II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 22 February 1990

amending Directive 87/102/EEC for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit

(90/88/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission (1),

In cooperation with the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas Article 5 of Council Directive 87/102/EEC (4) provides for the introduction of a Community method or methods of calculating the annual percentage rate of lcharge for consumer credit;

Whereas it is desirable, in order to promote the establishment and functioning the internal market and to ensure that consumers benefit from a high level of protection, that one method of calculating the said annual percentage rate of charge should be used throughout the Community;

Whereas it is desirable, with a view to introducing such a method and in accordance with the definition of the total cost of credit to the consumer, to draw up a single mathematical formula for calculating the annual percentage rate of charge and for determining credit cost items to be used in the calculation by indicating those costs which must not be taken into acount;

Whereas, during a trasitional period, Member States which prior to the date of notification of this Directive, apply laws which permit the use of another mathematical formula for calculating the annual percentage rate of charge may continue to apply such laws;

Whereas, before expiry of the transitional period and in the light of experience, the Council will, on the basis of a proposal from the Commission, take a decision which will make it possible to apply a single Community mathematical formula;

Whereas it is desirable, whenever necessary, to adopt certain hypotheses for calculating the annual percentage rate of charge;

Whereas by virtue of the special nature of loans guaranteed by a mortgage secured on immoveable property it is desirable that such credit should continue to be partially excluded from this Directive;

Whereas the information which must be communicated to the consumer in the written contract should be amplified,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 87/102/EEC is hereby amended as follows:

1. In Article 1 (2), points (d) and (e) shall be replaced by the following:

'(d) "total cost of the credit to the consumer" means all the costs, including interest and other charges, which the consumer has to pay for the credit.';

(1) OJ No C 155, 14. 6. 1988, p. 10.
(2) OJ No C 96, 17. 4. 1989, p. 87 and OJ No C 291, 20. 11. 1989, p. 50.
(3) OJ No C 337, 31. 12. 1988, p. 1.
(4) OJ No L 42, 12. 2. 1987, p. 48.

'(e) "annual percentage rate of charge" means the total cost of the credit to theconsumer, expressed as an annual percentage of the amount of the credit granted and calculated in accordance with Article 1a'.

2. The following Article shall be inserted :

'Article 1a

1. (a) The annual percentage rate of charge, which shall be that equivalent, on an annual basis, to the present value of all commitments (loans, repayments and charges), future or existing, agreed by the creditor and the borrower, shall be calculated in accordance with the mathematical formula set out in Annex II.

(b) Four examples of the method of calculation are given in Annex III, by way of illustration.

2. For the purpose of calculating the annual percentage rate of charge, the "total cost of the credit to the consumer" as defined in Article 1 (2) (d) shall be determined, with the exception of the following charges :

(i) charges payable by the borrower for non-compliance with any of his commitments laid down in the credit agreement ;

(ii) charges other than the purchase price which, in purchases of goods or services, the consumer is obliged to pay whether the transaction is paid in cash or by credit ;

(iii) charges for the transfer of funds and charges for keeping an account intended to receive payments towards the reimbursement of the credit the payment of interest and other charges except where the consumer doesn ot have reasonable freedom of choice in the matter and where such charges are abnormally high ; this provision shall not, however, apply to charges for collection of such reimbursements or payments, whether made in cash or otherwise ;

(iv) membership subscriptions to associations or groups and arising from agreements separate from the credit agreement, even though such subscriptions have an effect on the credit terms ;

(v) charges for insurance or guarantees ; included are, however, those designed to ensure payment to the creditor, in the event of the death, invalidity, illness or unemployment of the consumer, of a sum equal to or less than the total amount of the credit togehter with relevant interest and other charges which have to be imposed by the creditor as a condition for credit being granted.

3. (a) Where credit transactions referred to in this Directive are subject to the provisions of national laws in force on 1 March 1990 which impose maximum limits on the annual percentage rate of charge for such transactions and, where such provisions permit standard costs other than those described in paragraph 2 (i) to (v) not to be included in those maximum limits, Member States may, solely in respect of such transactions, not include the aforementioned costs when calculating the annual percentage rate of charge, as stipulated in this Directive, provided that there is a requirement, in the cases mentioned in Article 3 and in the credit agreement, that the consumer be informed of the amount and inclusion thereof in the payments to be made.

(b) Member States may no longer apply point (a) from the date of entry into force of the single mathematical formula for calculating the annual percentage rate of charge in the Community, pursuant to the provisions of paragraph 5 (c).

4. (a) The annual percentage rate of charge shall be calculated at the time the credit contract is concluded, without prejudice to the provisions of Article 3 concerning advertisements and special offers.

(b) The calculation shall be made on the assumption that the credit contract is valid for the period agreed and that the creditor and the consumer fulfil their obligations under the terms and by the dates agreed.

5. (a) As a transitional measure, notwithstanding the provisions of paragraph 1 (a), Member States which, prior to 1 March 1990, applied legal provisions whereby a mathematical formula different from that given in Annex II could be used for calculating the annual percentage rate of charge, may continue applying that formula within their territory for a period of three years starting from 1 January 1993.

Member States shall take the appropriate measures to ensure that only one mathematical formula for calculating the annual percentage rate of charge is used within their territory.

(b) Six months before the expiry of the time limit laid down in point (a) the Commission shall submit to the Council a report, accompanied by a proposal, which will make it possible in the light of experience, to apply a single Community mathematical formula for calculating the annual percentage rate of charge.

(c) The Council shall, acting by a qualified majority on the basis of the proposal from the Commission, take a decision before 1 January 1996.

6. In the case of credit contracts containing clauses allowing variations in the rate of interest and the amount or level of other charges contained in the annual percentage rate of charge but unquantifiable at the time when it is calculated, the annual percentage rate of charge shall be calculated on the assumption that interest and other charges remain fixed and will apply until the end of the credit contract.