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El Credito al Consumo en España

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News & Analysis

Slimmed down version of 2nd draft consumer credit directive emerges

by Karel Lannoo

The 2nd draft consumer credit directive,¹ which was published by the European Commission on 7 October 2005, is a considerably slimmed down version compared to the earlier versions. Some provisions of the earlier versions, e.g. unfair credit terms and performance of credit agreements, have altogether been eliminated, while others, such as the highly contested concept of responsible lending, are narrowed down. The directive no longer covers mortgage credits (based upon equity releases), nor are member states required to ensure the operation of central databases. But the directive maintains the full harmonisation approach for the aspects of consumer credit that it harmonises, meaning that member states are not allowed to impose additional rules in these areas, whereas in some other areas, leeway is given to the member states in national implementation. The proposal thus represents a form of targeted maximum harmonisation.

After a lengthy delay, the European Commission rather unexpectedly issued its second draft consumer credit directive. Although it concerns a fairly limited area of economic activity, it is rather rare in the European Commission's history that a proposal is amended twice. This underlines the controversial nature of the proposals. Many credit providers have argued that there is no need for a directive and that it is not worth the effort. Policy-makers on the other hand would say that this is a 'chicken and egg' issue: as long as we do not undertake an albeit limited form of harmonisation, cross-border credit will not develop. The Commission argues that it is necessary for firms to realise efficiencies and scale economies, and for markets to become more competitive.

What is probably most remarkable is that the EU Commission has chosen to stick to the maximum harmonisation approach, despite the preference of the European Parliament and the member states for minimal harmonisation and mutual recognition. The European Commission argues that "full harmonisation remains the optimal way to establish a genuine single market in consumer credit that allows business to offer consumer credit across borders while at the same time guaranteeing an appropriate high level of consumer protection..." In some areas, however, leeway is given to national implementation, meaning that mutual recognition will need to apply. This concerns principally pre-contractual information (partially), right of withdrawal, linked transactions and early repayment. While a combination of full and minimal harmonisation looks theoretically possible, and represents one way to advance the integrated financial market, it is questionable whether it will work in practice. It also seems unlikely that member states will accept it, as the differences in consumer protection schemes in the EU are so distinct

Just published!

2005 ECRI Statistical Package

Comprehensive collection of relevant statistical data on consumer credit and lending to households, covering 30 countries including all 25 EU member states, three candidate countries, the US and Japan. Published annually, this latest edition covers the period 1990 to 2004 (see p. 4 for details).

Price: €18 in PDF (available at www.ecri.be)

that member states will not rapidly accept something to supersede national law.

The new draft directive covers credit agreements, overdraft facilities (with a limited number of contractual obligations) and linked agreements, but, unlike the previous draft, it excludes some important parts of the market, such as credit agreements exceeding €50,000, financial leasing agreements and short-term credits of less than 3 months. Also mortgage credits, already partially excluded in the previous draft, are now fully out.

The directive keeps a controversial element of the previous draft, namely, responsible lending, which is now brought under the heading 'pre-contractual information' and requires the credit intermediary to comply with their obligations concerning the provision of pre-contractual information and the creditor to assess the consumer's creditworthiness. Also the new draft retains the concept of 'duty to advise', but has moved it to the part on pre-contractual information, meaning that it comes in at the phase when the consumer should be in a position to assess the advantages and drawbacks of a loan.

Despite this narrower version, a rapid decision on this second draft directive cannot be expected. The member states will continue to challenge the full harmonisation approach, and industry will take exception with the concept of responsible lending.

¹ Downloadable from the website of DG Sanco (English version at http://europa.eu.int/comm/consumers/cons_int/fin_serv/cons_directive/2ndproposal_en.pdf and French version at http://europa.eu.int/comm/consumers/cons_int/fin_serv/cons_directive/2ndproposal_fr.pdf).

Regulatory Affairs



Commission to open up payments markets

The European Commission aims to create a Single European Payments Market by 2010. By opening up national markets, the Commission would like to encourage greater efficiency in payment systems and stimulate technological innovation. A single payments market will lead to savings for banks, firms and for all citizens at large. Speaking in Paris on September 20th, Commissioner Charlie McCreevy said that the EU Commission will soon be proposing a new legal framework for payments in the EU, but added that such a proposal would be subject to a thorough impact assessment and consultation.

Payments markets in the EU today are fragmented along national lines. Each country has at least one dominant payment system, which is typically owned in a cooperative structure by the local banking industry. Some of these national payments systems are very efficient, whereas others are much less so. To illustrate the point, McCreevy said "customers in Italy pay on average €252 a year for basic banking services, which includes payments, while Dutch customers pay only €34 a year on average."

To change this situation, payment systems should be brought into open competition with each other. Today,

customers from other states would like to participate in a more efficient host country payment system, but often they cannot. As is also being considered in the area of securities clearing and settlement services, the European Commission would allow payments systems to offer their services on a cross-border basis, subject to some minimum criteria regarding authorisation, permissible activities, access, governance and risk management, and supervision. This regulation would also address payment services' performance, and in particular the authorisation process, the information to be provided, the execution (e.g. value dates) and redress mechanisms. The European Commission has been working on these matters for quite some time, and has discussed its New Legal Framework with representatives of the industry and consumers. Nevertheless, its draft rules are not yet openly available.

In a separate initiative but related to the action against terrorist financing, the European Commission has published a proposal for a regulation on the information a payer has to provide when transferring funds. This proposal was issued on 26 July 2005.

Competition investigation in retail financial markets is ongoing

As announced in our previous newsletter,¹ the competitive structure of retail financial markets is under investigation, with particular attention at this moment given to the payment cards sector. On 15 July, questionnaires were sent to some 300 banks, selected as part of a statistical sample in the 25 EU countries. The requests for information specifically concerned payment cards, focusing on arrangements regarding the use of payment cards by retailers. Replies were collected through mid-August, and preliminary findings will be available in due course from the website of DG Competition.²

On August 11th, DG Competition sent questionnaires to payment card networks. A few days later, questionnaires were sent to insurance associations, and on October 27th, to insurance intermediaries and risk-management associations, always within the context of the European Commission's Financial Services Sector Inquiry. The area of financial mediation had been designated by the Commission as an area for future consideration in the Green Paper on Financial Services Policy.³

¹ "Competition investigation launched in the financial services sector", ECRI Consumer Credit Newsletter, Summer 2005, p. 2.

² http://europa.eu.int/comm/competition/index_en.html

³ Available at http://europa.eu.int/comm/internal_market/finances/policy/index_en.htm#actionplan

Green Paper on Mortgage Credit ponders the merits of possible Commission intervention in this area

According to Commissioner Charlie McCreevy, “more cross-border activity and competition in the EU mortgage market could increase choice, reduce costs and leave more money in people’s pockets at the end of the month”.¹

In this vein and as previously announced, the Commission published a Green Paper on Mortgage Credit in the EU² on 19 July 2005, which examines whether and how Commission action to develop the Internal Market in mortgages could provide concrete benefits for EU consumers. The study focuses on four distinct but interrelated areas³ following the views expressed by the Forum Group on Mortgage Credit: consumer protection, legal issues, collateral and funding.

Responses to the Green Paper were to be sent by 30 November 2005 to: markt-mortgage-consultation@cec.eu.int. The Internal Market and Services Directorate General will host a public Hearing on Mortgage Credit in Brussels on 7 December 2005, in order to stimulate debate amongst key stakeholders on issues raised during the consultation process. Registration for that event is open until 21 November through the webpage http://europa.eu.int/comm/internal_market/finservices-retail/home-loans/index_en.htm.

Following the release of the Green Paper and as part of the corresponding review and consultation process, on September 13th the EU Commission also published a study on the costs and benefits of further integration of the EU mortgage credit market.⁴ The study estimates that by 2015, integration of the EU mortgage credit market would raise EU GDP by 0.7% and private consumption by 0.5%. It also found demonstrable interest amongst consumers to engage in mortgage credit transactions with foreign lenders: more than 50% indicated that the foreign identity of lenders would not discourage them from taking advantage of attractive mortgage credit offers.

Views on the study can be sent by email to markt-mortgage-consultation@cec.eu.int by 30 November 2005.

¹ “Financial services: Commission launches consultation on action in the EU mortgage market”, EU Commission’s Press Release, 19 July 2005, Reference IP/05/971.

² Available in various EU languages at <http://europa.eu.int/eur-lex/lex/LexUriServ/LexUriServ.do?uri=CELEX:52005DC0327:EN:NOT>.

³ See “The Integration of the EU Mortgage Credit Markets”, DG Internal Market, Brussels, 13 December 2004.

⁴ “The Costs and Benefits of Integration of EU Mortgage Markets”? available in English at http://europa.eu.int/comm/internal_market/finservices-retail/docs/home-loans/2005-report-integration-mortgage-markets_en.pdf.

Preliminary analysis of obstacles to cross-border mergers and acquisitions in the EU financial sector

In a recent statement, Commissioner Charlie McCreevy clearly expressed his view on the need for more cross-border consolidation in the financial sector: “Given the fierce global competition that is emerging, we cannot

afford to have 25 medium-sized markets made up of second-division champions.”¹ This appraisal is in line with the conclusions of recent publications in the field of banking consolidation (see “More European Bank Integration”, ECRI Consumer Credit Newsletter, Summer 2005, p. 4).

In response to a request of the Council of Economic and Finance Ministers (ECOFIN), the EU Commission produced, on November 8th, a preliminary analysis of the reasons for the lack of cross-border consolidation in the EU financial sector. This Working Document was based on a survey of market participants conducted between April and June 2005.

One key obstacle was highlighted by more than 90% of the respondents: non-overlapping fixed costs, which could be described as a lack of cost synergies for cross-border merger or acquisition and would result in an unattractive return on investment for this type of operation. Three explanatory factors were identified: differences in the product mix from one country to another (caused themselves by differences in legislation, taxation and consumer habits), diverging supervisory rules and practices, and, finally, the difficulty of reorganising business operations on a cross-border basis.

Other obstacles identified included an unfavourable environment for cross-border transactions (e.g. legal measures or political interference) and the general negative perception, by employees as well as consumers, of takeovers/mergers involving non-domestic entities.

The full analysis is available at http://europa.eu.int/comm/internal_market/finances/cross-sector/index_en.htm#obstacles.

¹ EU Commission’s Press Release “Financial sector: Commission presents analysis of obstacles to cross-border mergers and acquisitions”, Reference IP/05/1386, 8 November 2005, available at <http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/05/1386&format=HTML&aged=0&language=EN&guiLanguage=fr>.

New US personal bankruptcy legislation takes effect

On October 17th, most of the provisions included in the new Bankruptcy Abuse Prevention and Consumer Protection Act have gone into effect in the US. The new law should force more bankruptcy filers into Chapter 13, which requires that they repay their debts on a strict schedule. It also makes financial counselling compulsory for the filers, and reduces the possibility for property to be considered as falling in the ‘exempt’ category – that is, goods that cannot be taken or sold by the creditors or the trustees. In parallel, the law imposes new requirements on lawyers, which is likely to make personal bankruptcy filings more expensive, and excludes some forms of debt (e.g. some forms of credit card or tax debt) from the procedure altogether.

The law has been criticised by the National Association of Consumer Bankruptcy Attorneys as being a “creditor wish list”.¹ This association further emphasised the possible negative impact that the law could have on entrepreneurial spirit, estimating that 10 to 20% of consumer bankruptcies are actually business bankruptcies. On the other hand, Wharton finance professor [Hulya K. K. Eraslan](#) underlined that the law

does not address flaws in the Chapter 13 process: "These Chapter 13 repayment plans do not work at all."² In a study of 3,000 bankruptcies filed in Delaware during 2001 and 2002, Prof. Eraslan found that most Chapter 13 filers failed to satisfy their repayment requirements. "Only about 30% of the people make it to the end." Consequently, she does not expect creditors to recover significantly more. In any case, any assessment of the overall impact of the new law will not be possible for many months yet.

¹ See www.nacba.com.

² "The Next Chapter in Bankruptcy Law: What Does It Mean for Debtors and Creditors?", Knowledge@Wharton online publication available at <http://knowledge.wharton.upenn.edu/article/1297.cfm>.

Upcoming Issues



ECRI roundtable discussion on the new Consumer Credit Directive proposal

Following the consultation that took place in the intervening year since the European Commission published the first modified proposal for a Directive on Consumer Credit, a second modified proposal has been released on 7 October 2005. In order to analyse the new state of play for both industry and consumers, ECRI will organise a half-day roundtable discussion to take place in January 2006.

To have your name added to the mailing list for this event, please contact us at info@ecri.be

CEPS Task Force on Retail Financial Services

This new Task Force of the Centre for European Policy Studies (CEPS), chaired by Anton van Rossum (former CEO of Fortis Bank), examines the forms and benefits of market integration in retail financial services from the perspective of policy-makers, suppliers and end-users. Its purpose is to assist policy-makers in striking the right balance between prudential requirements, regulation, competition and consumer interests.

Following its launch on 19 October 2005, the Task Force will hold its next meeting on 19 January 2006. For further information about the activities of the Task Force, please contact Rym Ayadi (rym.ayadi@ceps.be).

Events



ECRI launches the 2005 edition of its Statistical Package

The latest edition of this collection of statistics on Lending and Consumer Credit in Europe is now available. It provides reliable information drawn from official national statistical sources, ensuring consistency and

comparability. Thirty countries are included: all 25 European Union countries, 3 candidate countries (Bulgaria, Romania and Turkey) and, for comparison purposes, 2 non-European G8 countries: Japan and the US. The statistical package focuses on lending by Monetary Financial Institutions (MFIs) in European countries, but offers additional data series including lending by Other Financial Institutions (OFIs) for countries where their market share of outstanding consumer credit is significant.

After the 2004 breakdown of Lending to the Private Sector in Loans to Households (further divided in Consumer Credit, Housing Loans and Other), Loans to Non-Profit Institutions and Loans to Private Businesses, the tables present the following time series:

- Consumer credit outstanding in billions of euro and of national currency, 1990-2004
- Consumer credit outstanding as a percentage of GDP, 1995-2004
- Consumer credit outstanding as a percentage of private consumption, 1995-2004
- Consumer credit outstanding as a percentage of disposable income, 1995-2004
- Consumer credit outstanding by lender in billions of euro and in percentage of the total, 1995-2004, for Germany, Spain, France, Italy, UK, US and Japan
- Consumer credit outstanding by product in billions of euro and as a percentage of the total, 1995-2004, for Belgium, Germany, Greece, France, Italy, UK, Poland, US and Japan.

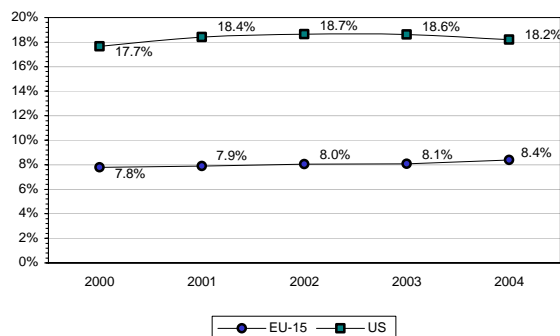
In order to facilitate the construction of ratios, the following data series are also presented:

- Private consumption in billions of euro and in national currency, 1995-2004
- Household disposable income in billions of euro and in national currency, 1995-2004
- GDP at current prices in billions of euro and in national currency, 1995-2004

A short summary of the findings is presented below. Please refer to the Statistical Package for the corresponding definitions and notes.

In 2004, the nominal ratio of consumer credit outstanding as a part of the annual GDP (consumer debt) continued to follow an upward trend in Europe, while a slight slowdown could be observed in the US, as can be seen from the following graph.

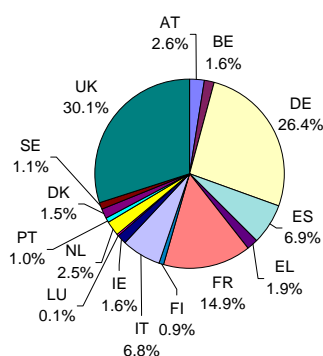
Evolution of outstanding consumer credit in EU-15 and the US, 2000-2004 (as a percent of GDP)



Considering lending by Monetary Financial Institutions only, consumer credit outstanding grew in nominal terms by 8.3% over 2004 in EU-15, and represented 8.1% of GDP at the end of December. On a country by country basis, the growth of consumer credit outstanding presents a rather heterogeneous picture, from 2.6% in Germany to 37.4% in Greece - where a regulatory change induced a restructuring of household borrowing in 2004. For the group of countries formed by the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland and the Slovak Republic, the aggregate growth rate of the consumer credit outstanding reached 30.2%, which has to be considered in the context of less developed consumer credit markets, where its aggregate stock represented only 4.3% of the annual GDP at the end of 2004.

Rates given in the previous paragraph can be compared with 2004 growth rates of approximately 4.6% for consumer credit stock in the US, where outstanding consumer credit represented around 18% of the annual GDP at the end of the year (the precise levels of the ratios depending on whether all lenders or only financial ones are considered).

Distribution of consumer credit outstanding in the EU-15 by country, 2004

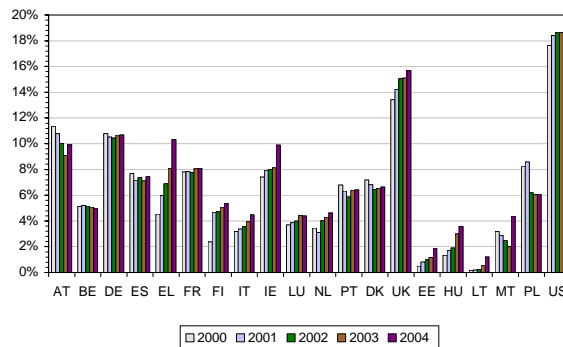


The distribution of consumer credit outstanding in the EU-15 by country (see graph) shows that three countries (UK, Germany and France) represent over 70% of the EU-15 consumer credit market in 2004, as in the previous year.

Consumer debt in European countries (measured as the outstanding amount of consumer credit divided by

GDP as seen at the end of the previous page), also showed highly dispersed country values and different evolutions as shown in the graph below.

Consumer credit as a percentage of GDP, 2000-04



The 2005 Statistical Package can be purchased through the ECRI website: www.ecri.be and the CEPS online bookshop (<http://shop.ceps.be>).

For information about this publication, please contact us at info@ecri.be

Workshop on consumer financial capability

On November 8th, a workshop co-sponsored by ECRI and newest ECRI member VISA Europe focused on the issue of consumer financial capability. This concept, mentioned in the debates on the regulation of retail financial markets, is often not clearly defined; it has long been relatively neglected by researchers as well as by policy-makers in the Anglo-Saxon countries. During the morning workshop session, several academic specialists in personal finance and consumer research presented papers on the concept of consumer financial capability, its measurement and its determinants. Another group analysed the related policy and regulatory aspects.

Afternoon sessions were devoted to institutional and consumer insights. It began with a summary by Barbara Smith, a Senior Analyst in the OECD's Financial Affairs Division, of the results from the first major international study on financial education entitled "Improving Financial Literacy: Analysis of Issues and Policies" and whose release is planned for end November 2005.

Presentations by representatives from German, British, Canadian and US government institutions were followed by the feedback of two representatives from the consumer side, Adiconsum (Italy) and Citizen's Advice International (UK). The workshop ended with a lively debate over the merits of the different approaches and their implications for the ongoing EU regulatory process.

The workshop was chaired by Almudena de la Mata, Legal Adviser at Genworth Financial and former ECRI Research Fellow.

A summary of the interventions will soon be available from <http://www.ecri.be/HTM/events/events.htm>

The workshop papers will be published by ECRI in January 2006.

To be kept informed of the publication, please send us your details at: info@ecri.be.

Mercer Oliver Wyman publishes report on European consumer credit markets, using ECRI data

Mercer Oliver Wyman, the financial services consulting company, is publishing in November a study on European Consumer Credit Markets. ECRI, of which Mercer Oliver Wyman has become a member this year, provided data and advice for the preparation of this document.



The report analyses Consumer Finance as the biggest current opportunity in European Financial Services, with profits generated set to increase to €26 billions over the next five years. The findings stress the importance, for market players, of developing specialist skills as well as a pan-European presence.

Mercer Oliver Wyman identified five types of market according to their outlook:

Dynamic	High level of innovation, competition and liberal regulation supporting high market growth even though, in some cases, already highly developed	UK, Italy, Portugal, Spain, Hungary, Czech Republic, Poland, Spain
Unrestrained	Liberal regulation and a good development potential	Greece, Turkey, Finland, Netherlands, Sweden, Ireland
Constrained	Tough (and well entrenched) regulation	France
Exhausted	Little scope for development given cultural resistance to debt, weak macro-economic growth, low levels of competition and regulatory restrictions	Germany, Austria, Belgium
Dormant	Low level of competition holding back market development	Switzerland, Denmark, Luxembourg

According to this model, forecasts for future country credit growth vary from 6-27% compound annual growth rate over the next five years in the 'dynamic' cluster, to 0-4% in the 'exhausted' cluster.

The study sees the consumer credit market at a turning point in its evolution, on the verge of undergoing a period of consolidation and specialisation. This situation will offer opportunities as well as challenges to market players.

A briefing note for this publication, with the relevant contact details for Mercer Oliver Wyman, can be downloaded from our website www.ecri.be. The publication will be available from 10 December 2005.

El Credito al Consumo en España

A new book, published by Estudios Economicos in cooperation with the local industry association, discusses market and regulatory developments in a country where lending to households has been growing substantially in recent years. It emphasises the crucial importance of consumer lending for the economy and the need for an adequate regulatory framework, given the existence of market failures. However, and specifically referring to the new draft Consumer Credit Directive, regulators need to be careful when enacting new rules. New rules can reduce market efficiency and reduce innovation; they can increase the cost of lending and thus limit further market development. The book is written by a group of experts, including a contribution by Almudena de la Mata, a former ECRI Research Fellow.

Available from www.iemadrid.com.