

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

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PARLIAMENT AND OF THE COUNCIL

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on credit agreements for consumers and repealing Council Directive 87/102/EEC

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee⁽¹⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁽²⁾,

Whereas:

- (1) Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit⁽³⁾ lays down rules at Community level concerning consumer credit agreements.
- (2) In 1995, the Commission presented a report on the operation of Directive 87/102/EEC and undertook a broad consultation of the interested parties. In 1997, the Commission presented a summary report of reactions to the 1995 report. A second report was produced in 1996 on the operation of Directive 87/102/EEC.
- (3) Those reports and consultations revealed substantial differences between the laws of the various Member States in the field of credit for natural persons in general and consumer credit in particular. An analysis of the national laws transposing Directive 87/102/EEC shows that Member States use a variety of consumer protection mechanisms, in addition to Directive 87/102/EEC, on account of differences in the legal or economic situation at national level.
- (4) The *de facto* and *de jure* situation resulting from those national differences in some cases leads to distortions of competition among creditors in the Community and creates obstacles to the internal market where Member States have adopted different mandatory provisions more stringent than those provided for in Directive 87/102/EEC. It restricts consumers' ability to make direct use of the gradually increasing availability of cross-border credit. Those distortions and restrictions may in turn have consequences in terms of the demand for goods and services.
- (5) In recent years the types of credit offered to and used by consumers have evolved considerably. New credit instruments have appeared, and their use continues to develop.

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It is therefore necessary to amend existing provisions and to extend their scope, where appropriate.

- (6) In accordance with the Treaty, the internal market comprises an area without internal frontiers in which the free movement of goods and services and freedom of establishment are ensured. The development of a more transparent and efficient credit market within the area without internal frontiers is vital in order to promote the development of cross-border activities.
- (7) In order to facilitate the emergence of a well-functioning internal market in consumer credit, it is necessary to make provision for a harmonised Community framework in a number of core areas. In view of the continuously developing market in consumer credit and the increasing mobility of European citizens, forward-looking Community legislation which is able to adapt to future forms of credit and which allows Member States the appropriate degree of flexibility in their implementation should help to establish a modern body of law on consumer credit.
- (8) It is important that the market should offer a sufficient degree of consumer protection to ensure consumer confidence. Thus, it should be possible for the free movement of credit offers to take place under optimum conditions for both those who offer credit and those who require it, with due regard to specific situations in the individual Member States.
- (9) Full harmonisation is necessary in order to ensure that all consumers in the Community enjoy a high and equivalent level of protection of their interests and to create a genuine internal market. Member States should therefore not be allowed to maintain or introduce national provisions other than those laid down in this Directive. However, such restriction should only apply where there are provisions harmonised in this Directive. Where no such harmonised provisions exist, Member States should remain free to maintain or introduce national legislation. Accordingly, Member States may, for instance, maintain or introduce national provisions on joint and several liability of the seller or the service provider and the creditor. Another example of this possibility for Member States could be the maintenance or introduction of national provisions on the cancellation of a contract for the sale of goods or supply of services if the consumer exercises his right of withdrawal from the credit agreement. In this respect Member States, in the case of open-end credit agreements, should be allowed to fix a minimum period needing to elapse between the time when the creditor asks for reimbursement and the day on which the credit has to be reimbursed.
- (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, 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 75 000. Furthermore, Member States could also apply the provisions of this Directive to linked credit which does not

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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.

- (11) In the case of specific credit agreements to which only some provisions of this Directive are applicable, Member States should not be allowed to adopt national legislation implementing other provisions of this Directive. However, Member States should remain free to regulate, in their national legislation, such types of credit agreements as regards other aspects not harmonised by this Directive.
- (12) 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 them for the duration of their provision by means of instalments, may differ considerably, in terms of the interests of the contractual parties involved, and the modalities and performance of the transactions, from credit agreements covered by this Directive. Therefore, it should be clarified that such agreements are not regarded as credit agreements for the purposes of this Directive. Such types of agreement include, for example, an insurance contract where the insurance is paid for in monthly instalments.
- (13) This Directive should not apply to certain types of credit agreement, such as deferred debit cards, under the terms of which the credit has to be repaid within three months and only insignificant charges are payable.
- (14) Credit agreements covering the granting of credit secured by real estate should be excluded from the scope of this Directive. That type of credit is of a very specific nature. Also, credit agreements the purpose of which is to finance the acquisition or retention of property rights in land or in an existing or projected building should be excluded from the scope of this Directive. However, credit agreements should not be excluded from the scope of this Directive only because their purpose is the renovation or increase of value of an existing building.
- (15) The provisions of this Directive apply irrespective of whether the creditor is a legal person or a natural person. However, this Directive does not affect the right of Member States to limit, in conformity with Community law, the provision of credit for consumers to legal persons only or to certain legal persons.
- (16) Certain provisions of this Directive should apply to natural and legal persons (credit intermediaries) who, in the course of their trade, business or profession, for a fee, present or offer credit agreements to consumers, assist consumers by undertaking preparatory work in respect of credit agreements or conclude credit agreements with consumers on behalf of the creditor. Organisations which allow their identity to be used in promoting credit products, such as credit cards, and which may also recommend those products to their members should not be regarded as credit intermediaries for the purposes of this Directive.
- (17) This Directive regulates only certain obligations of credit intermediaries in relation to consumers. Member States should therefore remain free to maintain or introduce additional obligations incumbent on credit intermediaries, including the conditions

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under which a credit intermediary may receive fees from a consumer who has requested his service.

- (18) Consumers should be protected against unfair or misleading practices, in particular with respect to the disclosure of information by the creditor, in line with Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market ('Unfair Commercial Practices Directive')⁽⁴⁾. However, this Directive should contain specific provisions on advertising concerning credit agreements as well as certain items of standard information to be provided to consumers in order to enable them, in particular, to compare different offers. Such information should be given in a clear, concise and prominent way by means of a representative example. A ceiling should be provided where it is not possible to indicate the total amount of credit as the total sums made available, in particular where a credit agreement gives the consumer freedom of drawdown with a limitation with regard to the amount. The ceiling should indicate the upper limit of credit which can be made available to the consumer. In addition, Member States should remain free to regulate information requirements in their national law regarding advertising which does not contain information on the cost of the credit.
- (19) In order to enable consumers to make their decisions in full knowledge of the facts, they should receive adequate information, which the consumer may 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.
- (20) The total cost of the credit to the consumer should comprise all the costs, including interest, commissions, taxes, fees for credit intermediaries and any other fees which the consumer has to pay in connection with the credit agreement, except for notarial costs. Creditors' actual knowledge of the costs should be assessed objectively, taking into account the requirements of professional diligence.
- (21) Credit agreements in which a borrowing rate is periodically revised in line with changes occurring in a reference rate referred to in the credit agreement should not be regarded as credit agreements with a fixed borrowing rate.
- (22) Member States should remain free to maintain or introduce national provisions prohibiting the creditor from requiring the consumer, in connection with the credit agreement, to open a bank account or conclude an agreement in respect of another ancillary service, or to pay the expenses or fees for such bank accounts or other ancillary

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services. In those Member States where such combined offers are allowed, consumers should be informed before the conclusion of the credit agreement about any ancillary services which are compulsory in order for the credit to be obtained in the first place or on the terms and conditions marketed. The costs payable in respect of those ancillary services should be included in the total cost of the credit; alternatively, if the amount of such costs cannot be determined in advance, consumers should receive adequate information about the existence of costs at a pre-contractual stage. The creditor must be presumed to have knowledge of the costs of the ancillary services which he offers to the consumer himself, or on behalf of a third party, unless the price thereof depends on the specific characteristics or situation of the consumer.

- (23) For specific types of credit agreements, however, it is appropriate, in order to ensure an adequate level of consumer protection without placing an excessive burden on creditors or, where applicable, credit intermediaries, to restrict the pre-contractual information requirements of this Directive, taking into account the specific character of such types of agreements.
- (24) The consumer needs to be given comprehensive information before he concludes the credit agreement, regardless of whether or not a credit intermediary is involved in the marketing of the credit. Therefore, in general, the pre-contractual information requirements should also apply to credit intermediaries. However, where suppliers of goods and services act as credit intermediaries in an ancillary capacity, it is not appropriate to burden them with the legal obligation to provide the pre-contractual information in accordance with this Directive. Suppliers of goods and services may be deemed, for example, to be acting as credit intermediaries in an ancillary capacity if their activity as credit intermediaries is not the main purpose of their trade, business or profession. In those cases, a sufficient level of consumer protection is still achieved since the creditor is responsible for ensuring that the consumer receives the full pre-contractual information, either from the intermediary, if the creditor and the intermediary so agree, or in some other appropriate manner.
- (25) The potentially binding character of the information to be provided to the consumer prior to the conclusion of the credit agreement and the period of time during which the creditor is to be bound by it may be regulated by the Member States.
- (26) Member States should take appropriate measures to promote responsible practices during all phases of the credit relationship, taking into account the specific features of their credit market. Those measures may include, for instance, the provision of information to, and the education of, consumers, including warnings about the risks attaching to default on payment and to over-indebtedness. In the expanding credit market, in particular, it is important that creditors should not engage in irresponsible lending or give out credit without prior assessment of creditworthiness, and the Member States should carry out the necessary supervision to avoid such behaviour and should determine the necessary means to sanction creditors in the event of their doing so. Without prejudice to the credit risk provisions of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions⁽⁶⁾, creditors should bear the responsibility of checking

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individually the creditworthiness of the consumer. To that end, they should be allowed to use information provided by the consumer not only during the preparation of the credit agreement in question, but also during a long-standing commercial relationship. The Member States' authorities could also give appropriate instructions and guidelines to creditors. Consumers should also act with prudence and respect their contractual obligations.

- (27) Despite the pre-contractual information to be provided, the consumer may still need additional assistance in order to decide which credit agreement, within the range of products proposed, is the most appropriate for his needs and financial situation. Therefore, Member States should ensure that creditors provide such assistance in relation to the credit products which they offer to the consumer. Where appropriate, the relevant pre-contractual information, as well as the essential characteristics of the products proposed, should be explained to the consumer in a personalised manner so that the consumer can understand the effects which they may have on his economic situation. Where applicable, this duty to assist the consumer should also apply to credit intermediaries. Member States could determine when and to what extent such explanations are to be given to the consumer, taking into account the particular circumstances in which the credit is offered, the consumer's need for assistance and the nature of individual credit products.
- (28) To assess the credit status of a consumer, the creditor should also consult relevant databases; the legal and actual circumstances may require that such consultations vary in scope. To prevent any distortion of competition among creditors, it should be ensured that creditors have access to private or public databases concerning consumers in a Member State where they are not established under non-discriminatory conditions compared with creditors in that Member State.
- (29) Where a decision to reject an application for credit is based on the consultation of a database, the creditor should inform the consumer of this fact and of the particulars of the database consulted. However, the creditor should not be obliged to give such information when this is prohibited by other Community legislation, for example legislation on money laundering or the financing of terrorism. Furthermore, such information should not be given if this would be contrary to objectives of public policy or public security, such as the prevention, investigation, detection or prosecution of criminal offences.
- (30) This Directive does not regulate contract law issues related to the validity of credit agreements. Therefore, in that area, the Member States may maintain or introduce national provisions which are in conformity with Community law. Member States may regulate the legal regime governing the offer to conclude the credit agreement, in particular when it is to be given and the period during which it is to be binding on the creditor. If such an offer is made at the same time as the pre-contractual information provided for by this Directive is given, it should, like any additional information the creditor may wish to give to the consumer, be provided in a separate document which may be annexed to the Standard European Consumer Credit Information.

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- (31) In order to enable the consumer to know his rights and obligations under the credit agreement, it should contain all necessary information in a clear and concise manner.
- (32) In order to ensure full transparency, the consumer should be provided with information concerning the borrowing rate, both at a pre-contractual stage and when the credit agreement is concluded. During the contractual relationship, the consumer should further be informed of changes to the variable borrowing rate and changes to the payments caused thereby. This is without prejudice to provisions of national law not related to consumer information which lay down conditions for, or prescribe the consequences of, changes, other than changes concerning payments, in borrowing rates and other economic conditions governing the credit, for instance rules providing that the creditor may change the borrowing rate only where there is a valid reason for such change or that the consumer may terminate the contract should there be a change in the borrowing rate or in some other economic condition concerning the credit.
- (33) The contracting parties should have the right to effect a standard termination of an open-end credit agreement. In addition, if agreed in the credit agreement, the creditor should have the right to suspend the consumer's right to draw down on an open-end credit agreement for objectively justified reasons. Such reasons may include, for instance, suspicion of an unauthorised or fraudulent use of the credit or a significantly increased risk of the consumer being unable to fulfil his obligation to repay the credit. This Directive does not affect national law in the area of contract law regulating the rights of the contracting parties to terminate the credit agreement on the basis of a breach of contract.
- (34) In order to approximate the procedures for exercising the right of withdrawal in similar areas, it is necessary to make provision for a right of withdrawal without penalty and with no obligation to provide justification, under conditions similar to those provided for by Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services⁽⁶⁾.
- (35) Where a consumer withdraws from a credit agreement in connection with which he has received goods, in particular from a purchase in instalments or from a hiring or leasing agreement providing for an obligation to purchase, this Directive should be without prejudice to any regulation by Member States of questions concerning the return of the goods or any related questions.
- (36) In some cases, national legislation already provides that funds cannot be made available to the consumer before the expiry of a specific deadline. In these cases, consumers may wish to ensure that they receive the goods or services purchased early. Therefore, in the case of linked credit agreements, Member States may exceptionally provide that, if the consumer explicitly wishes early receipt, the deadline for the exercise of the right of withdrawal could be reduced to the same deadline before which funds cannot be made available.
- (37) In the case of linked credit agreements, a relationship of interdependence exists between the purchase of goods or services and the credit agreement concluded for that purpose. Therefore, where the consumer exercises his right of withdrawal in respect of the

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purchase agreement, based on Community law, he should no longer be bound by the linked credit agreement. This should not affect national law applicable to linked credit agreements in cases where a purchase agreement has been voided or where the consumer has exercised his right of withdrawal based on national law. Nor should this affect the rights of consumers granted by national provisions according to which no commitment may be entered into between the consumer and a supplier of goods or services, nor any payment made between those persons, as long as the consumer has not signed the credit agreement to finance the purchase of the goods or services.

- (38) Under certain conditions, the consumer should be allowed to pursue remedies against the creditor in the event of problems related to the purchase agreement. However, Member States should determine to what extent and under what conditions the consumer is required to pursue his remedies against the supplier, in particular by bringing an action against the latter, before being in a position to pursue them against the creditor. This Directive should not deprive consumers of their rights under national provisions attaching joint and several liability to the seller or supplier of services and to the creditor.
- (39) The consumer should have the right to discharge his obligations before the date agreed in the credit agreement. In the case of early repayment, either in part or in full, the creditor should be entitled to compensation for the costs directly linked to the early repayment, taking into account also any savings thereby made by the creditor. However, in order to determine the method of calculating the compensation, it is important to respect several principles. The calculation of the compensation due to the creditor should be transparent and comprehensible to consumers already at the pre-contractual stage and in any case during the performance of the credit agreement. In addition, the calculation method should be easy for creditors to apply, and supervisory control of the compensation by the responsible authorities should be facilitated. Therefore, and due to the fact that consumer credit is, given its duration and volume, not financed by long-term funding mechanisms, the ceiling for the compensation should be fixed in terms of a flat-rate amount. This approach reflects the special nature of credits for consumers and should not prejudice the possibly different approach in respect of other products which are financed by long-term funding mechanisms, such as fixed-rate mortgage loans.
- (40) Member States should have the right to provide that compensation for early repayment may be claimed by the creditor only on condition that the amount repaid over a 12-month period exceeds a threshold defined by Member States. When fixing that threshold, which should not exceed EUR 10 000, Member States should for instance take into account the average amount of consumer credits in their market.
- (41) Assignment of the creditor's rights under a credit agreement should not have the effect of placing the consumer in a less favourable position. The consumer should also be properly informed when the credit agreement is assigned to a third party. However, where the initial creditor, in agreement with the assignee, continues to service the credit vis-à-vis the consumer, the consumer has no significant interest in being informed of the assignment. Therefore, a requirement at EU level that the consumer be informed of the assignment in such cases would be excessive.

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- (42) Member States should remain free to maintain or introduce national rules providing for collective forms of communication when this is necessary for purposes relating to the effectiveness of complex transactions such as securitisations or liquidation of assets that take place in the compulsory administrative liquidation of banks.
- (43) In order to promote the establishment and functioning of the internal market and to ensure a high degree of protection for consumers throughout the Community, it is necessary to ensure the comparability of information relating to annual percentage rates of charge throughout the Community. Despite the uniform mathematical formula for its calculation, the annual percentage rate of charge provided for in Directive 87/102/EEC is not yet fully comparable throughout the Community. In individual Member States different cost factors are taken into account in the calculation thereof. This Directive should therefore clearly and comprehensively define the total cost of a credit to the consumer.
- (44) In order to ensure market transparency and stability, and pending further harmonisation, Member States should ensure that appropriate measures for the regulation or supervision of creditors are in place.
- (45) This Directive respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, this Directive seeks to ensure full respect for the rules on protection of personal data, the right to property, non-discrimination, protection of family and professional life, and consumer protection pursuant to the Charter of Fundamental Rights of the European Union.
- (46) Since the objective of this Directive, namely the establishment of common rules for certain aspects of the laws, regulations and administrative provisions of the Member States concerning consumer credit, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (47) Member States should lay down rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and ensure that they are implemented. While the choice of penalties remains within the discretion of the Member States, the penalties provided for should be effective, proportionate and dissuasive.
- (48) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁽⁷⁾.
- (49) In particular, the Commission should be empowered to adopt additional assumptions for the calculation of the annual percentage rate of charge. Since those measures are of general scope and are designed to amend non-essential elements of this Directive, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

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- (50) In accordance with point 34 of the Interinstitutional Agreement on better law-making⁽⁸⁾, Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.
- (51) Accordingly, taking account of the number of amendments that need to be made to Directive 87/102/EEC due to the evolution of the consumer credit sector and in the interests of the clarity of Community legislation, that Directive should be repealed and replaced by this Directive,

HAVE ADOPTED THIS DIRECTIVE:

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- (1) [OJ C 234, 30.9.2003, p. 1.](#)
- (2) Opinion of the European Parliament of 20 April 2004 ([OJ C 104 E, 30.4.2004, p. 233](#)), Council common position of 20 September 2007 ([OJ C 270 E, 13.11.2007, p. 1](#)) and Position of the European Parliament of 16 January 2008 (not yet published in the Official Journal). Council Decision of 7 April 2008.
- (3) [OJ L 42, 12.2.1987, p. 48.](#) Directive as last amended by Directive 98/7/EC of the European Parliament and of the Council ([OJ L 101, 1.4.1998, p. 17](#)).
- (4) [OJ L 149, 11.6.2005, p. 22.](#)
- (5) [OJ L 177, 30.6.2006, p. 1.](#) Directive as last amended by Directive 2008/24/EC ([OJ L 81, 20.3.2008, p. 38](#)).
- (6) [OJ L 271, 9.10.2002, p. 16.](#) Directive as last amended by Directive 2007/64/EC ([OJ L 319, 5.12.2007, p. 1](#)).
- (7) [OJ L 184, 17.7.1999, p. 23.](#) Decision as amended by Decision 2006/512/EC ([OJ L 200, 22.7.2006, p. 11](#)).
- (8) [OJ C 321, 31.12.2003, p. 1.](#)