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NEWS

I. State of play in the CCD saga: LAC Rapporteur Würmeling to present an alternative proposal

Based on MEP Joachim Würmeling's assessment that the Commission's proposal for a consumer credit Directive (CCD) needed to be completely modified, the Legal Affairs Committee of the European Parliament called upon the Commission to withdraw the draft on September 11th (see ECRI Newsletter No. 10). On October 20th, Würmeling met with Commissioner Byrne to discuss the future of the proposed Directive.

Byrne insisted on defending the merits of the proposal, while Würmeling refused to approve the draft in its current version.

The EP did not reject the draft CCD at the plenary session on November 5.

The Commission's proposal was not rejected by the EP at the plenary session on November 5, but nor was it approved. Rather, the draft was referred back to the EP Committees, which must now present an alternative proposal.

Rapporteur Würmeling was again very critical of the draft which he described as a "poorly prepared text ill-adapted to current realities regarding consumer credit". The Rapporteur declared that the Parliament must now completely rewrite the text. The LAC is preparing to present a text early in the new year.

The LAC works on the revision: Basic guidelines presented at CEPS seminar

At an ECRI/CEPS seminar on Consumer Credit at the Point-of-Sale on November

25th (see proceedings at www.ecri.be), Stephan Huber, a member of Würmeling's staff, presented the guidelines of the LAC's alternative proposal to the draft.

Huber confirmed that the LAC is working hard on the proposal's revision. He indicated that the structural changes to be introduced will be so fundamental as to present an almost completely new text.

Key issue: Minimum harmonisation

The LAC is opting for a minimum harmonisation approach to consumer credit regulation in the EU.

In the opinion of the LAC, competition between national laws on consumer issues is a positive thing and should be encouraged. Moreover, citizens must feel confident to take advantage of available consumer credit. National features of regulation bring confidence to consumers. Huber referred to Prof. Reifner's report and said the LAC agrees with it for the most part (for details of Reifner's report, see ECRI Newsletter No. 10 and the summary of the ECRI Seminar on Consumer Credit at www.ecri.be).

II. Disagreement in the EP regarding the draft CCD

At a meeting of the Economic and Monetary Affairs Committee (EMAC) of the European Parliament on 2nd December 2003, the matter of the draft CCD was revisited. Disagreement among the present participants was in strong evidence.

MEP Mrs Bérès (the EMAC Rapporteur) said "pressure" should be exerted upon the LAC Rapporteur in order to restrain him "dismantling" the text of the proposal. Early in the new year, she will likely present her report on the draft legislation and propose amendments to

the present CCD text. Mrs. Bérès expressed a positive view towards as much harmonisation as possible.

Mrs Pantelouri (DG SANCO of the European Commission) expressed support for Mrs Bérès' comments and firmly endorsed the concept of maximum harmonisation, both for the creation of an internal market for consumer credit and for a high level of consumer protection.

Criticism of the Commission was voiced, however, by some MEPs. Mrs Lulling, for example, said that the text would need total redrafting, since it does not help to create the right conditions for an integrated market for consumer credit. She asserted that this should have been the task of Commissioner Byrne.

MEP Mr Karas also accused the Commission of failing "to do the job", despite very clear warnings. He pointed out some of the barriers to cross-border retail credit, observing that language differences and distinct tax regimes are "a matter of fact". He added that the proposal is not the appropriate legal instrument for fighting overindebtedness. Mr. Karas suggested that the EP committees involved in the matter should look for a more coordinated approach. MEP Mr Herzog argued that consumer credit cannot be considered as 'the' major cause of overindebtedness, suggesting rather that overindebtedness is often simply the consequence of 'life events', such as job loss or divorce.

MEP Mrs Villiers supported Würmeling's views: the current version of the proposal would restrict access to credit, and the right of withdrawal period would have negative effects, such as delayed delivery of the financed good. She also said that the text creates legal uncertainty, overlapping with existing directives (data protection, money laundering and Basle II). She questioned the need to set up one single central data base and

supported the exclusion of mortgage credit from the text.

Concerns were also raised by MEP Mr Blokland regarding the amount of time the legislative proceedings are taking.

Mrs Bérès' report will be available early in 2004. On January 12th, amendments are scheduled to be tabled and a vote will take place on January 27th.

III. Commission defends the draft CCD, in response to 10 main points of criticism

1. Citizens would be denied access to credit and the poorest sections of society in particular would be the most disadvantaged.

Wrong. The proposed Directive simply says that consumers would have to be informed about the conditions of credit, and that a lender would have to make an assessment of the consumer's ability to repay. Such assessments are already common practice within the industry.

It is in no one's interest - either lender or borrower - to enter into an agreement that the borrower cannot repay.

Some banks feel that assessing the borrower's ability to repay would increase their costs. However, this is nothing more than good business practice, for which many member states already have detailed legal requirements.

2. The Directive would have a negative impact on spending

Unfounded. If anything, the reverse is more likely. The Directive would create equal conditions for consumers and lenders across the entire EU, making the market more liquid. Opportunities and choice for granting and obtaining credit would increase rather than decrease.

3. Interest rates would go up.

Untrue. There is little evidence to suggest that compliance costs for this proposal would be higher than those for current national legislation or that this would create upward pressure on interest rates. Rather, increased competition will have the effect of driving down interest rates.

4. The right of withdrawal would allow consumers to use a product for two weeks and then return it to the shop saying "I withdraw".

Misunderstanding. The right of withdrawal relates only to the credit contract, not a right to withdraw from the sales contract.

5. The Directive would be detrimental for credit unions and social lending.

Incorrect. The Commission believes that the Directive should have a broad and general scope. There would not appear to be any obvious reasons for exempting credit unions from informing consumers and assessing their ability to repay. The Commission is willing to consider specific exemptions on their individual merits.

6. No impact assessment was done

False. The Commission's preparatory work for this initiative started in 1995. Internal studies were undertaken and six studies from outside experts were commissioned. Member States, financial institutions, consumer organisations and MEPs were all consulted. Consultative documents were issued and hearings took place prior to adopting the proposal.

7. Full harmonisation will lower consumer protection standards in many EU member states

Ungrounded. The proposal aims to enhance consumer confidence in the field

of credit. The consultations and analyses which preceded this proposal pointed to genuine harmonisation as the key to unlock the credit market within the single market to the benefit of both borrowers and lenders. Full harmonisation based on a high level of consumer protection will create common ground for the market to operate freely.

The Commission is open to suggestions that would contribute to the twin objectives of ensuring a high level of consumer protection and facilitating the operation of the single market.

8. The Commission Services have acknowledged flaws in this proposal and have already accepted or made changes to it.

Not true. The Commission services sought to inform Parliament of developments in the Council, as had been requested by the EP Committees. To date, no decisions have been taken on any amendment of the proposal. There is no alternative proposal.

9. The Commission is trying to deprive the EP of its right to a first reading.

No. Quite the opposite. This misconception is based on the erroneous assumption that the Commission has abandoned its proposal and is working on a new one. This is untrue. Parliament's opinion is sought on the proposal as it stands.

10. Parliament will have to re-write the proposal substantially.

Wrong. This allegation is based on the view that the proposal is invalid or incomplete. Neither the Council nor the Commission shares this view.

Parliament is not being asked to re-write the Commission's proposal. The Commission is willing, as always, to

consider any changes that the Parliament thinks appropriate. However, this willingness does not mean that Commission doubts the validity of its own proposal.

Source: European Commission, Press Release, 5 November 2003.

IV. ECRI seminar on Point of Sale Consumer Credit rated a success by speakers and participants

The seminar, held on 25 November 2003 at CEPS, brought together a wide-ranging panel of speakers from industry, financial entities, political institutions and academia to exchange views on the subject. Two main items were discussed: a) the importance of point-of-sale credit for private consumption and b) the efficiency of the current regulatory framework for consumer credit and future prospects.

SUMMARY of the interventions

Mr. Lars Braberg (IKEA) reported that consumer credit at the point of sale is used especially for major goods purchases, such as a complete kitchen or living room, and that it is mostly distributed through IKEA and co-branded cards which amount to about 6% of sales. Mr. Braberg emphasised that harmonisation of legislation and rules in the EU would be beneficial for extending and improving financial services at the point of sale. Indeed, it would allow for a centralised approach to customers. But the proposal for a new European Directive on consumer credit would lead to an overprotection resulting from provisions covering the transfer of personal data and repossession of goods and to excessive bureaucracy (related to the maintenance of a central database) which is costly and inefficient.

Similar concerns were expressed by **Mr. Eric Spielrein** (RCI Banque) who argued

in favour of "specific measures for investment secured credit". He noted that car financing at the point of sale should be considered as a "service" provided to the customer in order to answer his/her specific needs in an efficient (high acceptance of demands) and secure way (default risk covered by the value of the car). Furthermore, the car industry would suffer even more from further restrictions and protection since the core of the business is based on consumer credit financing: between 40% and 70% of new cars sold to private consumers in the EU are financed by point-of-sale consumer credit products.

Mr. Leonardo de Simon (Findomestic) presented figures from the Italian consumer credit market showing the significance of vehicle financing in terms of credit market share (62%) followed by personal loans (10%). Although revolving and personal loans represent 50% of Findomestic lending to consumers, financing of vehicles (in the majority, new cars but also second-hand cars and bikes) and furniture contributes a large part of its turnover. Mr. de Simon remarked that the period of 14 days given to the customer to exercise his/her right of withdrawal (Art. 11 of the draft proposal for a directive) is excessively long for credit agreements at the point of sale.

The point-of-sale consumer credit market in Germany is particularly developed in the car industry (accounting for the financing of 75% of new car sales and 60% of used car sales) and to a lesser extent for durables (12% of furniture and 5% of white and brown goods). **Mr. Pierantonio Rumignani** (CC-Holding) stressed the importance of taking into account the distribution methods of consumer credit products in different countries. The German specificity on that point is the high degree of decentralisation of the activity (only a few organisations cover the whole country), the negligible role of intermediaries and

the frequent use of debit cards linked to overdraft.

According to the report of **Mr. Salvador Maldonado** (Banco Cetelem), general and savings banks dominate the Spanish consumer credit market with 63% of new credit granted for purchases of consumer goods. Specialised banks which often have special agreements with retailers provide the other 37%. The use of low- or zero-rate credit products constitutes a fairly big part of consumer credit products at the point of sale - 20% of car financing and 55% of financing of furniture. Mr. Maldonado remarked that the point-of-sale consumer credit market in Spain presents certain stability in spite of the fact that consumer credit as a whole might be growing.

A differentiation of products included in consumer credit at the point of sale was given by **Mr. Cyril Robin** (ASF) as follows: revolving (store cards), "assigned credit" (store instalment credit) and hire-purchase or lease with purchase option. These types of credit are used to finance 20% of white and brown goods, 30% of department store sales, 20% of superstore sales and 2/3 of new cars purchases in France. Mr. Robin argued that special features of point-of-sale consumer credit must be considered further in the assessment of legislative rules, notably the right of withdrawal (Art. 11 of the draft proposal), the definition of credit intermediary (Art. 2 of the draft proposal) and the exemption of credit agreements of less than three months (Art. 3 of the draft proposal).

Mr. Frédéric Tardy (Cetelem) concluded the first part of the seminar underlining the crucial role of efficient financial services for retailers who use this kind of services to increase sales, to conserve a market share and to obtain new revenues. By offering various exclusive advantages and services, store cards serve to support consumption which,

incontestably, has beneficial effects on retail business. Mr. Tardy gave an example of a special agreement between But (first furniture retailer in France) and Cetelem, which contributed to an increase in But's turnover by 10%.

Discussions of economic and legal implications of regulatory decisions on consumer credit concentrated on consumer protection and the establishment of common rules in order to bring about the construction of a single credit market in the EU. Most of the participants agreed that imposing very restrictive rules with the intention of ensuring a maximum harmonisation of national legislation could be harmful rather than beneficial to stimulate consumer credit activity throughout Europe.

Ms. Almudena de la Mata (ECRI/CEPS) started by pointing out the need of a new regulation for consumer credit in Europe and cited the reasons for this. Keeping the current legislation is no longer possible. Ms. de la Mata highlighted the most controversial points of the draft consumer credit directive and gave an overview of the different perspectives. She raised the question whether the potential negative economic effects that are attributed to the implementation of the Proposal are due to the consumer protection approach of the directive or whether a high level of consumer protection can be compatible with a functioning market. The consumer perspective overlooks the paradox that certain protective measures can have an overall negative effect for the average consumer. It is a matter of choice. Ms. de la Mata entered into the maximum harmonisation issue, presenting pros and contras. Maximum harmonisation implies important policy choices. She raised the question whether it could be possible to have a maximum harmonisation with more exceptions.

Mr. Roger Grazebrook (Lloyds TSB Group) reproached the proposed European directive for its lack of a clear outcome. He noted that the scope of the proposal is very broad, and suggested that overdrafts and mortgages must not be included in the directive because they differ substantially by their purpose (overdrafts correspond to short-term not structured credit) or by the way they are granted (mortgages are not immediately obtained by the consumer) from other types of credit. Mr. Grazebrook also questioned the justification of the principle of "responsible lending" given the fact that lenders have no interest to encourage less responsible borrowing. Their "culture of business" imposes sufficient incentive for good control on borrowing. Furthermore, excessive restrictions reduce the flexibility of consumer finances and, finally, disadvantage the consumer (Mr. Grazebrook gave the example of zero interest borrowing).

Dr. Stefan Stein (Institut für Kredit- und Finanzwirtschaft, Bochum) appealed for stronger faith in the market and reminded the participants that "the spirit of competition" is the best protection for both lenders and borrowers. He insisted on the need to give more attention to the economic impact of institutional intervention as in the case of Art. 19 (joint and several liabilities for creditors and retailers). Art. 19 would give advantage to consumers buying goods by point-of-sale credit over consumers paying by cash or using overdrafts. Legislative restrictions would lead to either credit rationing or price increases, which would negatively influence growth and employment.

Prof. Dr. Udo Reifner (Institut für Finanzdienstleistungen, Hamburg) raised the point that credit has a social function. It must be productive, and give consumers the opportunity to buy things that give them new possibilities. Prof.

Reifner disagrees with the criticism that the draft consumer credit Directive is overregulating the market and that this is negative. Regulation is good in itself as long as it is done well. Empirically, the most regulated countries in Europe are the best functioning ones (Sweden). Prof. Reifner showed his preference for the minimum harmonisation approach. The law is what consumers understand as their law. Consumers identify themselves with the law of their country and feel more confident. 'Standardisation' instead of maximum harmonisation is the clue to market integrations. This way, comparisons would be facilitated and competition stimulated. It would also increase consumer confidence which constitutes an essential element of the demand for credit.

Mr. Stephan Huber (European Parliament, assistant to Joachim Würmeling of the Legal Affairs Committee) supported the willingness of the European institutions to adapt consumer credit legislation to actual needs of the market. Given the wide differences of interest expressed in public opinion, legislators must look for political balance. This could require combining certain rules of the current directive and probably exporting some of them to other directives. On the other hand, cultural and legal diversities between members states are strong enough to assess the "minimum harmonisation" principle as the best approach for consumer credit regulation. Maximum harmonisation would, indeed, eliminate some efficient protection rules already implemented in different countries. Finally, Mr. Huber proposed to examine the proposal for a consumer credit directive in the light of the directive for unfair market practices.

In response to the arguments against the proposal, **Mr. Jens Ring** (European Commission, DG SANCO) defended the idea that current legislation based on the "minimum harmonisation" principle does

not contribute building the single market. This is the reason to opt for a "maximum harmonisation" principle. Mr. Ring emphasised that consumer confidence is a key issue in the process of increasing cross-border activity and that protection rules as proposed in the draft are no more "draconian" than what already exists in national regulation frameworks. "Credit is considered as a risk by all national regulators" and it represents an area where abuses are potentially high. Mr. Ring focused on the fact that the relationship between an immature consumer and a professional supplier supports the argument in favour of the obligation for "exchange of information in advance and duty to provide advice" (Art. 6 of the proposal). Furthermore, common measures and good rules will allow taking rational decisions because creditors will be well informed of these rules and, thus, be better-armed to build their strategies.

Mr. Tobias Mackie (European Commission, DG Internal Market) closed the seminar by enumerating some additional issues to be considered in the revision of the current proposal. First, more attention should be directed to changes occurring in the financial sphere, such as the increasing efficiency of the market due to consolidations and restructuring or the substantial current and potential development of the market. Secondly, Mr. Mackie stressed the extremely political nature of the question of harmonisation because the construction of a single credit market needs further convergence in other related areas. He concluded by stating that "mutual recognition of credit contracts will be a major step towards the Internal Market."

Presentations are available: www.ecri.be

V. German Länder oppose changes to the public character of German savings banks

The German Federal Ministry of Finance is considering amendments to the German legislation on savings banks to allow takeovers by private banks. Savings banks in Germany are currently regulated under public law, and shareholding by private investors is limited. Saving banks are protected from takeovers. The state secretary of the Ministry of Finance, Caio Koch-Weser, had promoted stronger shareholding of private capital in the global credit industry and other alternative legal reforms for the public banking institutions. Strong criticism has been raised at local level. Local politicians of all parties have declared themselves against the proposed changes. Saving banks fulfil a public interest that is not guaranteed by private banks.

DOCUMENTS

For the benefit of our readers and to round out this issue of the ECRI Newsletter which is dominated by coverage of the proposal for a consumer credit Directive, we reproduce below the speech given by David Byrne, European Commissioner for Health and Consumer Protection, before the EP Committee on Legal Affairs and the Internal Market in Strasbourg, 20 October 2003.

Consumer credit - The way forward

Chairman, Ladies and Gentlemen,

Introduction

I am grateful for the opportunity to discuss with you the Commission's proposal on consumer credit.

You will recall that our previous meeting, scheduled for 17 June, could not, unfortunately, take place due to urgent votes.

The President of the European Parliament has asked the Commission to set out its position here today following the vote of this Committee calling on the Commission to withdraw its proposal on consumer credit and take appropriate steps to submit a new proposal.

I hope that our exchange of views will provide the basis for putting the discussions back on track and that Parliament will express its views on the operation of a single market for consumer credit well before the end of this Parliamentary term.

The Commission's objectives

The Commission presented this proposal to you more than a year ago in September 2002 with two principle objectives in mind:

- First, we seek to ensure the effective functioning of the single market for consumer credit in the interest of both consumers and credit institutions. To this end, barriers created by divergent national rules must be removed and consumers need to be guaranteed a high level of protection.
- Second, there is an urgent need to update the Community regulatory framework, which dates back to 1987. Many new forms of credit fall outside the scope of the Directive. It is no longer adapted to current market realities.

I am pleased to note that to date, neither the objectives nor the overall architecture of the proposal have been contested.

The Commission's proposal aims to ensure that a consumer who wants to take out credit with a lender irrespective of the Member State in which the lender is based can be assured on a number of points, including:

- that he will be properly informed about the relevant terms and conditions;
- that his ability to repay the credit will be assessed;
- that interest rates and charges will be calculated in a standardised and comparable manner;
- that he will not be subjected to unfair contract terms; and
- that he can repay his credit early without being unfairly penalised.

Our preference for full harmonisation reflects the desire to ensure that consumers can benefit from the Single Market.

The Commission believes that full harmonisation based on adequate protection will ensure that consumers can gain the confidence to take out credit with lenders from other Member States.

A consumer, say, in France who wants to take out a loan with an Italian lender should be able to do so with full knowledge of his rights. Equally a British lender should not be faced with surprises as a result of differences between British and, say German rules.

The preparatory work leading up to this proposal was solid, thorough and comprehensive.

The proposed Directive stems from extensive consultations with financial institutions, consumer representatives, Member States and indeed the European Parliament.

This work dates back to 1995 when the Commission presented its first report on the operation of the 1987 directive.

The reactions to this report showed that the Directive no longer reflected the reality of the consumer credit market. The Commission ordered a series of studies on various aspects of consumer credit and

carried out a detailed comparative study of the national legislation in all Member States.

On the basis of this work, the Commission presented a discussion paper in June 2001 setting out guidelines and options for a revision of the consumer credit directive. Hearings with the Member States and the credit sector, consumers and stakeholders took place in July 2001.

The consultation process led the Commission to the conclusion that the creation of a single market in the interest of consumers and financial institutions requires genuine harmonisation of national legislation. This is a difficult but not impossible task.

Developments in the Council

Discussions in the Council have progressed satisfactorily. On 19 May 2003, the Council held an extensive policy debate on the proposal. The conclusions of this debate were that Member States:

- expressed clear support for the need for this Directive;
- agreed on the objective of moving towards a single market for consumer credit;
- believe that the single market for consumer credit should be based on harmonisation to ensure a high level of consumer protection.

The Council discussed the objective of full harmonisation as proposed by the Commission and whether or not there should be a degree of flexibility built in for Member States.

The Council also discussed the scope of the proposal, notably as regards mortgage credit, the coverage of credit intermediaries and questions relating to registration requirements and possible controls.

Discussion of these subjects was not, however, conclusive pending the first reading by Parliament.

Efforts made by my services to keep you informed about these developments in the Council appear to have prompted a number of Members in this Committee to believe that the Commission had abandoned its original proposal and was working on a new text.

I would like to stress that this is not the case.

The Commission has, however, taken note of concerns expressed on various aspects of the proposal by Member States, by consumer organisations, by financial institutions and indeed by individual Members of Parliament. We had hoped that the letter sent by my services to the Chairmen of the three Committee at the end of July clarified this.

Developments in the European Parliament

As regards developments in the Parliament, the Commission has noted the work of the Committees on the Environment, Health and Consumer Protection and on Economic and Monetary Affairs as well as the concerns and observations expressed by your rapporteur in the working papers he presented in June 2003. I also had a useful meeting with him last week.

A number of themes recur in the comments made to date. Most of the issues raised are not technical or legal points but instead relate to political perspectives and opinions on the scope of the proposal, on how a single market for consumer credit should function and on the level of consumer protection to be guaranteed at Community level.

I should also add that the opinions of individual Members or even Committees

appear to vary considerably, making it impossible for the Commission to determine the tendencies or the majority view of the Parliament.

Given the ongoing work in Council and in the absence of a clear Parliament opinion, the Commission has neither taken any position nor drawn any conclusions on how provisions of the proposal could be changed.

To do so in the absence of the informed opinion of the European Parliament would, quite frankly, constitute an insult to the European Parliament.

It would imply that the Commission is oblivious to the position of Parliament. It would deprive Parliament of its central role in the co-decision process.

Precisely because the creation of a Single Market for consumer credit raises important political questions, Parliament's opinion is essential before we can move on to the next stage of an amended Commission proposal to be submitted to the Council with a view to then reaching a Common Position. Furthermore, preparing a revised proposal at this stage would be technically and materially impossible. Due to the procedures that would have to be respected, it would not be possible to table it in good time for this Parliament to be able to express itself on it before the elections.

The way forward

Given the support expressed for the proposal by the Council and the work carried out by Parliament to date, the Commission believes that the only way forward is for Parliament to continue its discussions with a view to setting out clearly:

- what it believes would be an appropriate legal framework for

developing the single market in consumer credit; and

- what amendments it would like to see made to the proposal.

I can assure you that the Commission will approach the amendments the Parliament proposes with an open mind.

This open approach reflects the confidence I have that there is considerable common ground between the Commission and the European Parliament on the need to unlock the single market for consumer credit in the interest of consumers and financial institutions.

Conclusion

Consumer credit has evolved considerably since the 1980s. The original Directive no longer matches today's market realities.

Member States realise that there is an urgent need to adapt their national legislation.

Failure to update the Community regulatory framework would mean that the consumer credit market remains very much divided along national and regional lines and lead to individual Member States going their own way.

This would not be a satisfactory outcome. It would deprive consumers of a wider variety of choice and the increased competition that the single market would bring. It would thwart those financial institutions hoping to broaden their horizons through gaining access to new markets.

To conclude, I have set out the Commission's ambitions for a single market in consumer credit. I maintain the view that the proposal, as drafted, would enable our objectives to be achieved.

But at the same time the Commission recognises that within the overall structure of the proposal there is room for alternative solutions and other political choices without undermining the objectives that I believe are shared among the Parliament, the Commission and the Council.

I therefore call on you and your colleagues in the associated committees to set out, without further delay, your views on the proposal and the level of protection to which you believe European consumers should be entitled.

I invite you to propose amendments with a view to reaching a substantive EP first reading opinion as soon as possible.

Thank you.