

Directive 2008/48/EC Of the European Parliament and
of the Council of 23 April 2008 on credit agreements for
consumers and repealing Council Directive 87/102/EEC

CHAPTER I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter

The purpose of this Directive is to harmonise certain aspects of the laws, regulations and administrative provisions of the Member States concerning agreements covering credit for consumers.

Article 2

Scope

- 1 This Directive shall apply to credit agreements.
- 2 This Directive shall not apply to the following:
 - a credit agreements which are secured either by a mortgage or by another comparable security commonly used in a Member State on immovable property or secured by a right related to immovable property;
 - b credit agreements the purpose of which is to acquire or retain property rights in land or in an existing or projected building;
 - c credit agreements involving a total amount of credit less than EUR 200 or more than EUR 75 000;
 - d hiring or leasing agreements where an obligation to purchase the object of the agreement is not laid down either by the agreement itself or by any separate agreement; such an obligation shall be deemed to exist if it is so decided unilaterally by the creditor;
 - e credit agreements in the form of an overdraft facility and where the credit has to be repaid within one month;
 - f credit agreements where the credit is granted free of interest and without any other charges and credit agreements under the terms of which the credit has to be repaid within three months and only insignificant charges are payable;
 - g credit agreements where the credit is granted by an employer to his employees as a secondary activity free of interest or at annual percentage rates of charge lower than those prevailing on the market and which are not offered to the public generally;
 - h credit agreements which are concluded with investment firms as defined in Article 4(1) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments⁽¹⁾ or with credit institutions as defined in Article 4 of Directive 2006/48/EC for the purposes of allowing an investor to carry out a transaction relating to one or more of the instruments listed in Section C of Annex I to Directive 2004/39/EC, where the investment firm or credit institution granting the credit is involved in such transaction;

- i credit agreements which are the outcome of a settlement reached in court or before another statutory authority;
- j credit agreements which relate to the deferred payment, free of charge, of an existing debt;
- k credit agreements upon the conclusion of which the consumer is requested to deposit an item as security in the creditor's safe-keeping and where the liability of the consumer is strictly limited to that pledged item;
- l credit agreements which relate to loans granted to a restricted public under a statutory provision with a general interest purpose, and at lower interest rates than those prevailing on the market or free of interest or on other terms which are more favourable to the consumer than those prevailing on the market and at interest rates not higher than those prevailing on the market.

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), Article 4(2)(a) to (c), Article 4(4), Articles 6 to 9, Article 10(1), Article 10(4), Article 10(5), Articles 12, 15, 17 and Articles 19 to 32 shall apply.

4 In the case of credit agreements in the form of overrunning, only Articles 1 to 3, 18, 20 and 22 to 32 shall apply.

5 Member States may determine that only Articles 1 to 4, 6, 7 and 9, Article 10(1), points (a) to (h) and (l) of Article 10(2), Article 10(4) and Articles 11, 13 and 16 to 32 shall apply to credit agreements which are concluded by an organisation which:

- a is established for the mutual benefit of its members;
- b does not make profits for any other person than its members;
- c fulfils a social purpose required by domestic legislation;
- d receives and manages the savings of, and provides sources of credit to, its members only; and
- e provides credit on the basis of an annual percentage rate of charge which is lower than that prevailing on the market or subject to a ceiling laid down by national law,

and whose membership is restricted to persons residing or employed in a particular location or employees and retired employees of a particular employer, or to persons meeting other qualifications laid down under national law as the basis for the existence of a common bond between the members.

Member States may exempt from the application of this Directive credit agreements concluded by such an organisation where the total value of all existing credit agreements entered into by the organisation is insignificant in relation to the total value of all existing credit agreements in the Member State in which the organisation is based and the total value of all existing credit agreements entered into by all such organisations in the Member State is less than 1 % of the total value of all existing credit agreements entered into in that Member State.

Member States shall each year review whether the conditions for the application of any such exemption continue to exist and shall take action to withdraw the exemption where they consider that the conditions are no longer met.

6 Member States may determine that only Articles 1 to 4, 6, 7, 9, Article 10(1), points (a) to (i), (l) and (r) of Article 10(2), Article 10(4), Articles 11, 13, 16 and Articles 18 to 32 shall apply to credit agreements which provide for arrangements to be agreed by the creditor and the consumer in respect of deferred payment or repayment methods, where the consumer is already in default on the initial credit agreement and where:

- a such arrangements would be likely to avert the possibility of legal proceedings concerning such default; and
- b the consumer would not thereby be subject to terms less favourable than those laid down in the initial credit agreement.

However, if the credit agreement falls within the scope of paragraph 3, only the provisions of that paragraph shall apply.

Article 3

Definitions

For the purposes of this Directive, the following definitions shall apply:

- (a) ‘consumer’ means a natural person who, in transactions covered by this Directive, is acting for purposes which are outside his trade, business or profession;
- (b) ‘creditor’ means a natural or legal person who grants or promises to grant credit in the course of his trade, business or profession;
- (c) ‘credit agreement’ means an agreement whereby a creditor grants or promises to grant to a consumer credit in the form of a deferred payment, loan or other similar financial accommodation, except for agreements for the provision on a continuing basis of services or for the supply of goods of the same kind, where the consumer pays for such services or goods for the duration of their provision by means of instalments;
- (d) ‘overdraft facility’ means an explicit credit agreement whereby a creditor makes available to a consumer funds which exceed the current balance in the consumer’s current account;
- (e) ‘overrunning’ means a tacitly accepted overdraft whereby a creditor makes available to a consumer funds which exceed the current balance in the consumer’s current account or the agreed overdraft facility;
- (f) ‘credit intermediary’ means a natural or legal person who is not acting as a creditor and who, in the course of his trade, business or profession, for a fee, which may take a pecuniary form or any other agreed form of financial consideration:
 - (i) presents or offers credit agreements to consumers;
 - (ii) assists consumers by undertaking preparatory work in respect of credit agreements other than as referred to in (i); or
 - (iii) concludes credit agreements with consumers on behalf of the creditor;
- (g) ‘total cost of the credit to the consumer’ means all the costs, including interest, commissions, taxes and any other kind of fees which the consumer is required to pay in connection with the credit agreement and which are known to the creditor, except for notarial costs; costs in respect of ancillary services relating to the credit agreement, in particular insurance premiums, are also included if, in addition, the conclusion of a service contract is compulsory in order to obtain the credit or to obtain it on the terms and conditions marketed;
- (h) ‘total amount payable by the consumer’ means the sum of the total amount of the credit and the total cost of the credit to the consumer;

- (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 applicable including the costs referred to in Article 19(2);
- (j) ‘borrowing rate’ means the interest rate expressed as a fixed or variable percentage applied on an annual basis to the amount of credit drawn down;
- (k) ‘fixed borrowing rate’ means that the creditor and the consumer agree in the credit agreement on one borrowing rate for the entire duration of the credit agreement or on several borrowing rates for partial periods using exclusively a fixed specific percentage. If not all borrowing rates are determined in the credit agreement, the borrowing rate shall be deemed to be fixed only for the partial periods for which the borrowing rates are determined exclusively by a fixed specific percentage agreed on the conclusion of the credit agreement;
- (l) ‘total amount of credit’ means the ceiling or the total sums made available under a credit agreement;
- (m) ‘durable medium’ means any instrument which enables the consumer to store information addressed personally to him in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;
- (n) ‘linked credit agreement’ means a credit agreement where
 - (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
 - (ii) those two agreements form, from an objective point of view, a commercial unit; a commercial unit shall be deemed to exist where the supplier or service provider himself finances the credit for the consumer or, if it is financed by a third party, where the creditor uses the services of the supplier or service provider in connection with the conclusion or preparation of the credit agreement, or where the specific goods or the provision of a specific service are explicitly specified in the credit agreement.

CHAPTER II

INFORMATION AND PRACTICES PRELIMINARY TO THE CONCLUSION OF THE CREDIT AGREEMENT

Article 4

Standard information to be included in advertising

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 any cost of credit to the consumer 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 or variable or both, together with particulars of any charges included in the total cost of the credit to the consumer;
- 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 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.

3 Where the conclusion of a contract regarding an ancillary service relating to the credit agreement, in particular insurance, is compulsory in order to obtain the credit or to obtain it on the terms and conditions marketed, and the cost of that service cannot be determined in advance, the obligation to enter into that contract shall also be stated in a clear, concise and prominent way, together with the annual percentage rate of charge.

4 This Article shall be without prejudice to Directive 2005/29/EC.

Article 5

Pre-contractual information

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.

The information in question shall specify:

- a the type of credit;
- b the identity and the geographical address of the creditor as well as, if applicable, the identity and geographical address of the credit intermediary involved;
- c the total amount of credit and the conditions governing the drawdown;
- 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 and linked credit agreements, that good or service and its cash price;
- f 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 abovementioned information on all the applicable rates;
- g the annual percentage rate of charge and the total amount payable by the consumer, illustrated by means of a representative example mentioning all the assumptions used in

order to calculate that rate; where the consumer has informed the creditor of one or more components of his preferred credit, such as the duration of the credit agreement and the total amount of credit, the creditor shall take those components into account; if a credit agreement provides different ways of drawdown with different charges or borrowing rates and the creditor uses the assumption set out in point (b) of Part II of Annex I, he shall indicate that other drawdown mechanisms for this type of credit agreement may result in higher annual percentage rates of charge;

- h the amount, number and frequency of payments to be made by the consumer and, where appropriate, the order in which payments will be allocated to different outstanding balances charged at different borrowing rates for the purposes of reimbursement;
- i where applicable, the charges for maintaining one or several accounts recording both payment transactions and drawdowns, unless the opening of an account is optional, together with the charges for using a means of payment for both payment transactions and drawdowns, any other charges deriving from the credit agreement and the conditions under which those charges may be changed;
- j where applicable, the existence of costs payable by the consumer to a notary on conclusion of the credit agreement;
- k the obligation, if any, to enter into an ancillary service contract relating to the credit agreement, in particular an insurance policy, where the conclusion of such a contract is compulsory in order to obtain the credit or to obtain it on the terms and conditions marketed;
- l the interest rate applicable in the case of late payments and the arrangements for its adjustment, and, where applicable, any charges payable for default;
- m a warning regarding the consequences of missing payments;
- n where applicable, the sureties required;
- o the existence or absence of a right of withdrawal;
- p the right of early repayment, and, where applicable, information concerning the creditor's right to compensation and the way in which that compensation will be determined in accordance with Article 16;
- q the consumer's right to be informed immediately and free of charge, pursuant to Article 9(2), of the result of a database consultation carried out for the purposes of assessing his creditworthiness;
- r 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 of the request unwilling to proceed to the conclusion of the credit agreement with the consumer; and
- s if applicable, the period of time during which the creditor is bound by the pre-contractual information.

Any additional information which the creditor may provide to the consumer shall be given in a separate document which may be annexed to the Standard European Consumer Credit Information form.

2 However, in the case of voice telephony communications, as referred to in Article 3(3) of Directive 2002/65/EC, the description of the main characteristics of the financial service to be provided pursuant to the second indent of Article 3(3)(b) of that Directive shall include at least the items referred to in points (c), (d), (e), (f) and (h) of paragraph (1) of this Article, together with the annual percentage rate of charge illustrated by means of a representative example and the total amount payable by the consumer.

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.

4 Upon request, the consumer shall, in addition to receiving the Standard European Consumer Credit Information, be supplied free of charge with a copy of the draft credit agreement. This provision shall not apply if the creditor is at the time of the request unwilling to proceed to the conclusion of the credit agreement with the consumer.

5 In the case of a credit agreement under which payments made by the consumer do not give rise to an immediate corresponding amortisation of the total amount of credit, but are used to constitute capital during periods and under conditions laid down in the credit agreement or in an ancillary agreement, the pre-contractual information required under paragraph 1 shall include a clear and concise statement that such credit agreements do not provide for a guarantee of repayment of the total amount of credit drawn down under the credit agreement, unless such a guarantee is given.

6 Member States shall ensure that creditors and, where applicable, credit intermediaries provide adequate explanations to the consumer, in order to place the consumer in a position enabling him to assess whether the proposed credit agreement is adapted to his needs and to his financial situation, where appropriate by explaining the pre-contractual information to be provided in accordance with paragraph 1, the essential characteristics of the products proposed and the specific effects they may have on the consumer, including the consequences of default in payment by the consumer. Member States may adapt the manner by which and the extent to which such assistance is given, as well as by whom it is given, to the particular circumstances of the situation in which the credit agreement is offered, the person to whom it is offered and the type of credit offered.

Article 6

Pre-contractual information requirements for certain credit agreements in the form of an overdraft facility and for certain specific credit agreements

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.

The information in question shall specify:

- a the type of credit;
- b the identity and geographical address of the creditor as well as, if applicable, the identity and geographical address of the credit intermediary involved;
- c the total amount of credit;
- d the duration of the credit agreement;
- e the borrowing rate; the conditions governing the application of that rate, any index or reference rate applicable to the initial borrowing rate, the charges applicable from the time the credit agreement is concluded, and, where applicable, the conditions under which those charges may be changed;
- f the annual percentage rate of charge, illustrated by means of representative examples mentioning all the assumptions used in order to calculate that rate;
- g the conditions and procedure for terminating the credit agreement;

- h in the case of credit agreements as referred to in Article 2(3), where applicable, an indication that the consumer may be requested to repay the amount of credit in full at any time;
- i the interest rate applicable in the case of late payments and the arrangements for its adjustment, and, where applicable, any charges payable for default;
- j the consumer's right to be informed immediately and free of charge, pursuant to Article 9(2), of the result of a database consultation carried out for the purposes of assessing his creditworthiness;
- k in the case of credit agreements as referred to in Article 2(3), information about the charges applicable from the time such agreements are concluded and, if applicable, the conditions under which those charges may be changed;
- l if applicable, the period of time during which the creditor is bound by the pre-contractual information.

Such information shall be provided on paper or on another durable medium and all information shall be equally prominent. It may be provided by means of the European Consumer Credit Information form set out in Annex III. The creditor shall be deemed to have fulfilled the information requirements in this paragraph and in Article 3(1) and (2) of Directive 2002/65/EC if he has supplied the European Consumer Credit Information.

2 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.

3 In the case of a credit agreement as referred to in Article 2(5) and (6), the information provided to the consumer in accordance with paragraph 1 of this Article shall also include:

- a the amount, number and frequency of payments to be made by the consumer and, where appropriate, the order in which payments will be allocated to different outstanding balances charged at different borrowing rates for the purposes of reimbursement; and
- b the right of early repayment, and, where applicable, information concerning the creditor's right to compensation and the way in which that compensation will be determined.

However, if the credit agreement falls within the scope of Article 2(3), only the provisions of paragraph 1 of this Article shall apply.

4 However, in the case of voice telephony communications and where the consumer requests that the overdraft facility be made available with immediate effect, the description of the main characteristics of the financial service shall include at least the items referred to in points (c), (e), (f) and (h) of paragraph 1. In addition, in credit agreements of the kind referred to in paragraph 3, the description of the main characteristics shall include a specification of the duration of the credit agreement.

5 Notwithstanding the exclusion provided for in Article 2(2)(e), the Member States shall apply at least the requirements of the first sentence of paragraph 4 of this Article to credit agreements in the form of an overdraft facility and where the credit has to be repaid within one month.

6 Upon request, the consumer shall, in addition to receiving the information referred to in paragraphs 1 to 4, be supplied free of charge with a copy of the draft credit agreement containing the contractual information provided for by Article 10 insofar as that Article is applicable. This provision shall not apply if the creditor is at the time of the request unwilling to proceed to the conclusion of the credit agreement with the consumer.

7 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 paragraphs 1 and 3, including in the cases referred to in paragraph 4, the creditor shall immediately after the conclusion of the credit agreement fulfil his obligations under paragraphs 1 and 3 by providing the contractual information pursuant to Article 10 insofar as that Article is applicable.

Article 7

Exemptions from the pre-contractual information requirements

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.

Article 8

Obligation to assess the creditworthiness of the consumer

1 Member States shall ensure 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 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.

CHAPTER III

DATABASE ACCESS

Article 9

Database access

1 Each Member State shall in the case of cross-border credit ensure access for creditors from other Member States to databases used in that Member State for assessing the creditworthiness of consumers. The conditions for access shall be non-discriminatory.

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.

3 The information shall be provided unless the provision of such information is prohibited by other Community legislation or is contrary to objectives of public policy or public security.

4 This Article shall be without prejudice to the application of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data⁽²⁾.

CHAPTER IV

INFORMATION AND RIGHTS CONCERNING CREDIT AGREEMENTS

Article 10

Information to be included in credit agreements

1 Credit agreements shall be drawn up on paper or on another durable medium.

All the contracting parties shall receive a copy of the credit agreement. This Article shall be without prejudice to any national rules regarding the validity of the conclusion of credit agreements which are in conformity with Community law.

2 The credit agreement shall specify in a clear and concise manner:

- a the type of credit;
- b the identities and geographical addresses of the contracting parties as well as, if applicable, the identity and geographical address of the credit intermediary involved;
- c the duration of the credit agreement;
- d the total amount of credit and the conditions governing the drawdown;
- 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;
- f the borrowing rate, the conditions governing the application of that rate and, where available, any index or reference rate applicable to the initial borrowing rate, as well as the periods, conditions and procedures for changing the borrowing rate and, if different borrowing rates apply in different circumstances, the abovementioned information in respect of all the applicable rates;
- g the annual percentage rate of charge and the total amount payable by the consumer, calculated at the time the credit agreement is concluded; all the assumptions used in order to calculate that rate shall be mentioned;
- h the amount, number and frequency of payments to be made by the consumer and, where appropriate, the order in which payments will be allocated to different outstanding balances charged at different borrowing rates for the purposes of reimbursement;
- i where capital amortisation of a credit agreement with a fixed duration is involved, the right of the consumer to receive, on request and free of charge, at any time throughout the duration of the credit agreement, a statement of account in the form of an amortisation table.

The amortisation table shall indicate 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;

- j if charges and interest are to be paid without capital amortisation, a statement showing the periods and conditions for the payment of the interest and of any associated recurrent and non-recurrent charges;
- k where applicable, the charges for maintaining one or several accounts recording both payment transactions and drawdowns, unless the opening of an account is optional, together with the charges for using a means of payment for both payment transactions and drawdowns, and any other charges deriving from the credit agreement and the conditions under which those charges may be changed;
- l the interest rate applicable in the case of late payments as applicable at the time of the conclusion of the credit agreement and the arrangements for its adjustment and, where applicable, any charges payable for default;
- m a warning regarding the consequences of missing payments;
- n where applicable, a statement, that notarial fees will be payable;
- o the sureties and insurance required, if any;
- p the existence or absence of a right of withdrawal, the period during which that right may be exercised and other conditions governing the exercise thereof, including information concerning the obligation of the consumer to pay the capital drawn down and the interest in accordance with Article 14(3)(b) and the amount of interest payable per day;
- q information concerning the rights resulting from Article 15 as well as the conditions for the exercise of those rights;
- r the right of early repayment, the procedure for early repayment, as well as, where applicable, information concerning the creditor's right to compensation and the way in which that compensation will be determined;
- s the procedure to be followed in exercising the right of termination of the credit agreement;
- t whether or not there is an out-of-court complaint and redress mechanism for the consumer and, if so, the methods for having access to it;
- u where applicable, other contractual terms and conditions;
- v where applicable, the name and address of the competent supervisory authority.

3 Where paragraph 2(i) applies, the creditor shall make available to the consumer, free of charge and at any time throughout the duration of the credit agreement, a statement of account in the form of an amortisation table.

4 In the case of a credit agreement under which payments made by the consumer do not give rise to an immediate corresponding amortisation of the total amount of credit, but are used to constitute capital during periods and under conditions laid down in the credit agreement or in an ancillary agreement, the information required under paragraph 2 shall include a clear and concise statement that such credit agreements do not provide for a guarantee of repayment of the total amount of credit drawn down under the credit agreement, unless such a guarantee is given.

5 In the case of credit agreements in the form of overdraft facilities as referred to in Article 2(3), the following shall be specified in a clear and concise manner:

- a the type of credit;
- b the identities and geographical addresses of the contracting parties as well as, if applicable, the identity and geographical address of the credit intermediary involved;
- c the duration of the credit agreement;
- d the total amount of the credit 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

- and, if different borrowing rates apply in different circumstances, the abovementioned information in respect of all the applicable rates;
- f the annual percentage rate of charge and the total cost of the credit to 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; 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 agreements are concluded and, if applicable, the conditions under which those charges may be changed.

Article 11

Information concerning the borrowing rate

1 Where applicable, the consumer shall be informed of any change in the borrowing rate, on paper or another durable medium, before the change enters into force. The information shall state the amount of the payments to be made after the entry into force of the new borrowing rate and, if the number or frequency of the payments changes, particulars thereof.

2 However, the parties may agree in the credit agreement that the information referred to in paragraph 1 is to be given to the consumer periodically in cases where the change in the borrowing rate is caused by a change in a reference rate, the new reference rate is made publicly available by appropriate means and the information concerning the new reference rate is also kept available in the premises of the creditor.

Article 12

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

1 Where a credit agreement covers credit in the form of an overdraft facility, the consumer shall be kept regularly informed by means of a statement of account, on paper or on another durable medium, containing the following particulars:

- a the precise period to which the statement of account relates;
- b the amounts and dates of drawdowns;
- c the balance from the previous statement, and the date thereof;
- d the new balance;
- e the dates and amounts of payments made by the consumer;
- f the borrowing rate applied;
- g any charges that have been applied;
- h where applicable, the minimum amount to be paid.

2 In addition, the consumer shall be informed on paper or another durable medium of increases in the borrowing rate, or in any charges payable, before the change in question enters into force.

However, the parties may agree in the credit agreement that information concerning changes in the borrowing rate is to be given in the manner provided for in paragraph 1

in cases where the change in the borrowing rate is caused by a change in a reference rate, the new reference rate is made publicly available by appropriate means and the information concerning the new reference rate is also kept available in the premises of the creditor.

Article 13

Open-end credit agreements

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.

2 If agreed in the credit agreement, the creditor may, for objectively justified reasons, terminate the consumer's right to draw down on an open-end credit agreement. The creditor shall inform the consumer of the termination and the reasons for it on paper or on another durable medium, where possible before the termination and at the latest immediately thereafter, unless the provision of such information is prohibited by other Community legislation or is contrary to objectives of public policy or public security.

Article 14

Right of withdrawal

1 The consumer shall have a period of 14 calendar days in which to withdraw from the credit agreement without giving any reason.

That period of withdrawal shall begin

- a either from the day of the conclusion of the credit agreement, or
- b from the day on which the consumer receives the contractual terms and conditions and information in accordance with Article 10, if that day is later than the date referred to in point (a) of this subparagraph.

2 Where in the case of a linked credit agreement, as defined in Article 3(n), national legislation at the time of the entry into force of this Directive already provides that funds cannot be made available to the consumer before the expiry of a specific period, Member States may exceptionally provide that the period referred to in paragraph 1 of this Article may be reduced to this specific period at the explicit request of the consumer.

3 If the consumer exercises his right of withdrawal, he shall:

- a in order to give effect to the withdrawal before the expiry of the deadline referred to in paragraph 1, notify this to the creditor in line with the information given by the creditor pursuant to Article 10(2)(p) by means which can be proven in accordance with national law. The deadline shall be deemed to have been met if that notification, if it is on paper or on another durable medium that is available and accessible to the creditor, is dispatched before the deadline expires; and
- b pay to the creditor the capital and the interest accrued thereon from the date the credit was drawn down until the date the capital is repaid, without any undue delay and no later than 30 calendar days after the despatch by him to the creditor of notification of

the withdrawal. The interest shall be calculated on the basis of the agreed borrowing rate. The creditor shall not be entitled to any other compensation from the consumer in the event of withdrawal, except compensation for any non-returnable charges paid by the creditor to any public administrative body.

4 If an ancillary service relating to the credit agreement is provided by the creditor or by a third party on the basis of an agreement between the third party and the creditor, the consumer shall no longer be bound by the ancillary service contract if the consumer exercises his right of withdrawal from the credit agreement in accordance with this Article.

5 If the consumer has a right of withdrawal under paragraphs 1, 3 and 4, Articles 6 and 7 of Directive 2002/65/EC and Article 5 of Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises⁽³⁾ shall not apply.

6 Member States may provide that paragraphs 1 to 4 of this Article shall not apply to credit agreements which by law are required to be concluded through the services of a notary, provided that the notary confirms that the consumer is guaranteed the rights provided for under Articles 5 and 10.

7 This Article shall be without prejudice to any rule of national law establishing a period of time during which the performance of the contract may not begin.

Article 15

Linked credit agreements

1 Where the consumer has exercised a right of withdrawal, based on Community law, concerning a contract for the supply of goods or services, he shall no longer be bound by a linked credit agreement.

2 Where the goods or services covered by a linked credit agreement are not supplied, or are supplied only in part, or are not in conformity with the contract for the supply thereof, the consumer shall have the right to pursue remedies against the creditor if the consumer has pursued his remedies against the supplier but has failed to obtain the satisfaction to which he is entitled according to the law or the contract for the supply of goods or services. Member States shall determine to what extent and under what conditions those remedies shall be exercisable.

3 This Article shall be without prejudice to any national rules rendering the creditor jointly and severally liable in respect of any claim which the consumer may have against the supplier where the purchase of goods or services from the supplier has been financed by a credit agreement.

Article 16

Early repayment

1 The consumer shall be entitled at any time to discharge fully or partially his obligations under a credit agreement. In such cases, he shall be entitled to a reduction in the total cost of the credit, such reduction consisting of the interest and the costs for the remaining duration of the contract.

2 In the event of early repayment of credit the creditor shall be entitled to fair and objectively justified 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.

Such compensation 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.

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:

- a 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 12 months;
- b the creditor may exceptionally claim higher compensation if he can prove that the loss he suffered from early repayment exceeds the amount determined under paragraph 2.

If the compensation claimed by the creditor exceeds the loss actually suffered, the consumer may claim a corresponding reduction.

In this case, the loss shall consist of the difference between the initially agreed interest rate and the interest rate at which the creditor can lend out the amount repaid early on the market at the time of early repayment, and shall take into account the impact of early repayment on administrative costs.

5 Any 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.

Article 17

Assignment of rights

1 In the event of assignment to a third party of the creditor's rights under a credit agreement or the agreement itself, the consumer shall be entitled to plead against the assignee any defence which was available to him against the original creditor, including set-off where the latter is permitted in the Member State concerned.

2 The consumer shall be informed of the assignment referred to in paragraph 1 except where the original creditor, by agreement with the assignee, continues to service the credit vis-à-vis the consumer.

Article 18

Overrunning

1 In the case of an agreement to open a current account, where there is a possibility that the consumer is allowed an overrun, the agreement shall contain in addition the information

referred to in Article 6(1)(e). The creditor shall in any case provide that information on paper or another durable medium on a regular basis.

2 In the event of a significant overrunning exceeding a period of one month, the creditor shall inform the consumer without delay, on paper or on another durable medium,

- a of the overrunning;
- b of the amount involved;
- c of the borrowing rate;
- d of any penalties, charges or interest on arrears applicable.

3 This Article shall be without prejudice to any rule of national law requiring the creditor to offer another kind of credit product when the duration of the overrunning is significant.

CHAPTER V

ANNUAL PERCENTAGE RATE OF CHARGE

Article 19

Calculation of the annual percentage rate of charge

1 The annual percentage rate of charge, equating, on an annual basis, to the present value of all commitments (drawdowns, repayments and charges), future or existing, agreed by the creditor and the consumer, shall be calculated in accordance with the mathematical formula set out in Part I of Annex I.

2 For the purpose of calculating the annual percentage rate of charge, the total cost of the credit to the consumer shall be determined, with the exception of any charges payable by the consumer for non-compliance with any of his commitments laid down in the credit agreement and charges other than the purchase price which, for purchases of goods or services, he is obliged to pay whether the transaction is effected in cash or on credit.

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.

3 The calculation of the annual percentage rate of charge shall be based on the assumption that the credit agreement is to remain valid for the period agreed and that the creditor and the consumer will fulfil their obligations under the terms and by the dates specified in the credit agreement.

4 In the case of credit agreements containing clauses allowing variations in the borrowing rate and, where applicable, charges contained in the annual percentage rate of charge but unquantifiable at the time of calculation, the annual percentage rate of charge shall be calculated on the assumption that the borrowing rate and other charges will remain fixed in relation to the initial level and will remain applicable until the end of the credit agreement.

5 Where necessary, the additional assumptions set out in Annex I may be used in calculating the annual percentage rate of charge.

If the assumptions set out in this Article and in Part II of Annex I do not suffice to calculate the annual percentage rate of charge in a uniform manner or are not adapted any more to the commercial situation at the market, the Commission may determine the necessary additional assumptions for the calculation of the annual percentage rate of charge, or modify existing ones. These measures, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 25(2).

CHAPTER VI

CREDITORS AND CREDIT INTERMEDIARIES

Article 20

Regulation of creditors

Member States shall ensure that creditors are supervised by a body or authority independent from financial institutions, or regulated. This shall be without prejudice to Directive 2006/48/EC.

Article 21

Certain obligations of credit intermediaries vis-à-vis consumers

Member States shall ensure that:

- (a) a credit intermediary indicates in advertising and documentation intended for consumers the extent of his powers, in particular whether he works exclusively with one or more creditors or as an independent broker;
- (b) the fee, if any, payable by the consumer to the credit intermediary for his services is disclosed to the consumer, and agreed between the consumer and the credit intermediary on paper or another durable medium before the conclusion of the credit agreement;
- (c) the fee, if any, payable by the consumer to the credit intermediary for his services is communicated to the creditor by the credit intermediary, for the purpose of calculation of the annual percentage rate of charge.

CHAPTER VII

IMPLEMENTING MEASURES

Article 22

Harmonisation and imperative nature of this Directive

1 Insofar as this Directive contains harmonised provisions, Member States may not maintain or introduce in their national law provisions diverging from those laid down in this Directive.

2 Member States shall ensure that consumers may not waive the rights conferred on them by the provisions of national law implementing or corresponding to this Directive.

3 Member States shall further ensure that the provisions they adopt in implementation of this Directive cannot be circumvented as a result of the way in which agreements are formulated, in particular by integrating drawdowns or credit agreements falling within the scope of this Directive into credit agreements the character or purpose of which would make it possible to avoid its application.

4 Member States shall take the necessary measures to ensure that consumers do not lose the protection granted by this Directive by virtue of the choice of the law of a third country as the law applicable to the credit agreement, if the credit agreement has a close link with the territory of one or more Member States.

Article 23

Penalties

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.

Article 24

Out-of-court dispute resolution

1 Member States shall ensure that adequate and effective out-of-court dispute resolution procedures for the settlement of consumer disputes concerning credit agreements are put in place, using existing bodies where appropriate.

2 Member States shall encourage those bodies to cooperate in order to also resolve cross-border disputes concerning credit agreements.

Article 25

Committee procedure

1 The Commission shall be assisted by a Committee.

2 Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

Article 26

Information to be supplied to the Commission

Where a Member State makes use of any of the regulatory choices referred to in Article 2(5) and 2(6), Article 4(1), Article 4(2)(c), Article 6(2), Article 10(1), Article 10(2)(g), Article 14(2) and Article 16(4), it shall inform the Commission thereof as well as of any subsequent changes. The Commission shall make that information public on a website or in another easily accessible way. Member States shall take

the appropriate measures to diffuse that information amongst national creditors and consumers.

Article 27

Transposition

1 Before 12 May 2010 Member States shall adopt and publish the provisions necessary to comply with this Directive. They shall forthwith inform the Commission thereof.

They shall apply those provisions from 12 May 2010.

When Member States adopt these provisions, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2 The Commission shall undertake, every five years and for the first time 12 May 2013, a review of the thresholds laid down in this Directive and its annexes and the percentages used to calculate the compensation payable in the event of early repayment, assessing them in the light of economic trends in the Community and the situation of the market concerned. The Commission shall also monitor the effect of the existence of the regulatory choices referred to in Article 2(5) and 2(6), Article 4(1), Article 4(2)(c), Article 6(2), Article 10(1), Article 10(2) (g), Article 14(2) and Article 16(4) on the internal market and consumers. The results shall be made known to the European Parliament and the Council, accompanied where appropriate by a proposal to modify the thresholds and percentages as well as the abovementioned regulatory choices accordingly.

Article 28

Conversion of amounts expressed in euro into national currency

1 For the purposes of this Directive, those Member States who convert the amounts expressed in euro into their national currency shall initially use in the conversion the exchange rate prevailing on the date of adoption of this Directive.

2 Member States may round off the amounts resulting from the conversion provided that such rounding off does not exceed EUR 10.

CHAPTER VIII

TRANSITIONAL AND FINAL PROVISIONS

Article 29

Repeal

Directive 87/102/EEC shall be repealed with effect from 12 May 2010.

*Article 30***Transitional measures**

1 This Directive shall not apply to credit agreements existing on the date when the national implementing measures enter into force.

2 However, Member States shall ensure that Articles 11, 12, 13 and 17, the second sentence of Article 18(1), and Article 18(2) are applied also to open-end credit agreements existing on the date when the national implementing measures enter into force.

*Article 31***Entry into force**

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

*Article 32***Addressees**

This Directive is addressed to the Member States.

Done at Strasbourg, 23 April 2008.

For the European Parliament

The President

H.-G. PÖTTERING

For the Council

The President

J. LENARČIČ

- (1) [OJ L 145, 30.4.2004, p. 1](#). Directive as last amended by Directive 2008/10/EC ([OJ L 76, 19.3.2008, p. 33](#)).
- (2) [OJ L 281, 23.11.1995, p. 31](#). Directive as amended by Regulation (EC) No 1882/2003 ([OJ L 284, 31.10.2003, p. 1](#)).
- (3) [OJ L 372, 31.12.1985, p. 31](#).