cards apply only fixed annual service fees that do not vary in relation to the amounts spent on these cards.

Amendment 3
Recital 18

(18) In order to enable consumers to make their decisions in full knowledge of the facts, they should receive adequate information, prior to the conclusion of the credit agreement, on the conditions and cost of the credit and on their obligations. To ensure the fullest possible transparency and comparability of offers, such information should, in particular, include the annual percentage rate of charge applicable to the credit, determined in the same way throughout the Community. As the annual percentage rate of charge can at this stage be indicated only through an example, such example should be representative. Therefore, it should correspond, for instance, to the average duration and total amount of credit granted for the type of credit agreement under consideration and, if applicable, to the goods purchased. When determining the representative example, the frequency of certain types of credit agreement in a specific market should also be taken into account. As regards the borrowing rate, the frequency of instalments and the capitalisation of interest, creditors should use their conventional method of calculation for the consumer credit concerned.

(18) In order to enable consumers to make their decisions in full knowledge of the facts, they should receive adequate information, ***which, where applicable, they can take away and consider***, prior to the conclusion of the credit agreement, on the conditions and cost of the credit and on their obligations. To ensure the fullest possible transparency and comparability of offers, such information should, in particular, include the annual percentage rate of charge applicable to the credit, determined in the same way throughout the Community. As the annual percentage rate of charge can at this stage be indicated only through an example, such example should be representative. Therefore, it should correspond, for instance, to the average duration and total amount of credit granted for the type of credit agreement under consideration and, if applicable, to the goods purchased. When determining the representative example, the frequency of certain types of credit agreement in a specific market should also be taken into account. As regards the borrowing rate, the frequency of instalments and the capitalisation of interest, creditors should use their conventional method of calculation for the consumer credit concerned.

Amendment 4

Recital 37 a (new)

(37a) Where under national law creditors may demand compensation, and they take up this option, they must inform the consumer of this fact.

Amendment 5

Article 2, paragraph 2, point (c)

(c) credit agreements involving a total amount of credit less than EUR 200 or more than **EUR 100 000**;

(c) credit agreements involving a total amount of credit less than EUR 200 or more than **EUR 50 000**;

Justification

Amounts of less than EUR 500 should be excluded from the scope. In the case of small loans, the costs arising from the legislation have a particular impact. Member States may, without any problems, take account of different income situations and different circumstances by making smaller amounts subject to the law at the transposition stage. Credit in excess of EUR 50 000 is not typical consumer credit.

Amendment 6

Article 2, paragraph 3

3. In the case of credit agreements in the form of an overdraft facility and where the credit has to be repaid on demand or within three months, only Articles 1 to 3, Article 4(1), **points (a) to (e)** of Article 4(2), Article 4(4), Articles 6 to 9, Article 10(1), **points (a) to (g), (l), (p) and points (r) to (u) of Article 10(2)**, Article 10(3), *Articles 12, 15, 16(1), first sentence*, Article 17 and Articles 19 to 32 shall apply.

3. In the case of credit agreements in the form of an overdraft facility and where the credit has to be repaid on demand or within three months, only Articles 1 to 3, Article 4(1), **points (a) to (c)** of Article 4(2), Article 4(4), Articles 6 to 9, Article 10(1), Article 10(3), **Article 10(4)**, *Article 12, Article 15, Article 17 and Articles 19 to 32* shall apply.

The information to be included in those credit agreements shall also contain information concerning the charges applicable from the time such credit agreements are concluded and, if applicable, the conditions under which those charges may be changed.

Justification

Adjustment in line with subsequent amendments. The second sentence does not belong in Article 2 of the directive.

Amendment 7
Article 3, point (i)

(i) "annual percentage rate of charge" means the total cost of the credit to the consumer, expressed as an annual percentage of the total amount of credit;

(i) "annual percentage rate of charge" means the total cost of the credit to the consumer, expressed as an annual percentage of the total amount of credit, ***where appropriate including the costs referred to in Article 19(2);***

Justification

Clarification.

Amendment 8
Article 3, point (n), point (i)

i) the credit in question serves exclusively to finance an agreement for the supply of specific goods or the provision of a specific service, and

i) the credit in question serves exclusively to finance an agreement for the supply of specific goods or the provision of a specific service ***which is explicitly specified in the credit agreement,*** and

Justification

The text of the Council common positions has to be considered ambiguous and creates legal uncertainty as to which agreements have to be considered linked and therefore it creates uncertainty on when the consumer can benefit of the protection provided for by the Directive in these cases. The amendment clarifies that an exclusivity link between the credit agreement and the provision of specific goods or services must be identified in the credit agreement itself. For the above mentioned reason, it's important to ensure legal certainty to the consumer making clear the elements which define when a credit agreement has to be considered "linked" without introducing the risk to determine different interpretations by Member States and different degrees of consumer protection.

Amendment 9
Article 4, paragraphs 1 and 2

1. Any advertising concerning credit agreements which indicates an interest rate or any figures relating to the cost of the credit to the consumer shall include standard information in accordance with this Article. This obligation shall not apply where national legislation requires the indication of the annual percentage rate of charge in advertising concerning credit agreements which does not indicate an interest rate or any figures relating to the cost of credit to the consumer.

2. The standard information shall specify, **in the following order, and** in a clear, concise and prominent way by means of a representative example:

(a) the borrowing rate, fixed **or** variable **or both, if applicable**, together with particulars of any applicable charges;

(b) the total amount of credit;

(c) the annual percentage rate of charge; in the case of a credit agreement of the kind referred to in Article 2(3), Member States may decide that the annual percentage rate of charge need not be provided;

(d) the duration of the credit agreement;

(e) in the case of a credit in the form of deferred payment for a specific good or service, the cash price and the amount of any advance payment; and

(f) if applicable, the total amount payable by the consumer and the amount of the instalments.

1. Any advertising concerning credit agreements which indicates an interest rate or any figures relating to the cost of the credit to the consumer shall include standard information in accordance with this Article.

This obligation shall not apply where national legislation requires the indication of the annual percentage rate of charge in advertising concerning credit agreements which does not indicate an interest rate or any figures relating to the cost of credit to the consumer **or any other cost within the meaning of the first subparagraph.**

2. The standard information shall specify in a clear, concise and prominent way by means of a representative example:

(a) the borrowing rate, fixed **and/or** variable, together with particulars of any charges **included in the total cost of the credit to the consumer;**

(b) **if applicable**, the total amount of credit;

(c) the annual percentage rate of charge; in the case of a credit agreement of the kind referred to in Article 2(3), Member States may decide that the annual percentage rate of charge need not be provided;

(d) **if applicable**, the duration of the credit agreement;

(e) in the case of a credit in the form of deferred payment for a specific good or service, the cash price and the amount of any advance payment; and

(f) if applicable, the total amount payable by the consumer and the amount of the instalments.

Amendment 10
Article 5, paragraph 1, subparagraph 1

1. *In good time before* the consumer is bound by any credit agreement or offer, the creditor and, where applicable, the credit intermediary shall, on the basis of the credit terms and conditions offered by the creditor and, if applicable, the preferences expressed and information supplied by the consumer, provide the consumer with the information needed to compare different offers in order to take an informed decision on whether to conclude a credit agreement. Such information, on paper or on another durable medium, shall be provided by means of the Standard European Consumer Credit Information form set out in Annex II. The creditor shall be deemed to have fulfilled the information requirements in this paragraph and in Article 3, paragraphs (1) and (2) of Directive 2002/65/EC if he has supplied the Standard European Consumer Credit Information.

1. *Before* the consumer is bound by any credit agreement or offer, the creditor and, where applicable, the credit intermediary shall, on the basis of the credit terms and conditions offered by the creditor and, if applicable, the preferences expressed and information supplied by the consumer, provide the consumer with the information needed to compare different offers in order to take an informed decision on whether to conclude a credit agreement. Such information, on paper or on another durable medium, shall be provided by means of the Standard European Consumer Credit Information form set out in Annex II. The creditor shall be deemed to have fulfilled the information requirements in this paragraph and in Article 3, paragraphs (1) and (2) of Directive 2002/65/EC if he has supplied the Standard European Consumer Credit Information.

Amendment 11
Article 5, paragraph 3

3. If the agreement has been concluded at the consumer's request using a means of distance communication which does not enable the information to be provided in accordance with paragraph 1, in particular in the case referred to in paragraph 2, the creditor shall provide the consumer with the full Standard European Consumer Credit Information immediately after the conclusion of the credit agreement.

3. If the agreement has been concluded at the consumer's request using a means of distance communication which does not enable the information to be provided in accordance with paragraph 1, in particular in the case referred to in paragraph 2, the creditor shall provide the consumer with the full *pre-contractual information using the Standard European Consumer Credit Information form* immediately after the conclusion of the credit agreement.

Amendment 12
Article 6, paragraph 1

1. ***In good time before*** the consumer becomes bound by any credit agreement or offer concerning a credit agreement as referred to in Article 2(3), (5) or (6), the creditor and, where applicable, the credit intermediary shall, on the basis of the credit terms and conditions offered by the creditor and, if applicable, the preferences expressed and information supplied by the consumer, provide the consumer with the information needed to compare different offers in order to take an informed decision on whether to conclude a credit agreement.

1. ***Before*** the consumer becomes bound by any credit agreement or offer concerning a credit agreement as referred to in Article 2(3), (5) or (6), the creditor and, where applicable, the credit intermediary shall, on the basis of the credit terms and conditions offered by the creditor and, if applicable, the preferences expressed and information supplied by the consumer, provide the consumer with the information needed to compare different offers in order to take an informed decision on whether to conclude a credit agreement.

Amendment 13
Article 6, paragraph 1, point (e)

(e) in the case of a credit in the form of deferred payment for a specific good or service, that good or service and its cash price;

deleted

Amendment 14
Article 6, paragraph 1, point (i)

(i) where applicable, an indication that the consumer may be requested to repay the amount of credit in full at any time;

(i) where applicable, ***in the case of credit agreements as referred to in Article 2(3)***, an indication that the consumer may be requested to repay the amount of credit in full at any time;

Amendment 15
Article 6, paragraph 1, point (l)

(l) the consumer's right to be supplied, on request and free of charge, with a copy of the draft credit agreement. This provision shall not apply if the creditor is at the time

deleted

Amendment 19
Article 7

Articles 5 and 6 shall not apply to suppliers of goods or services acting as credit intermediaries in an ancillary capacity. This is without prejudice to the creditor's obligation to ensure that the consumer receives the pre-contractual information referred to in those Articles.

Articles 5 and 6 shall not apply to:

a) suppliers of goods or services acting as credit intermediaries in an ancillary capacity; or

b) credit intermediaries where the creditor assumes responsibility (whether in practice or in law) for the credit intermediary's conduct towards the consumer in relation to the credit.

This is without prejudice to the creditor's obligation to ensure that the consumer receives the pre-contractual information referred to in those Articles.

Justification

The amendment aims to prevent disproportionate burden on small-scale intermediation activities, in particular in relation to mail order and weekly collected credit. The amendment would not affect the more detailed rules in Art.21.

Amendment 20
Article 8, paragraphs 1 and 2

1. **Before** the conclusion of the credit agreement, the creditor **shall assess** the consumer's creditworthiness on the basis of sufficient information, where appropriate obtained from the consumer and, where necessary, on the basis of a consultation of the relevant database.

2. **If** the parties agree to change the total

1. **Member States shall ensure, in accordance with Article 20, that, before** the conclusion of the credit agreement, the creditor **assesses** the consumer's creditworthiness on the basis of sufficient information, where appropriate obtained from the consumer and, where necessary, on the basis of a consultation of the relevant database. **Member States whose legislation requires creditors to assess the creditworthiness of consumers on the basis of a consultation of the relevant database may retain this requirement.**

2. **Member States shall ensure that, if** the

amount of credit after the conclusion of the credit agreement, the creditor **shall update** the financial information at his disposal concerning the consumer and **assess** the consumer's creditworthiness before any significant increase in the total amount of credit.

parties agree to change the total amount of credit after the conclusion of the credit agreement, the creditor **updates** the financial information at his disposal concerning the consumer and **assesses** the consumer's creditworthiness before any significant increase in the total amount of credit.

Justification

In accordance with Recital (25), Member States require flexibility in the context of the promotion of responsible practices in credit markets.

Amendment 21 Article 9, paragraph 2

2. If the credit application is rejected on the basis of consultation of a database, the creditor shall inform the consumer immediately and without charge of the result of such consultation and of the particulars of the database consulted, unless **the provision of such information** is prohibited by other Community legislation or is contrary to objectives of public policy or public security.

2. If the credit application is rejected on the basis of consultation of a database, the creditor shall inform the consumer immediately and without charge of the result of such consultation and of the particulars of the database consulted.

If the credit application is granted on the basis of consultation of a database, the creditor shall inform the consumer upon request and without charge of the result of such consultation and of the particulars of the database consulted.

In both cases and when the assessment and decision is solely or predominantly automated the consumer shall be given upon request the opportunity to check and correct any false underlying data.

The information referred to in the previous subparagraphs shall be provided unless its provision is prohibited by other Community legislation or is contrary to objectives of public policy or public security.

Amendment 22
Article 10, paragraph 2, point (e)

(e) in case of a credit in the form of deferred payment for a specific good or service, that good or service and its cash price;

(e) in case of a credit in the form of deferred payment for a specific good or service ***or in the case of linked credit agreements***, that good or service and its cash price;

Amendment 23
Article 10, paragraph 2, point (i)

i) where capital amortisation of a credit agreement with a fixed duration is involved, a statement of account in the form of an amortisation table indicating the payments owing and the periods and conditions relating to the payment of such amounts; the table shall contain a breakdown of each repayment showing capital amortisation, the interest calculated on the basis of the borrowing rate and, where applicable, any additional costs; where the interest rate is not fixed or the additional costs may be changed under the credit agreement, the amortisation table shall indicate, clearly and concisely, that the data contained in the table will remain valid only until such time as the borrowing rate or the additional costs are changed in accordance with the credit agreement;

i) ***at the request of the consumer***, where capital amortisation of a credit agreement with a fixed duration is involved, a statement of account in the form of an amortisation table indicating the payments owing and the periods and conditions relating to the payment of such amounts; the table shall contain a breakdown of each repayment showing capital amortisation, the interest calculated on the basis of the borrowing rate and, where applicable, any additional costs; where the interest rate is not fixed or the additional costs may be changed under the credit agreement, the amortisation table shall indicate, clearly and concisely, that the data contained in the table will remain valid only until such time as the borrowing rate or the additional costs are changed in accordance with the credit agreement;

Justification

In some cases such tables can run to 30 pages or more. This in addition to other information risks distracting the consumer from the most important essential information. However it should still be available if the consumer chooses to have these tables.

Amendment 24
Article 10, paragraph 2, point (m a) (new)

(ma) where appropriate, that notary's

fees will be payable;

Amendment 25
Article 10, paragraph 3 a (new)

3a. In the case of credit agreements in the form of overdraft facilities as referred to in Article 2(3), the following shall be indicated in a clear, concise way:

(a) the type of credit;

(b) the identity and addresses of the contracting parties as well as, if applicable, the identity and address of the credit intermediary involved;

(c) the duration of the credit agreement;

(d) the credit limit and the conditions governing the drawdown;

(e) the borrowing rate, the conditions governing the application of the borrowing rate and, where available, any index or reference rate applicable to the initial borrowing rate, as well as the periods, conditions and procedure for changing the borrowing rate; if different borrowing rates apply in different circumstances, the above mentioned information on all the applicable rates;

(f) the annual percentage rate of charge and the total costs payable by the consumer, calculated at the time the credit agreement is concluded; all the assumptions used in order to calculate that rate as referred to in Article 19(2) in conjunction with Article 3(g) and (i) shall be mentioned; in the case of a credit agreement of the kind referred to in Article 2(3), Member States may decide that the annual percentage rate of charge need not be provided;

(g) an indication that the consumer may be requested to repay the amount of credit in full on demand at any time;

(h) conditions governing the exercise of the right of withdrawal from the credit agreement; and

(i) information concerning the charges applicable from the time such credit agreements are concluded and, if applicable, the conditions under which those charges may be changed;

Amendment 26
Article 12, title

Credit agreement in the form of an overdraft facility

Obligations in connection with credit agreements in the form of an overdraft facility

Amendment 27
Article 13, paragraph 1

1. The consumer may effect standard termination of an open-end credit agreement free of charge at any time unless the parties have agreed on a period of notice. ***Such a period may not exceed one month.***

If agreed in the credit agreement, the creditor may effect standard termination of an open end credit agreement by giving the consumer at least two months' notice drawn up on paper or on another durable medium.

1. The consumer may effect standard termination of an open-end credit agreement free of charge at any time unless the parties have agreed on a period of notice.

If agreed in the credit agreement, the creditor may effect standard termination of an open end credit agreement by giving the consumer at least two months' notice drawn up on paper or on another durable medium. ***The period of notice for the consumer may not exceed one month.***

Justification

More comprehensible.

Amendment 28
Article 14, paragraph 1, subparagraph 1

1 The consumer shall have a period of fourteen calendar days in which to withdraw from the credit agreement without giving

1. The consumer shall have a period of fourteen calendar days in which to withdraw from the credit agreement without giving

any reason

any reason. *In the case of a linked credit agreement, as defined in Article 3 point (n), this period may be reduced to a minimum of three calendar days at the request of the consumer, should the latter wish to take faster delivery of or benefit from the goods or services financed by a credit agreement.*

When delivery or the date on which performance starts occurs later than the end of the period agreed, the period shall end on the date of delivery of the goods or the date on which performance of the services starts, without being longer than fourteen calendar days.

Amendment 29

Article 16, paragraphs 2, 3 and 4

2. The creditor *shall* be entitled to compensation for possible costs directly linked to early repayment of credit *provided that the early repayment falls within a period for which the borrowing rate is fixed and the creditor proves that the reference interest rate applied by the European Central Bank to its most recent main refinancing operation carried out before the first calendar day of the half year in question is lower at the time of the early repayment than at the time of conclusion of the credit agreement. For a Member State which is not participating in the third stage of economic and monetary union, the reference rate shall be the equivalent rate set by its national central bank.*

Such compensation shall be determined by the creditor and may not exceed 1 % of the amount of credit repaid early, if the period of time between the early repayment and the agreed termination of the credit agreement exceeds one year. If the period does not exceed one year, the compensation may not exceed 0,5 % of the amount of credit repaid early.

2. The creditor *may, in accordance with national law, be entitled to fair and objectively justified* compensation for possible costs directly linked to early repayment of credit.

The compensation shall not exceed the amount of interest the consumer would have paid during the period between the early repayment and the agreed date of termination of the credit agreement.

3. Compensation for early repayment shall not be claimed:

a) if the repayment has been made under an insurance contract intended to provide a credit repayment guarantee;

b) in the case of overdraft facilities; *or*

c) if the repayment falls within a period for which the borrowing rate is not fixed.

4. Member States may provide that such compensation may be claimed by the creditor only on condition that the amount of the early repayment exceeds the threshold defined by national law. That threshold shall not exceed EUR 10 000 within any period of twelve months.

The compensation shall not exceed the amount of interest the consumer would have paid during the period between the early repayment and the agreed date of termination of the credit agreement.

3. Compensation for early repayment shall not be claimed:

a) if the repayment has been made under an insurance contract intended to provide a credit repayment guarantee; *or*

b) in the case of overdraft facilities.

Amendment 30

Article 19, paragraph 2, subparagraph 2

The costs of maintaining an account recording both payment transactions and drawdowns, the costs of using a means of payment for both payment transactions and drawdowns, and other costs relating to payment transactions shall be included in the total cost of credit to the consumer unless the opening of the account is optional and the costs of the account have been clearly and separately shown in the credit agreement or in any other agreement concluded with the consumer.

The costs of maintaining an account recording both payment transactions and drawdowns, the costs of using a means of payment for both payment transactions and drawdowns, and other costs relating to payment transactions shall be included in the total cost of credit to the consumer unless *the account is not opened in connection with the credit or* the opening of the account is optional and the costs of the account have been clearly and separately shown in the credit agreement or in any other agreement concluded with the consumer.

Amendment 31
Article 21, point (b), point (ii)

ii) the credit intermediary does not receive a fee from the creditor,

ii) all remuneration to the intermediary for his services is transparent and disclosed to the consumer,

Justification

The amendment seeks to ensure that intermediaries act in a transparent manner, whilst safeguarding the flexibility which allows for costs to be shared by consumers and lenders.

Amendment 32
Article 21, point (b), point (iii)

iii) the credit agreement in respect of which he has acted is actually concluded, **deleted**

Justification

The condition risks introducing an element of cross-subsidy, whereby consumers who conclude a credit agreement could be charged higher amounts for the services of an intermediary to compensate for those who do not conclude the agreement. Additionally, if an intermediary was not able to recover some costs for providing his advice in case the agreement is not concluded, that may lead him to pressure the consumer to conclude the agreement. However, Member States should have the possibility of restricting the amount which intermediaries can charge in order to protect consumers from being charged disproportionately for advice in cases when no agreement is concluded.

Amendment 33
Article 21, paragraph 2 (new)

Member States may restrict the amount which intermediaries can charge for their services in cases where the agreement is not concluded.

Justification

The condition risks introducing an element of cross-subsidy, whereby consumers who conclude a credit agreement could be charged higher amounts for the services of an intermediary to compensate for those who do not conclude the agreement. Additionally, if an intermediary was not able to recover some costs for providing his advice in case the agreement is not concluded, that may lead him to pressure the consumer to conclude the agreement. However, Member States should have the possibility of restricting the amount which intermediaries can charge in order to protect consumers from being charged

disproportionately for advice in cases when no agreement is concluded.

Amendment 34
Annex I, part II, point (b)

b) if a credit agreement provides different ways of drawdown with different charges or borrowing rates, the total amount of credit shall be deemed to be drawn down at the highest charge and borrowing rate;

b) if a credit agreement provides different ways of drawdown with different charges or borrowing rates, the total amount of credit shall be deemed to be drawn down at the highest charge and borrowing rate ***applied to the category of transaction most commonly used under that type of credit agreement;***

Justification

The highest charge for credit card transactions is for cash advances, but most credit card business is point-of-sale. Using the highest charge would therefore be misleading.

Amendment 35
Annex I, part II, point (d)

(d) if there is no fixed timetable for repayment, ***and no such timetable can be deduced from the terms of the credit agreement and the means of repaying the credit granted, the duration of the credit shall be deemed to be one year and the amount of the credit shall be assumed to be repaid in twelve equal instalments of capital*** at monthly intervals;

(d) if there is no fixed timetable for repayment, ***it shall be assumed:***

(i) that the credit is provided for a period of one year beginning from the relevant date; and

(ii) that the credit will be repaid in twelve equal instalments and at monthly intervals, beginning one month after the relevant date;

Justification

As the question of whether a fixed timetable can be deduced from the agreement or not is open to subjective interpretation, this amendment seeks to ensure that the APR is always calculated based on the same assumptions concerning the timetable, so as to enable consumers to make effective comparisons of cross-border credit offers.

Amendment 36
Annex I, part II, point (g)

g) if the ceiling applicable to the credit has not yet been agreed, that ceiling is assumed to be **EUR 1 000**;

g) if the ceiling applicable to the credit has not yet been agreed, that ceiling is assumed to be **EUR 2 500 or the minimum amount of credit offered for the product**;

Justification

The limit of EUR 2,500 is more reflective of the typical credit products. There exist also products with significantly higher credit limits for which calculations using a lower limit would be misleading to the consumers.

Amendment 37
Annex II, section 4, box 2, left-hand column

Early repayment

You have the right to repay the credit early at any time in full or partially.

If applicable

The creditor is entitled to compensation in the case of early repayment

Early repayment

You have the right to repay the credit early at any time in full or partially.

If applicable

Reference to compensation payable

Amendment 38
Annex II, section 4, box 2, right-hand column

[Determination of the compensation (calculation method) in accordance with the provisions implementing Article 16(2) of Directive .../.../EC]

deleted

Amendment 39
Annex II, section 4, box 3, left-hand column

Consultation of a database

The creditor must inform you immediately and without charge of the result of a consultation of a database, if a credit application is rejected on the basis of such

Consultation of a database

Consent of the consumer

a consultation. This does not apply if the provision of such information is prohibited by European Community law or is contrary to objectives of public policy or public security.

Amendment 40
Annex III, section 2, box 4, left-hand column

How and when will you have to repay the credit? ***deleted***

Amendment 41
Annex III, section 2, box 6, left-hand column

If applicable ***deleted***

The credit is granted in the form of a deferred payment for a good or service

Name of good/service

Cash price

Amendment 42
Annex III, section 4, box 3, left-hand column

Right to a draft credit agreement ***deleted***

You have the right, upon request, to obtain a copy of the draft credit agreement free of charge. This provision does not apply if the creditor is at the time of the request unwilling to proceed to the conclusion of the credit agreement with you.

Amendment 43
Annex III, section 5, box 3, left-hand column

Early repayment

You have the right to repay the credit early at any time in full or partially.

If applicable

The creditor is entitled to compensation in the case of early repayment.

Early repayment

You have the right to repay the credit early at any time in full or partially.

If applicable

Reference to compensation payable

Amendment 44

Annex III, section 5, box 3, right-hand column

[Determination of the compensation (calculation method) in accordance with the provisions implementing Article 16(2) of Directive .../.../EC*]

deleted

EXPLANATORY STATEMENT

Consumer credit to finance the purchase of goods or services has become a standard part of economic life. It accounts for a substantial proportion of Gross Domestic Product in Europe, although there are large differences between the individual Member States. Despite increasing economic interrelatedness, a single currency and substantial improvements in the methods available for making cross-border payments, the fact is that markets remain predominantly national, while cross-border credit provision is rare. There are many different reasons for this, the main ones probably being different national customs and traditions of financing, as well as language barriers.

Improving access to national markets in the important economic sector of consumer credit, promoting competition and improving the internal market are political tasks incumbent on the EU and are in the interests of consumers and creditors.

A common European legal framework for consumer protection can contribute to this, although legal and practical obstacles remain and law is not the decisive factor in cross-border consumer credit.

The European legal framework currently comprises Directive 87/102/EEC. It only contains minimum standards. The further development of this field of the law varies widely between Member States, creating obstacles to the internal market.

However, complete harmonisation of legislation is not the answer.

Consumer law must be flexible; differences in circumstances, and particularly differences in the risks to consumers, call for different legal rules in response, and where appropriate these must be adopted quickly and open to amendment. The effect of the law also depends on its acceptance by people, who wish to be able to regard it as their law and as appropriate to the circumstances in which they live. Uniformity of the law might not only violate the subsidiarity principle but also in many cases, because of the necessary compromises, result in complex and excessive regulation, further reducing the already small internal market impact of consumer credit.

For this reason, the Commission's first proposal of 11 September 2002, which provided for complete harmonisation, miscarried. At first reading, the European Parliament adopted huge numbers of amendments to the Commission proposal and provided only for minimum harmonisation.

In October 2005, the Commission submitted a new, substantially modified proposal. To a large extent, it took account of Parliament's decisions and was considerably more concise. The new Commission proposal also abandoned the objective of comprehensive maximum harmonisation, opting instead merely for selective harmonisation of certain fundamental legal aspects: pre-contractual information, contractual information, right of withdrawal, early repayment and annual percentage rate of charge.

This new approach is very much to be welcomed. In its common position, the Council adopted the same approach, making further modifications, some of which rendered the proposal even more concise, although others introduced fresh complications.

Although the common position constitutes a good basis, certain revisions and corrections on points of detail are called for. The following criteria should be applied for this purpose: legislation should be based on typical cases, average consumers and average entrepreneurs, rather than on failed attempts to commit abuses, which are the exception. The principle of freedom to enter into contracts should be maintained, and the personal responsibility of consumers should be increased. Increased regulation does not automatically mean better consumer protection. As unequivocally demonstrated by the study commissioned by the European Parliament and the hearings which it has held, too much information leads more to confusion than to enlightenment, particularly among inexperienced consumers, quite apart from the associated higher costs, which ultimately also have to be borne by the consumer. Rules should be clear, simple and transparent, and should ensure European added value with the aim of promoting the internal market. Not all parts of the common position take account of these aspects and succeed in striking the right balance with regard to them. Many are too extensive and bureaucratic, and some are too complex and difficult to understand. This may be attributable to the need to arrive at compromises within the Council and the insistence of Member States on their own specific rules, but it is not the right approach and cannot be the one which guides the European Parliament.

The following amendments call for comment:

1. Further exceptions need to be made to the scope, for example for contracts concluded with the assistance of a notary, housing loans and credits under € 500 and over € 50 000. This will give Member States greater freedom of action. However, it should particularly be noted that they may also adopt provisions relating to these fields at the transposition stage. For example, Member States may already apply their rules to credits from € 100 credits upwards, and they may at any time adjust this threshold in the light of monetary circumstances and incomes in their territory without its being necessary to amend the European directive.
2. The provisions concerning advertising are unclear and seem excessive, particularly as Directive 2005/29/EC on unfair commercial practices also applies.
3. The pre-contractual and contractual information requirements are excessive. It is not desirable to harmonise this field of the law in such a way as to lump together all the requirements that exist in Member States. This would inevitably result in over-regulation and information overload, and the point is further borne out by the fact that consumers have a right of withdrawal.

This is particularly true of overdraft facilities.

The additional explanations required concerning the information could substantially hamper the internal market, on the one hand because the Member States concerned might transpose the provisions differently and on the other hand because they would be too much for creditors to cope with, particularly in the case of cross-border

transactions, but also in the case of electronic transactions, and the rules could well deter creditors from providing cross-border credit.

For this reason, and also on account of the individual responsibility of consumers, these explanations should only have to be provided at the consumer's request.

4. The right of withdrawal should be subject to a lapse date. In view of the numerous rules with which businesses will be required to comply, errors may occur when concluding a contract and providing information about the right of withdrawal, although these errors are due not to dishonest intentions but purely to an oversight by the entrepreneur. After all, the directive will also apply to entrepreneurs who do not have experience of credit transactions. Such mistakes could also mislead consumers into committing abuses. 6 months after the conclusion of the contract, the legal position should therefore become incontestable.
5. From the point of view of the Commission, early repayment and compensation were an element which it was important to harmonise. The compromise which the Council has reached on the subject could hardly be more complicated, and does not help matters much. In view of the major differences in the traditions and legal doctrines of the individual Member States, it is understandable that it might be impossible to arrive at any convincing compromise on this.

However, the solution which has been proposed is thoroughly unsatisfactory and does not appear likely to produce any effect on the internal market (harmonisation).

The nature of the calculation of any compensation is formulated unclearly and remains open. Up to € 10 000 per annum, it is possible to avoid compensation altogether. The only common rule worthy of the name remains that which lays down that, if compensation is permitted, and no matter how it is calculated, not more than 0.5% or 1% of the early repayment may be demanded.

Against this background and because this limit is not necessarily the right one, the more honest solution would seem to be to completely delete the provisions on compensation, thus leaving the matter to the discretion of the Member States.

The rapporteur considers that the remaining amendments improve the common position by making the provisions clear and concise and that they strike an appropriate balance among the various aspects.

PROCEDURE

Title	Harmonisation of the Member States' legislation on credit for consumers (repeal of Directive 87/102/EEC)			
References	09948/2/2007 - C6-0315/2007 - 2002/0222(COD)			
Date of Parliament's first reading – P number	20.4.2004	T5-0297/2004		
Commission proposal	COM(2002)0443 - C5-0420/2002			
Amended Commission proposal	COM(2004)0747			
Date receipt of common position announced in plenary	27.9.2007			
Committee responsible Date announced in plenary	IMCO 27.9.2007			
Rapporteur(s) Date appointed	Kurt Lechner 30.1.2006			
Discussed in committee	24.10.2005	9.10.2006	22.11.2006	8.5.2007
	5.6.2007	3.10.2007	5.11.2007	22.11.2007
	27.11.2007			
Date adopted	10.12.2007			
Result of final vote	+: –: 0:	32 0 5		
Members present for the final vote	Gabriela Crețu, Janelly Fourtou, Vicente Miguel Garcés Ramón, Evelyne Gebhardt, Malcolm Harbour, Edit Herczog, Kurt Lechner, Lasse Lehtinen, Toine Manders, Arlene McCarthy, Nickolay Mladenov, Catherine Neris, Bill Newton Dunn, Zita Pleštinská, Giovanni Rivera, Luisa Fernanda Rudi Ubeda, Heide Rühle, Christel Schaldemose, Alexander Stubb, Eva-Britt Svensson, Marianne Thyssen, Jacques Toubon, Bernadette Vergnaud, Barbara Weiler, Nicola Zingaretti			
Substitute(s) present for the final vote	Emmanouil Angelakas, André Brie, Wolfgang Bulfon, Giovanna Corda, Benoît Hamon, Gisela Kallenbach, Othmar Karas, Andrea Losco, Manuel Medina Ortega, Joseph Muscat, José Javier Pomés Ruiz, Olle Schmidt, Gary Titley, Diana Wallis, Stefano Zappalà			
Substitute(s) under Rule 178(2) present for the final vote	Klaus-Heiner Lehne, Karsten Friedrich Hoppenstedt, Tadeusz Zwiefka			