

*Proposed directive on credit for  
consumers*

*(Presented by the EU Commission on  
11 September 2002)*

## *Proposed directive on credit for consumers*

-  It will replace present Community rules (Directives n. 87/102/EEC, 90/88/EEC and 98/7/EC) and intends to produce framing legislation on retail credit.
-  Unlike present consumer credit rules, the proposal will apply to all credit transactions with consumers (no value cap) and to surety agreements concluded with consumers.
-  The technique is that of maximum (or rather "maximalist") harmonisation.

While in principle the Commission's purposes are sound, it is worth examining some points that are questionable:

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- Responsible lending and duty to provide advice.
- Central database.
- Contracts signed outside business premises.
- Joint and several liability.
- Annual percentage rate of charge and borrowing rate.
- Duration of surety agreements.
- Transitional rules.

Responsible Lending (art. 9) and duty to provide advice (art. 6)

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These provisions institute stringent constraints on the activities of lenders.

They threaten to give rise to serious disputes between consumers and lenders.

## Central database (art. 8)

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The inclusion of specific measures concerning databases in a directive that bears on another matter is questionable and risks to introduce solutions that conflict with existing regulations in the various Member States.

The rule would conflict with the new Basel Capital Adequacy Accord.

## Contracts signed outside business premises (art. 5)

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An absolute ban is not positive for the market because in practice it limits consumers' access to credit.

It would produce a clear discrimination with respect to other financial services (investment services, insurance).

## Joint and several liability (art. 19)

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This article makes the creditor objectively liable for non-fulfilment on the part of the supplier of the good or service.

The new provision would require a virtually impossible assessment by the creditor of the quality of goods and services supplied by others.

This principle could have an adverse impact on requests for consumer credit and signing of loans at points of sale.

## Annual percentage rate of charge and borrowing rate (artt. 2, 12, 13 and 14)

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The inclusion in "total cost of credit to consumer" of all costs of credit, including taxes, is harmful to consumers.

The indication of two more interest rates – namely the "total lending rate" and the "borrowing rate" – could cause confusion for consumers and make it hard to understand the actual cost of credit.

## Duration of surety agreements (art. 23)

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Sureties guaranteeing the fulfilment of obligations under an open-ended credit contract cannot be effective for longer than 3 years.

Consequently, a creditor who considers such a surety necessary in order to grant the credit line will be exposed to the risk of non-renewal by the guarantor at the end of the period.

## Transitional rules (art. 34)

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In general, the proposed directive does not apply to contracts in being on the date of entry into force of the national transposition laws.

However there are exceptions which have significant effects on the management of existing credit and guarantee relations (see, for example, the duration of surety agreements, art. 23).

Such retroactivity is inconsistent, considering that the new Community legislation does not merely update existing consumer credit rules but introduces an innovative regime that is different and broader in scope.