

The EU Commission publishes on 28 October the amended version of the proposed consumer credit directive

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The amended version of the Commission's proposal for a Consumer Credit Directive that was presented on the 28th of October showed once more the distance that still remains with the European Parliament when it comes to the regulatory requirements needed to underpin a functioning consumer credit market in the EU.

In its first reading within the co-decision procedure, which took two years of heated discussion, the European Parliament had adopted a whopping 152 amendments to the 30 articles of the proposal. Some of these amendments modified the very essence of the Commission's proposal, displaying a rather different take on the regulatory needs in the field of consumer credit for Europe.

The Commission did take into account the Parliament's views, introducing several changes (108 amendments) to its proposal, but it stuck to its guns in several key areas.

The features of the amended CCD proposal are following:

1. Full harmonisation

The EU Commission had opted for the full harmonisation approach in its original proposal for a new CCD of 2002. The EP agreed in its first reading to retain the minimum harmonisation approach, which allows member states to legislate beyond the limits set in the directive. In its amended version, the EU Commission turns back to its original proposal: full harmonisation. According to this approach Member States will need to transpose the Directive in its exact terms. This principle affects the tenor of the Directive as member states cannot increase the level of consumer protection for their own nationals.

2. Scope of application

The scope of application of the proposed directive has been severely reduced as compared to the original proposal. However, it is still larger than that approved by the EP. For instance, Mortgages are still included in the scope of application of the Directive. As Dirk Staudenmayer, Head of Unit at DG SANCO, EU Commission said recently at a roundtable at ECRI, mortgages mean an important part of consumer credit and therefore need to be included in the directive by now.

New exclusions from the scope of application

Totally excluded from the scope of the Directive are now credits above €100,000, credit concluded with pawn-shops and credit agreements where

the consumer is required to repay within 3 months free of charge (they no longer need to be repayable in one single payment) as well as those agreements certified by a court. Also excluded from the scope of application are those surety agreements which guarantee business loans instead of all kinds of surety agreements in which the surety or guarantor is a consumer as had been the case in the original proposal. Hiring agreements except where they provide for the title to pass to the hirer eventually and leasing agreements which do not create any obligation to purchase the object of the agreement are now also excluded in the Commission's amended proposal.

The creation of new "light regimes"

In certain other cases for which the EP had agreed exclusion of the scope of application of the directive, the EU Commission has created so called "light regimes" (new Arts. 6 and 7). A certain level of information must be provided prior to the conclusion of the agreement, but this is not as extensive as for the standard cases.

Art. 7 applies to the following four cases: a) smaller loans below €300;

b) loans granted to a restricted public, at a lower interest rate than usually offered on the market or free of interest, and when the creditor is fulfilling a statutory duty with a general interest purpose;

c) loans granted by certain non-profit associations such as genuine credit unions; and

d) credit agreements aiming at refinancing the existing debts of a consumer in order to avoid legal proceedings and where the terms do not have the consequence of putting the consumer in a worse situation than before the new agreement.

The applicable regime consists of providing on paper or another durable medium the following information:

a) the total amount of credit;

b) the borrowing rate;

c) the annual percentage rate of charge, by means of an example mentioning all the financial data and assumptions used to calculating the said rate;

d) the duration of the credit agreement and

e) the amount, number and frequency of payments to be made. The information must be provided "in good time" before a consumer is bound by a credit agreement or any offer concerning a credit agreement within the meaning of art. 3 (4). The interpretation of a rather vague wording as "in good time" is led to the discretion of the corresponding national courts.

The other "light regime" established in Art. 6 is applicable to overdrafts as defined in par. 1. In this case, the consumer shall be informed, before the agreement is concluded, of:

a) the total amount of credit;

- b) the borrowing rate;
- c) the annual percentage rate of charge by means of a representative example mentioning all the financial data and assumptions used for calculating the said rate;
- d) the charges applicable from the time the agreement is concluded, and the conditions under which those charges may be amended and
- e) the conditions and procedure for terminating the agreement.

3. No ban of doorstep consumer credit

The controversial Article 5 by means of which negotiation of credit outside business premises was banned has been deleted.

4. Right for withdrawal

The right for withdrawal is kept at 14 calendar days. Despite a section of the EP supported the proposed amendment to reduce it to 7 calendar days, the final voting agreed to keep it at 14 days. This provision is still heavily criticised by the industry while strongly supported by consumer representatives (see summary of interventions of the ECRI Seminar 2004 and ECRI Roundtable 2004 www.ecri.be/events)

5. Data Protection: No creation of central databases

The duty of the member states to create national databases has been substituted by the right to request information from any existing database on a non discriminatory basis (Article 8) and the provision on processing of data for lending purpose has been deleted.

6. Linked contracts

In the case of linked transactions, consumers that withdraw from the purchase contract are allowed to withdraw from the credit contract as well. However the withdrawal from the credit contract does not allow withdrawing from the purchase agreement.

If the supplier of goods or services has acted as credit intermediary, the creditor and the supplier shall be jointly and severally liable for indemnifying the consumer in case of default in the underlying agreement.

7. Responsible lending and duty to advise

The principle of responsible lending has been retained. Accordingly lenders:

-assess creditworthiness (on the basis of the information provided by the consumer, and where appropriate on the basis of consultation of the relevant database);

-provide substantive pre-contractual information (larger than before. See art. 5 (2) and

-establish the most appropriate type and amount of credit for the consumer (duty to advise). The wording of this provision lacks of clarity.

The principle of responsible borrowing as such and as approved by the EP has not been introduced. However, the ability of the creditor to assess the consumer's creditworthiness is partially conditional on the quality and accuracy of the information provided by the latter. Also in the case of early repayment, the consumer is entitled to an equitable reduction in the cost of credit; but the creditor is entitled to claim "fair and objective" indemnities.

A valiant effort has been made by the Commission to reconcile its original proposal with the flow of inputs coming from a number of different actors over the last two years.

The text has also been improved so as to avoid inconsistencies with applicable EU legislation and some of the articles that were thought to increase bureaucratisation and put additional strains on the lending business have been amended.

However still, the controversial political debate surrounding consumer credit reform reduces the likelihood that the Directive will be adopted before the end of 2005.

Article 251 of the Amsterdam Treaty makes it clear that after the first reading by the European Parliament (EP), it is up to the Council to further the development of the legislative procedure. Meeting of the Council Working Group will restart in 2005.