

11 April 2003

THE SECRETARY GENERAL

Dear Member of the European Parliament,

Subject: Proposal for a directive concerning credit for consumers

In view of the forthcoming discussions on the above-mentioned matter, I would like to draw your attention to important concerns that this proposal has raised among the business community.

UNICE is of the opinion that the 1986 Directive on Consumer Credit has served its purpose of creating a more harmonised legal framework for consumer credit in the EU while ensuring consumer protection. However, it is seriously concerned about the ability of the new draft proposal to attain the objective of setting up a uniform workable legal regime on consumer credit that strikes a fair balance between the interests of business and consumers.

On the contrary, UNICE believes that the proposal tabled would place a disproportionate burden on companies and undermine consumer-credit-financed consumption, therefore having an adverse effect on both economic operators and the economy in general.

UNICE members are concerned about the following provisions of the draft directive:

Article 5: introduces a ban on the negotiation of credit and surety agreements outside business premises. UNICE asks for deletion of this ban. It would prevent direct selling and would thus pose a threat to the existence of a whole sector of industry that is active throughout Europe. Neither should intermediaries for credit for goods and services fall within the scope of the directive if we are to avoid another additional burden being imposed on the consumer goods industry (Articles 2 d and 28).

Article 7 laying down the requirements concerning data collection and processing. This article would result in prohibiting the credit professionals referred to in the Directive from creating files for client-monitoring purposes. Such a prohibition is not of any benefit either for enterprises or for consumers because of the consequences it would have for commercial policy. It should therefore be deleted.

Article 9: responsible lending. The proposed concept of responsible granting of loans is too vague and subjective to be enshrined in the legislation, and its inclusion could lead to an enormous increase in lawsuits with regard to liability.

In a competitive market, the lender has to act responsibly since his survival depends on this. The Directive as drafted only imposes obligations on the lender to act responsibly when entering into a credit agreement. UNICE believes this is disproportionate and would disfavour any regulation of the principle of responsible lending which would lead to the liability for the final decision being transferred entirely towards the lender. Consequently, it is essential to eliminate the reference to this issue in Art. 6 and to delete Art. 9 entirely.

Article 11: cooling-off period. A 14-calendar day period to withdraw might well be an acceptable practice in investment banking services offered to consumers (often sophisticated techniques). This is clearly not the case in ordinary banking.

This would entail a considerable reduction in the distribution of credit at the point of sale, particularly in the states where sale contract and credit contract are linked during this period, each of them being cancelled if the other one is. Sellers would incur a substantial risk in delivering a goods that may be returned to them at any point over a period of 14 days after the sale, without the possibility of claiming expenses from the buyer and without any restrictive conditions, given that completion of the sale agreement would be conditional upon the completion of a definitive credit agreement. It is easy to imagine the destructive effects such a provision might have, for example, on the TV set, HI-FI, used car and car rental markets.

The consumer should have the right to request delivery within the 14-day cooling-off period, thereby deleting or reducing the said cooling-off-period.

Article 15: unfair terms observed in credit agreements. It is necessary to refer to the 1993 Directive defining the constitutive elements of an unfair clause, instead of stating that certain clauses are automatically unfair by nature.

This is for instance the case for "balloon agreements." This form of finance, which is particularly used in the car industry, favours asset utilisation rather than acquisition and thus makes it possible to respond to the requirements of an increasing number of consumers wishing to change cars frequently under a finance agreement rather than acquire their existing vehicle. By forbidding such clauses, the proposed directive makes an erroneous assessment. Indeed, consumers entering into such agreements are not at all captive, because they are not obliged to repurchase from the same professional upon expiry of the financing agreement.

Article 19: joint and several liability of the seller and the lending institution. It would lead the lending institution to bear the burden of possible defects or faults in the financed goods, while such institution is neither a manufacturer nor a distributor, is not responsible for dealing with such situations and does not have the resources necessary to solve any of the issues at stake. Moreover, such joint and several liability might call into question certain co-operation agreements with distributors, including in particular distributors with poor creditworthiness.

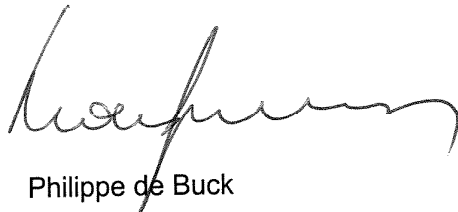
The consequence of the establishment of that liability would be an increase in the creditor's risk and credit for the consumer would therefore become more expensive, at the same time as making it impossible to finance numerous goods or services, and it would introduce an element of discrimination among those consumers who pay in cash and those who buy on credit.

Particular attention should be paid to avoiding overlap of the draft proposal provisions with other existing directives. A significant number of the articles duplicate the requirements set out in existing directives (e.g. on Data Protection, Unfair Contract Terms and Doorstep Selling). In some cases the provisions unnecessarily seek to go further than existing provisions, which could create potential conflict with the requirements of these other directives and will create legal uncertainty. These provisions should be removed from the Directive.

UNICE believes that the above-mentioned comments are critical issues for business that need to be addressed in these discussions in order to avoid the risk that this proposal strongly perturbs the markets concerned without leading to the emergence of an internal market in this area.

I hope you can take into account UNICE's observations in your deliberations on this matter. In the meantime, we remain at your disposal to provide you with any further information you may require.

Yours sincerely,



Philippe de Buck