

CONTENTS

NEWS

REGULATORY ISSUES..... 1

- I. **State of play in the consumer credit Directive saga: the European Parliament to vote at a plenary session on amendments to the draft consumer credit Directive**
- II. **Outline of the revised draft consumer credit Directive (CCD) to be voted upon at the EP plenary session**
- III. **Contribution of the EMAC to the CCD debate**
 1. Outline of the report by MEP and Rapporteur Bérès
 2. Outline of the proposed amendments by other EMAC members
- IV. **Commissioner Byrne's opinion on LAC amendments to the draft consumer credit Directive**

MARKET ISSUES:.....9

- I. **European retail banks enter foreign markets**
 1. Acquisition by Crédit Agricole of Dan-Aktiv
 2. Commerzbank acquires Schmidtbank
 3. Société Générale plans to expand its business in Russia
 4. Competition for the growing consumer banking sector in Russia
 5. New consumer credit provider in Italy, Advera: a joint venture of BBVA and BNL
- II. **Local news**
 1. BNP Paribas extends its real estate branches
 2. Partnership between Laser-Cofinoga and Quelle France

NEWS

REGULATORY ISSUES

I. **State of play in the CCD saga: the European Parliament to vote at a plenary session on amendments to the draft consumer credit Directive**

The European Parliament (EP) will discuss and likely vote on the amendments prepared by the EP committees to the draft consumer credit Directive (CCD), at a plenary session on 21 April.

Since, the EP plenary session on 5 November referred the draft back to the EP committees for amendments, specially the Legal Affairs Committee (LAC) and the Economic and Monetary Affairs Committee (EMAC) discussed and agreed numerous amendments to the Commission's version. [[See ECRI Newsletter no. 11](#)].

The amendments are based on MEP Joachim Würmeling's critical assessment of the draft CCD, as revealed in his *first report* (23 September 2003). He called upon the Commission to withdraw the draft CCD and completely revise it.

Würmeling's clear views on ideal consumer credit regulations turned into the set of amendments published in a *second report* (9 January 2004). This document provides a profoundly revised version of the draft CCD, including 181 amendments. (The document was at first only available in German. An ECRI summary in English was downloadable from the ECRI website on 10 January; the full English translation was published on 30 January.)

The LAC discussed Würmeling's second report on 21 January. LAC members contributed further amendments on 13 February (amendments 181 to 502).

Meanwhile, efforts to improve the draft CCD were also undertaken by the EMAC.

The amendments presented by Rapporteur Pervenche Bérès (on 2 and 18 December) were augmented by amendments from other committee members (published on [9](#), [15](#) and [21](#) January). The EMAC voted upon these on 9 February.

Finally, a [concluding report](#), summarising the main amendments was presented to the LAC Committee, on which discussion took place on 24 February.

The LAC voted upon the revised draft of the CCD on 16 March. On this occasion, Würmeling's proposed amendments received support and the main guidelines were agreed. Würmeling's assistant, Stephan Huber, informed ECRI that all of the proposed amendments in the concluding report had been accepted.

The revised draft CCD will be discussed in the EP plenary session on 21 April (the first reading). If a vote does not take place at that time, the draft CCD is likely to be reconsidered after the elections.

II. Outline of the revised draft consumer credit Directive (CCD) to be voted upon at the EP plenary session

The amendments to be voted upon at the EP plenary session have completely changed the concept of consumer credit regulation established by the Commission. The main features of the revised CCD are below.

1. Minimum harmonisation

The LAC has returned to the traditional **minimum-harmonisation** clause instead of the principle of maximum harmonisation as set out in the Commission's first proposal.

The reasons for this amendment are: first, the maximum-harmonisation approach contradicts the principle of subsidiarity and the nature of the Directive as a legal instrument; second, maximum harmonisation is not necessary for the achievement of a single consumer

credit market, yet it carries the risk of over-regulation.

Finally, differing rules are necessary to take into account national preferences, which cannot be considered in a single directive covering the entire EU.

2. Scope

The **scope** of the CCD is limited to what can be defined as *standard consumer credit*. In general, four kinds of credit are excluded from the scope of the Directive: a) bagatelle credits and credits for a very high amount; b) special kinds of credit such as mortgages, overdrafts and certain leasing agreements; c) credits granted between particulars or not-for-profit credits and d) credit agreements that are notarised or certified by the courts.

a) Bagatelle credits and credits for a very high amount

The so-called 'bagatelle' credits are those granted for less than €1000. Credit for small amounts should not be subject to the costly procedures specified in the Directive. Credit transactions for more than €50,000 are also excluded from the Directive. Credit for high amounts usually concern consumers who are undertaking business transactions, and do not need the protection set forth by the CCD.

b) Special kinds of credit

Contracts secured with a mortgage as well as overdrafts are also excluded, by reason of the special features of the contract (with the exception of credit card agreements).

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

c) Credits granted between particulars or not-for-profit credits

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

Start-up or personal development loans granted by public institutions or officially authorised institutions are not subject to the CCD.

Other credit agreements not covered by the CCD are those entered into by non-profit cooperative associations that manage the savings and credits of their members. Such associations are those run by unpaid members that provide credit on the basis of an APR (which is subject to a ceiling laid down by national law) and restrict membership to employees of a particular sector, a particular employer or region.

d) Credit agreements that are notarised or certified by the courts

Credit agreements that are notarised or certified by a court or that relate to a deferred payment – free of charge – of an existing debt do not fall into the scope of the Directive.

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 and held by the creditor is sufficient to pay off the loan.

3. Information

The contract must include an **infobox**, where the main conditions of the agreement are clearly provided. This will increase transparency and comparability. Exemptions from this stipulation can only be allowed in cases where it is not possible to provide the specified standard information.

The minimum information the infobox should include is:

a) the APR to be charged;

- b) the agreed duration of the credit agreement;
- c) the number and amount of payments; and
- d) the total cost of credit.

4. Responsible lending and borrowing

The principle of **responsible lending** is enlarged and also contains pre-contractual duties for lenders and borrowers. Prior to the conclusion of a contract, borrowers must provide information to the lender about his/her creditworthiness (such as total existing loans, total monthly income, current financial obligations, purpose of the credit and other information requested and necessary for the assessment of creditworthiness).

5. Annual percentage rate of charge

The **APR** has been established on a broader basis to make it easier to compare offers between member states. The reference to the total lending rate has been replaced by a reference to the newly standardised annual percentage rate of charge. Würmeling stressed that it is not possible to achieve the objective of EU-wide comparability of percentage rates by providing information about two separate rates that are derived by different means. Moreover, referring to different interest rates is confusing for consumers. The EU-wide comparability of annual percentage rates is only possible if the way in which the rate is derived is regulated in a uniform and binding manner.

6. No provision on data protection

Article 7 of the draft CCD has been deleted. It has been asserted that the CCD is not the place for provisions on **data protection**, as these are adequately dealt with by Directive 95/46/EC, which provides 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

The requirement that member states set up **central databases** has also been deleted, as credit institutions in member states are already able to obtain the necessary information to assess their clients' creditworthiness, without any need to set up a statutory infrastructure for this purpose. A national database would have resulted in the nationalisation of databases and prevented existing private sector providers from continuing in business. Instead, member states are to ensure access to those national databases that already exist.

8. No ban on doorstep sales of consumer credit

The Directive does not specifically ban **doorstep sales** of consumer credit. The reason is that doorstep transactions are sufficiently regulated by Council Directive 85/577/EEC, which protects the consumer with respect to contracts negotiated away from business premises. There is no need for more stringent regulation.

9. Right of withdrawal

The consumer still has a period of 14 calendar days to **withdraw** his/her acceptance of an agreement without giving any reason. With regard to linked agreements, however, if the consumer insists on the immediate delivery of goods or services, the time for withdrawal ends with the delivery or the provision of these, and in any case before three days.

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

III. Contribution of the EMAC to the CCD debate

EMAC made a valuable contribution to the work on the draft CCD through a series of amendments.

The report presented by MEP Bérès was enhanced by other amendments and comments from EMAC members. The

EMAC voted on the amendments on 9 February. These amendments were then taken into account by the LAC (the responsible committee) in the preparation of the *concluding report* that offers a revised text of the CCD, on which voting is anticipated at the EP plenary session of 21 April.

1. Outline of the report by MEP and Rapporteur Bérès

MEP Bérès remarked in her report that the European legal framework needs to be updated, as the consumer credit sector has expanded enormously since the 1987 Directive came into force. Furthermore, new kinds of services have developed and differences among national laws have increased. Ms Bérès referred to a survey conducted in some countries of the euro zone that revealed a demand for easier access to consumer credit and indicated legal uncertainty as the major obstacle for cross-border borrowing. She stressed the importance of developing consumer credit on a cross-border basis as a key factor in the process of economic recovery. In view of this, she supported the **maximum-harmonisation** approach. Yet she also warned of the danger that excessive regulation could block the desired economic effect.

Regarding **information**, Ms Bérès highlighted the importance of taking into account that any advertisement or offer must contain the same information. In the interest of clarity, the APR has been selected as the only rate to be indicated to facilitate comparison. In addition, she observed that since the Directive is concerned above all with cross-border credit, specific mention should be made of the currency in which payments are to be effected.

In her report, Ms Bérès also raised the point that **over-indebtedness** is a reality that should not be underestimated.

Finally, in Ms Bérès opinion, the ban of **doorstep selling** is unjustified since the primary purpose is to make the consumer

aware of the importance of the transaction before it is concluded; therefore, it is not necessary to prohibit any offer of credit made away from business premises.

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

2. Outline of the proposed amendments by other EMAC members

MEP Blockland remarked that the consumer credit Directive should not contain provisions on **data protection** since these are adequately dealt with by the 95/46/EC Directive. Regarding the duty of the creditor to destroy the data after the conclusion of the credit agreement, he claimed that creditors would be interested in recording such information, as it is relevant to their duty of care and in case they are later called to account regarding compliance with responsible lending obligations.

Mr Blockland expressed concerns also about the **registration of creditors**. In this regard, he suggested that a preventive check should be established for creditors and credit intermediaries and that the registration of creditors and credit intermediaries should be recognised in other member states. Further, the register must have the capacity to remove a provider if the provider is shown to be untrustworthy or incompetent.

For the purpose of limiting the scope of the Directive, MEP Teresa Villiers observed that **mortgage credit** is substantially different from consumer credit and should therefore be excluded.

MEP Richard Balfe proposed that the **activities of home-shopping agents** are also excluded from the Directive, since he considered that these agents are usually women and the burdens imposed by such regulation would discourage it. Hence, it may have an indirectly discriminatory effect on grounds of gender and intensify problems of social exclusion. He also stressed that there is

no evidence that consumers would benefit from another set of figures being provided in advertisements and that the APR has been promoted as the most appropriate tool used by consumers to compare different credit offers. The introduction of different rates would only confuse the consumer without any benefit.

Similar concerns were expressed by MEP Othmar Karas, who stressed that borrowers cannot cope with a mass of **information** and brochures. Such information should be provided only at the request of the borrower.

MEP Villiers said that **maximum harmonisation** is unnecessary and could jeopardise many valuable consumer protection rules in different member states. Regarding the ban of **doorstep selling**, she remarked that it is unjustified since credit is very often offered as an accessory in conjunction with goods distributed through the same channel; the doorstep-selling Directive gives the consumer the right to withdraw from agreements concluded on the doorstep and this offers consumers sufficient protection. In this regard, MEP Karas also noted that consumers may have a legitimate interest in concluding contracts outside credit institutions and that this measure would affect the weakest group of consumers, for example the sick and elderly who would be unable to visit a credit institution.

MEP Tannok pointed out that the obligation for member states to create separate **central databases** is not justified and would impose a disproportionate cost compared to the number of cases where consumers apply for cross-border credit. Indeed, where more than one database exists, the consumer benefits from competition on price, quality and accuracy of data, efficiency of services and the development of new facilities.

He also raised the point that granting the **right of withdrawal** encourages consumers to enter into obligations

without due reflection. It is opposed to the principle of taking responsibility for one's actions and the principle of private law, namely that contracts must be honoured. In his view, there is no objective justification for a general right of withdrawal in respect of the contracting of credit agreements.

MEP Generoso Andria highlighted that the failure to include **minimum and maximum limits** for consumer credit may result in disproportionate costs for small loans; on the other hand, a maximum amount also needs to be set, since practical experience has shown that the provisions of this Directive are likely to encounter strong resistance from those seeking sizeable loans.

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

IV. Commissioner Byrne's opinion on the LAC amendments to the draft consumer credit directive

European Commissioner David Byrne expressed his opinion on the LAC amendments (see under I) to the consumer credit directive at the board meeting of the European Bank Federation on 26 March in Dublin.

Mr. Byrne raised the main points on the consumer credit directive, defending the core rationales of the Commission's proposal. He remarked the importance to opt for a full harmonisation approach in order to achieve a single financial market and boost consumer confidence.

Commissioner Byrne expressed also his concerns about the disappointing results obtained with the adoption of the Voluntary Code of Conduct in the home loans field. He stressed the limits of self-regulation at EU level and the advantages of a legislative approach instead.

For the benefit of our readers, we reproduce below part of the speech given by Commissioner Byrne.

[...] "**Consumer credit directive**

Turning to our legislative proposals you will be aware that the proposal for a Directive on Consumer Credit has at last been making progress through the European Parliament and they will vote on the proposal at the April Plenary.

A number of issues have been raised in the discussions so far, but allow me to stress one essential point.

It is very important that there should be full harmonisation of the key elements of the proposal to enable smooth cross-border supply and demand of consumer credit.

The potential for cross-border business in consumer credit is, I believe, large provided consumers are confident of their rights, whatever the national origin of the creditor. Our aim is to liberate this potential as much as possible.

Full harmonisation

I was pleased that the Competitiveness Council, in May last year, clearly endorsed the principle of full harmonisation of core issues in consumer credit.

In the light of the potential advantages (for both businesses and consumers) that this proposal would bring, and in view of the position of the Council, I am surprised and indeed rather disappointed that the Legal Affairs Committee has voted to introduce minimal harmonisation into this Directive. I wonder if Members of the European Parliament are aware of your reasoned opinion on this point.

I think that for the central elements, full harmonisation is vital if the Directive is to achieve its objectives. Full harmonisation does not mean that we harmonise everything. It means that some elements, which are particularly important for the internal market, should be compulsory for all Member States to implement, without

maintaining or introducing alternative measures.

I have said on many occasions that for non-central elements, flexibility can be considered. Certain more peripheral elements could fall outside the scope of the Directive the result being that Member States could maintain their national provisions in these specific areas.

We also recognise that the regulatory regime should be proportionate in relation to the problems which need to be overcome.

This is in line with the approach your Federation has expressed on several occasions with me and with my services. Full harmonisation is desirable in order to increase competition within the Single Market, but as I have repeatedly said the scope and certain provisions could be adjusted to take account of such issues as low value loan and re-mortgages, for example.

I know that my services have had very constructive meetings with representatives of your Federation. I hope these close contacts will continue to bear fruit. It is important for me to work closely with all stakeholders. The attempts by certain interests to kill this proposal without a full discussion shows scant concern for consumers.

The Legal Affairs Committee has already adopted a large number of amendments to the proposal. Some of these proposals go too far and are likely to be unacceptable for the Commission. Others we will be able to work with. It is interesting to see that the Environment Committee in its opinion has taken a more positive view of the proposal. We have to wait and see what amendments are adopted in the Plenary Session in April.

In the light of Parliament's first reading the Commission will as usual present a modified proposal. I hope that this will facilitate work on the Directive leading to its early adoption.

Payments

As I said earlier boosting consumer confidence in cross-frontier purchases is an essential component of making the internal market work. It is disappointing to see the relatively low take-up of e-commerce by individual consumers. One factor influencing this is concern about security of payments over the internet.

Refund

I have been struck by the situation in the UK where, in recent years, credit card payments through the Internet have developed more than in other Member States.

When a UK consumer decides to buy goods on line, he can do so securely. If a problem occurs with the supplier, he will be able to obtain reimbursement from his credit card provider. The card provider can then take action against the supplier.

I would encourage such "refund" schemes in the Internal Market. They would lead to what I would call a "win-win situation". A win for banks because credit card transactions would flourish, at home and also across borders. A win for consumers as they would enjoy a much higher level of protection online and therefore feel more confident in making on-line purchases.

I know there is a cost element involved but how real an impediment is this in offering this service to consumers? Given the experience with the generous fund system offered to card holders in the US and the system in the UK I am sure card issuers could do more in extending such

schemes to consumers in other Member States.

Last December the Commission issued a communication concerning a new legal framework for payments in the Internal Market.

This communication sought the views of stakeholders on a range of topics including security, attribution of liability and information. I hope there will be imaginative response to this consultation and a more open approach to refund schemes for consumers.

Unauthorised use

Turning to unauthorised use, everybody would accept that non-cash payment systems are not 100% safe although security mechanisms and devices are improving everyday.

Let us take the example of a consumer whose payment card is used fraudulently on the internet. This is a real-life example: the card number is generally sufficient to buy online, and even secret codes can be hacked.

When he discovers the fraud, the consumer will claim he has not authorised the transaction. At the other end of the pipeline, the bank will say it has trace of a perfectly normal transaction.

I take the view that, where there is a dispute, the payment service provider should be obliged to provide evidence that the payment transaction has been authorised by the consumer.

Some argue that this would open the door to massive consumer fraud. I do not believe that would happen. A provider should be responsible for the safety of the service he provides to consumers, not the other way round.

This issue is also covered in the Communication, and I know many contributions received by the Commission relate to it. It is an essential question in terms of consumer confidence, and balanced solutions need to be found as regards the onus of proof.

Unfair Commercial Practices

I mentioned at the start of my presentation today that one of my key aims in relation to consumer protection has been to enable consumers to share the benefits of the internal market.

I do not have to remind you that fragmented regulation imposes costs for businesses which can act as an impediment to taking advantage of the internal market.

It is against this background that you have to see the proposal for a Directive on unfair commercial practices. This aims to put in place a common, EU-wide framework for protecting consumers against unfair practices such as misleading advertising and aggressive sales techniques.

It would be a gap-filling directive taking account of the fact that some aspects of industries such as yours are already regulated at EU level. Where there are such special rules they would take precedence over the framework directive.

It takes a 'light-touch' approach by identifying and prohibiting problematic unfair practices, rather than by trying to dictate to you how to manage your relationship with your customers.

It aims to benefit both consumers and businesses, through providing for an appropriately high level of protection EU-wide while allowing for mutual recognition. This will provide regulatory certainty for firms, so that for areas covered by the Directive you will only

have to comply with one set of rules not 15 sets or, from May, 25.

By seeking to free up the internal market, it should bring considerable opportunities for cross-border selling. In our surveys, nearly half of all businesses cited the need for compliance with different national rules on unfair commercial practices as an important barrier to cross-border trade.

Discussions on the proposal, with Council and Parliament, are making steady progress. The European Parliament is due to complete its first reading by the end of this legislature in April, and the Council is aiming to reach a political agreement in May" [...].

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

MARKET ISSUES

I. European retail banks enter foreign markets

1. Acquisition by Crédit Agricole of Dan-Aktiv

Crédit Agricole SA announced on 1 March that it had signed an agreement with a view to acquiring 100% of Dan-Aktiv, the consumer credit subsidiary of the Danish distributor F Group A/S, for a consideration of €53 million (or 394 million Danish krone).

Dan-Aktiv, which is ranked fourth among specialised Danish financial institutions, manages a portfolio of 65,000 customers, with outstandings of approximately €150 million. It has a network of 550 distribution partners, which represents almost 1200 sales outlets. The new Danish subsidiary will be managed by Finaref, the consumer credit subsidiary of Crédit Agricole that is already present in Sweden, Norway and Finland.

2. Commerzbank acquires Schmidtbank

Commerzbank confirmed on 25 February that it had acquired Schmidtbank, a regional bank operating mainly in Bavaria, Saxony and Thuringe. Schmidtbank has a network of 70 branches and 29 self-service outlets, a customer base of 360,000 personal account holders and 4,000 SMEs.

3. Société Générale plans to expand its business in Russia

Société Générale concluded an agreement with the Russian company PPE late last year to set up a joint venture in consumer credit. Société Générale will own 51% of PPE and will presumably begin operations in June 2004.

Société Générale, present in Russia since last year, will likely open some 20 branches there within a two-year period (undoubtedly in Moscow, St Petersburg and major provincial cities such as Ekaterinburg and Samara).

The PPE group is a distributor that is especially active in the mail-order sector. It also has an Internet subsidiary and a customer database containing the details of more than 20 million consumers.

4. Competition for the growing consumer banking sector in Russia

Competition is increasing in the booming Russian retail and mortgage lending markets.

A powerful demand for consumer-oriented retail banking services is taking off in Russia, as a consequence of growing incomes and previous perturbations in the demand for goods and services. Real incomes have been growing by 8 to 9% per year over the past three years. Moreover, thousands of companies supplying consumers with quality consumer goods and services that were not available in the past (or only imported) are emerging rapidly. A consumption-oriented middle class with rising disposal income and low debt is emerging. Between 12 and 15% of the

Russian population of 143 million qualify as middle class.

The Vneshtorgbank (VTB), a state-owned Russian bank, plans to raise its share of the retail market from 1.5 to 8% within the next five years and to allocate 4 billion roubles to mortgage lending. Alfa Bank has opened 15 of its Alfa Bank Express retail branches in Moscow and plans to open 25 more during this year. Its main target is the rising middle class.

Foreign banks are showing interest and testing the Russian market. This is the case of Citibank, which has started a small retail lending operation.

5. New for consumer credit provider in Italy, Advera: a joint venture of BBVA and BNL

BBVA and Banca Nazionale del Lavoro (BNL) created Advera, a joint company specialised in consumer credit.

The aim of the company is to enlarge the consumer credit business in Italy and obtain approx. 5 % of the whole Italian consumer credit market by 2008.

The new company will offer a wide range of financial products (consumer credit, revolving cards, etc) and will use its own and other nets for its distribution.

This joint venture will allow BNL to reinforce its position in all segments of consumer credit market in Italy. BBVA will enter one of the most attractive consumer credit markets in Europe. The Spanish bank will provide its large expertise in the development and run of consumer credit business in Spain, Portugal and Latin America. BNL will also contribute with its national experience and its current 10% of Italian personal loans' market.

Today, consumer credit market in Italy represents approx. 3 % of Italian GDP, a low level compared to other EU countries (Germany (10.3 %), UK (14.5)). Advera aims to get profit of the potential of Italian market.

II. Local news

1. BNP Paribas extends its real estate branches

BNP Paribas will open a network of about 30 specialised real estate branches, where loan facilities (specifically mortgage loans) and all the services of a real estate agent will be offered.

BNP Paribas has already tested these branches with the ten pilot branches over a two-year period. The experiment achieved very successful results (11,700 customer visitors) with a low required investment (costs of approximately €120,000 to open one branch).

2. Partnership between Laser-Cofinoga and Quelle France

Cofinoga, the consumer credit subsidiary of Laser (Galeries Lafayette Group), announced on 4 March that it was acquiring 50% of the capital of CDGP, the finance company of Quelle SAS. CDGP manages the 350,000 charge cards for Quelle France (which equate to €63 million in outstandings).

Quelle SAS is ranked third among distance sellers in France and is the French subsidiary of the German distribution group, KarstadtQuelle. Quelle's potential customers are estimated to be around five million.

The partnership between the two groups could be extended to other European countries where they are both established (such as Belgium, Spain and Portugal).