

## **Two steps further in the Consumer Credit Directive procedure: -The European Parliament votes in its first reading on the Consumer Credit Directive and the European Council launches a questionnaire -**

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The legislative procedure concerning the draft Consumer Credit Directive (CCD) has recently moved further. Widely endorsing the various amendments presented by the European Parliament (EP) committees, the draft CCD was voted upon at the EP plenary session of 20 April.

This major step in the consumer credit legislative process reveals once again the strong differences at the institutional level on this particular issue. Indeed, this vote gave rise to a profoundly revised version of the text submitted by the Commission and consequently to a completely altered form of EU consumer credit regulation.

According to Art. 251 of the Amsterdam Treaty, after the first reading by the EP, it is now up to the Council to further the development of the procedure. Immediately after the EP plenary session, the EU Council presidency launched a questionnaire to member states raising the key points of the draft CCD.

The controversial political debate surrounding the consumer credit reform reduces the likelihood that the Directive will be adopted until early 2005. In any case, future developments will also depend on the reaction of the European Commission to the outcome of the parliamentary vote.

### **I. EP amendments voted upon in the first reading**

In the EP plenary session vote, agreement on the main points was reached and only a few amendments were rejected. Thus the revised CCD largely follows the guidelines recommended by MEP J. Wuermeling. The key features of the revised CCD are below.

#### *1. Minimum harmonisation (art. 30)*

The EP endorsed the **minimum harmonisation** approach, which allows member states to adopt more stringent provisions than those prescribed in the Directive. Full harmonisation may be adopted only in particular areas to ensure comparability between credit offers, as is the case for the calculation method of the cost of credit.

#### *2. Definition and scope (art. 3)*

The **scope** of the Directive has been severely reduced. The EP agreed on the idea of limiting the scope of the Directive to what can be defined as *standard* consumer credit.

On the presumption that credit for small amounts should not be subject to the costly procedures specified in the Directive, a floor of €500 has been introduced. Similarly, a ceiling of €100,000 has been approved on the basis

that credit transactions involving high amounts of money usually concern consumers with experience in business transactions. It is noteworthy to stress here that the parameters proposed by the Legal Affairs Committee (LAC) have been modified in the EP plenary session: the floor has been lowered and the ceiling has been raised.

Special forms of credit – such as contracts secured with a mortgage as well as overdrafts – are also excluded on the basis of the peculiar features of the contract.

Other exclusions include rental agreements (except where these provide for the eventual transfer of the title to the renting party) and lease agreements that do not contain any obligation to purchase the object of the agreement.

Also excluded are credit agreements between private persons or those granted by an employer to an employee free of interest or at an annual percentage rate (APR) that is lower than those prevailing on the market.

Loans granted by public institutions or officially authorised institutions along with credits granted by certain not-for-profit cooperative institutions that serve particular sectors or limited geographical localities (i.e. credit unions in UK and Ireland) are *not* subject to the CCD.

Finally, the CCD excludes those agreements accompanied by the delivery of a security deposit from the consumer to the creditor – where the amount of the surety deposited held by the creditor is sufficient to pay off the loan – along with credit agreements that are notarised or certified by a court, or relate to a deferred payment (free of charge) of an existing debt.

### *3. Information (art. 4)*

In the view of the European Parliament, the consumer should only be provided with essential information. An **infobox** should contain the APR, the agreed duration of credit, the number and amount of monthly payments and the total cost of credit. Additional information may be provided separately. The obligation to provide this standard information shall not apply: 1) if one of the standard items of information cannot be determined in general terms or if credit terms are not generally available for every borrower; 2) in the case of credit card agreements; or 3) in the case of general advertising that does not contain a specific credit offer.

### *4. Responsible lending and borrowing (art. 6 and art. 9)*

The principle of responsible lending has been extended and complemented with the principle of responsible borrowing to equilibrate the rights and obligations between lenders and borrowers.

In the draft CCD, as amended by the EP, responsible lending includes the requirement for the creditor and the consumer to comply with their obligations as regarding the provision of information prior to the formation of

the agreement and the requirement for the creditor to assess the consumer's creditworthiness on the basis of the information provided by the latter.

#### *5. Annual percentage rate of charge (art. 12)*

The **APR** has been selected as the only rate to be indicated to facilitate comparison between different offers. Therefore, all other definitions included in the Commission's proposal, namely the "total lending rate", the "borrowing rate" and the "sum levied by the creditor" have been deleted. Regarding the method used to determine the cost of the credit, the European Parliament stressed the importance of achieving an EU-wide comparability of the percentage rate of interest charged. Towards this aim, the contents of the total cost of credit shall be defined, which should cover only those costs generated by the creditor himself.

#### *6. No provision on data protection or unfair contract terms (art. 7 and art.15)*

It has been agreed that the CCD is not the place for provisions on **data protection** or **unfair contract terms**, as these issues are adequately dealt with by other directives that provide consumers with sufficient protection. The clarity of EU law would be undermined if specific arrangements were laid down outside the relevant directives.

#### *7. No creation of central databases (art. 8)*

The Commission's proposal to set out compulsory **central databases** in each country has been rejected. Instead, each member state should ensure access for creditors from other member states to the existing databases.

Nevertheless, the consumer and (where appropriate) the guarantor shall be informed of the result of any consultation immediately and without charge.

#### *8. Registration of providers (art. 28)*

The reference of Art. 28 to the duty of creditors and credit intermediaries to apply for **registration** has been deleted on the grounds that provisions specifically relating to credit intermediaries should be contained in a separate legal act. Agreement has been reached, however, on the point that creditors and credit intermediaries should be regulated or supervised by an independent body or authority, until an EU system of rules for credit intermediaries is in place.

#### *9. Linked transactions (art. 19)*

The principle of **joint and several liability** has been rejected and replaced by the principle of **linked transactions**.

Under the principle of joint and several liability, consumers would have had the right to make claims against both the credit provider and the supplier,

since they would be jointly liable if, for example, there is a default by the supplier.

In the opinion of the EP, joint and several liability would thus entail an excessive risk for creditors that is not related to financing. This would push credit costs up, which would ultimately be borne by the consumer.

With the principle of linked transactions, the EP has simply intended to recognise the interdependence existing between the credit contract and the agreement for the supply of goods. Accordingly, Art. 19 of the draft proposal, as amended by the EP, provides the borrower with the right to withdraw his or her acceptance from the credit agreement in case the seller defaults, but the consumer will not have right to make a claim for compensation against the credit provider.

In compliance with the minimum harmonisation approach adopted in the Directive, it has been stressed that member states are not prevented from maintaining more far-reaching provisions. The possibility of maintaining more stringent rules is particularly significant for those member states where the principle of joint and several liability is in force, such as the UK.

#### *8. No ban on doorstep sales of consumer credit (art. 5)*

The Directive does not specifically ban **doorstep sales** of consumer credit on the presumption that doorstep transactions are sufficiently regulated by Council Directive 85/577/EEC. Hence, there is no need for more stringent regulation.

#### *9. Right of withdrawal (art. 11)*

The consumer still has a period of **14 calendar days** to withdraw his/her acceptance of an agreement without giving any reason.

The proposal of MEP Wuermeling to reduce this period to seven calendar days did not pass. On this point, the LAC rapporteur had argued that a period of 14 calendar days would entail operational changes that, given the higher risk involved, would ultimately make loans more expensive and difficult to obtain.

(Find the full text here: [ECRI Documents](#))

## **II. The EU Council Presidency moves the CCD procedure a step further**

On the 22<sup>nd</sup> of April, following the parliamentary vote, the EU Council Presidency launched a **questionnaire** to member states raising the key controversial points of the draft CCD. This measure was aimed at surveying the views of member states and allowing them the time to establish their positions before the next meeting on 30 June.

According to ECRI information, member states have been canvassed with regard to a few basic issues. The biggest question concerns the scope of the legislation.

Taking the view that the scope of the Directive is disproportionately limited to the detriment of consumer protection, Finland, France, Ireland, Austria, Portugal, the UK, Sweden, Poland and Hungary have suggested that ceilings should not be set. By contrast, Germany, Luxembourg, Greece, Denmark, Italy, Slovenia and Spain have pointed out that fixing limits would be a way of avoiding excessive administrative costs.

Concerning mortgage credit, member states seemed to be rather divided. Germany, France, Finland, Sweden, Austria, Belgium, Poland, Slovenia, Latvia and Estonia claimed that all mortgage loans should be included in the scope of the Directive. The UK, Portugal and the Netherlands would opt instead for a total exclusion. Greece and Denmark argued in favour of including mortgage-secured loans with the exception of home loans. Luxembourg, Italy and Spain stated that their positions will be contingent upon the harmonisation approach eventually selected.

With regard to credit agreements that are notarised or certified by a court, or those that are the outcome of a settlement reached in court or before another statutory authority, Ireland, Luxembourg, the Czech Republic, the UK, Estonia, Austria, Finland, France, Belgium, Slovenia, Estonia, Spain and Italy were in favour of the inclusion of such agreements in the scope of the legislation. The Netherlands, Latvia, Hungary, Poland, Greece and Sweden have taken a rather open position on this issue. Only Germany, Portugal and Denmark have endorsed a full exclusion.

With reference to guarantees given by a consumer in respect of non-consumer credit agreements, the Netherlands, Luxembourg, Portugal, Finland, Sweden, Belgium, Spain, Denmark, Greece and Italy opted for exclusion of such guarantees on the basis of a lesser need to protect guarantors in the framework of non-consumer credit. On the other hand, the stances of Ireland, Austria, Finland, Latvia, Germany, Poland and Slovenia were for inclusion, while the Czech Republic, Estonia and Hungary have not reached a position yet.

On the exemption of certain not-for-profit credit institutions (namely the credit unions in Ireland and the UK) from the Directive, different opinions have been expressed. Whereas the positions of Greece, France, Denmark, Spain, the Netherlands and Sweden are rather open, Belgium, Portugal, Austria, the Czech Republic and Luxembourg pointed out that this exclusion could bring distortions in competition. Only Italy, the UK and Ireland firmly supported the exemption.

Finally, with regard to the intermediaries' regulation, a number of different issues have been raised. Ireland, the Czech Republic, the UK, Belgium, Slovenia and Estonia have argued that every credit intermediary should be registered and supervised, regardless of whether their activities are principal or secondary. Luxembourg, France, Spain, Austria, the Netherlands, Latvia, Greece, Hungary and Italy made an exception of those organisations for which credit intermediation is not their principal activity.

On the controversial point of the creditor's liability, Sweden pointed out that the liability should lie with the creditor. Germany and Denmark agreed on adopting the principle of joint and several liability and asked for a separate directive to regulate professional credit intermediaries.