

# Consumer Credit Newsletter

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Editor:  
*Almudena de la Mata*  
e-mail: [almudena.delamata@ceps.be](mailto:almudena.delamata@ceps.be)  
Place du Congrès 1, B-1000 Brussels  
Telephone: 32 (0)2 229.39.61

*Irene De Beni*  
e-mail: [irene.debeni@ceps.be](mailto:irene.debeni@ceps.be)  
Place du Congrès 1, B-1000 Brussels  
Telephone: 32 (0)2 229.39.14

## NEWS

### I. State of play in the Consumer Credit Directive saga: Further progress

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

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

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

The controversial political debate surrounding the consumer credit reform reduces the likelihood that the Directive will be adopted until early 2005.

In any case, future developments will also depend on the reaction of the European Commission to the outcome of the parliamentary vote.

## II. EP amendments voted upon in the first reading

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

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

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

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

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

On the presumption that credit for small amounts should not be subject to the costly procedures specified in the Directive, a floor of € 500 has been introduced. Similarly, a ceiling of € 100,000 has been approved on the basis that credit transactions involving high amounts of money usually concern consumers with experience in business transactions. It is noteworthy to stress here that the parameters proposed by the Legal Affairs Committee (LAC) have been modified in the EP plenary session: the floor has been lowered and the ceiling has been raised.

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

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

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

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

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

### 3. Information (art. 4)

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

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

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

In the draft CCD, as amended by the EP, responsible lending includes the requirement for the creditor and the consumer to comply with their obligations as regarding the provision of information prior to the formation of the agreement and the requirement for the creditor to assess the consumer's creditworthiness on the basis of the information provided by the latter.

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

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

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

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

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

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

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

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

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

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

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

Under the principle of joint and several liability, consumers would have had the right to make claims against both the credit provider and the supplier, since they would be jointly liable if, for example, there is a default by the supplier.

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

With the principle of linked transactions, the EP has simply intended to recognise the interdependence existing between the credit contract and the agreement for the

supply of goods. Accordingly, art. 19 of the draft proposal, as amended by the EP, provides the borrower with the right to withdraw his or her acceptance from the credit agreement in case the seller defaults, but the consumer will not have right to make a claim for compensation against the credit provider.

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

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

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

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

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

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

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

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

On the 22<sup>nd</sup> of April, following the parliamentary vote, the EU Council

Presidency launched a **questionnaire** to member states raising the key controversial points of the draft CCD. This measure was aimed at surveying the views of member states and allowing them the time to establish their positions before the next meeting on 30 June.

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

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

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

With regard to credit agreements that are notarised or certified by a court, or those that are the outcome of a settlement reached in court or before another statutory authority, Ireland, Luxembourg, the Czech Republic, the UK, Estonia, Austria, Finland, France, Belgium, Slovenia, Estonia, Spain and Italy were in favour of the inclusion of such agreements in the scope of the

legislation. The Netherlands, Latvia, Hungary, Poland, Greece and Sweden have taken a rather open position on this issue. Only Germany, Portugal and Denmark have endorsed a full exclusion.

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

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

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

On the controversial point of the creditor's liability, Sweden pointed out that the liability should lie with the creditor.

Germany and Denmark agreed on adopting the principle of joint and several liability and asked for a separate directive to regulate professional credit intermediaries.

#### **IV. Interest in consumer credit increases across Europe, along with ECRI participation in conferences and seminars**

Interest in issues surrounding consumer credit has been growing throughout the current year. ECRI has been invited to a series of conferences tackling the key issues affecting the consumer credit debate.

The first conference took place in London on 5 March 2004. The event, organised by Credit Today in cooperation with Credit Link Financial, brought together a large number of UK and European banking practitioners. The conference offered attendees a global view of the recent developments that affect the banking industry. On behalf of ECRI, Almudena de la Mata gave a presentation on "The Harmonisation of EU Consumer Credit: Market and Legal Developments" and took part in the panel discussion on consumer protection in the financial field.

In April 2004 the Centro de Estudios del Consumo-Universidad de Castilla la Mancha in Spain organised a three-day seminar entitled "El derecho de consumo en la perspectiva del 2004: Crédito al consumo, cooperación interadministrativa y prácticas comerciales desleales". The forum was mainly attended by industry representatives, civil servants, consumers association representatives and members of the Instituto nacional de Consumo, the leading Spanish authority in the consumer field. At the seminar, ECRI presented the current picture of consumer credit in the EU as well as developments in the Commission's proposal on the Consumer Credit Directive at a session entitled "Propuesta de Directiva de crédito al

consumo. ¿Regulación a favor o en contra del consumidor?”.

The European Community Studies Association (ECSA) and the University of Montreal in Canada organised a two-day conference on 27–28 May 2004 on the future of Europe. Given that consumer credit has important economic and social implications for the EU, an ECRI/CEPS paper on consumer credit was accepted and presented at the conference.

In June 2004 a presentation of the recent developments in consumer credit regulation and the implications for Germany was made at the Humboldt University (Berlin). A vivid discussion took place between Almudena de la Mata and the audience, mainly composed of researchers and students. A similar forum was convened at the conference held at the University of Hamburg on 24 July.

Finally, ECRI was also present at the conference “Credit Card World 2004”, organised by Terrapin London on 29–30 June for practitioners in the credit card sector. A panel discussion on “Consumer debt: Should credit card issuers take responsibility? Introducing measures to protect the consumer” took place.

#### V. New ECRI website

Recently the European Credit Research Institute has launched a **new website**, with a completely revised design and structure. In view of the ongoing institutional debate affecting the consumer credit regulation, the aim of the website is to broaden the understanding of EU consumer credit issues by way of extending website information services.

Towards this aim, the content of the existing web pages has been enlarged and new pages have been created. A new “Papers Library” provides the visitors to

the website with a relevant selection of papers in the retail financial market field.

An overview of the EU consumer credit regulatory process, with structured links to all related documents, has been introduced to provide a constant and accurate update of the recent developments in the consumer credit debate.

An extended explanation of ECRI’s activities and research has been introduced in a new page entitled: “What is ECRI?”, which includes a methodology section. The “Media Echo” page has been enlarged with articles and documents in which ECRI data have been cited.

The newsletter page has also been restructured, now providing a brief summary of each issue in order to inform readers about the main points covered.

Finally, the “Legal Observatory” section has been added to monitor consumer credit legislation in force in EU countries.

#### VI. New ECRI publications

- ***EU Data Protection in the Context of Financial Services***, Alfredo Sousa de Jesus, ECRI Research Report No. 6, April 2004. (Freely downloadable from [www.ecri.be](http://www.ecri.be)).

This paper deals with the issue of financial privacy, i.e. the rules on data protection that apply to the financial services provided to consumers. The report aims at raising the awareness of EU consumers with regard to threats to their privacy and at providing an overview of the current system of protection. In this context, the paper also seeks to contribute to the understanding of the legal framework for data protection in the EU.

To conform with ECRI’s mandate, the scope of the report is restricted to ‘Business-to-Consumers’ (B2C) activities

and the related legislation, as it is precisely at this level that barriers to the completion of the Single Market emerge.

The report focuses exclusively on issues of data protection arising in the private sector, choosing to ignore the concerns raised about the possible use of personal data made by governments. In the same way, the approach followed is restricted to matters of civil law, thus excluding criminal law and procedure. In assessing the effect of the legal framework, the scope of the report is therefore limited to the consumer point of view and does not address the issue of the fundamental human rights enjoyed by all EU citizens. Financial services and data protection are analysed in both the traditional and the internet market from a legal perspective, excluding any technical IT considerations.

The report argues that by the end of the 20<sup>th</sup> century, the free movement of information, the globalisation of economies and IT developments have resulted in the need for a comprehensive review of all regulatory regimes, including current consumer protection policy. Thus the role of legislation in regulating the privacy of financial transactions is considered at national, EU and international levels.

After the general background section on data protection and consumer concerns when operating on the internet, the paper expands into a detailed analysis of the impact of the IT revolution on the regulation of data protection and on the banking sector. It then analyses the findings and limitations of national initiatives prior to any EU protection and reviews the impact of the EU regime on member state legislation. In parallel, several initiatives at the international level are also considered, because of their influence on the EU legislative framework. As an alternative to the traditional legislative framework (national, EU and international), the paper addresses the

contribution of industry through the application of voluntary codes of conduct.

The paper then proceeds to the heart of the issue: the analysis of the EU framework on data protection. Data protection rules are illustrated with concrete examples and practical case studies from the banking sector. With reference to globalisation, the paper also describes cross-border transfers of information to non-EU countries, through different types of mechanisms (covering the adequacy of the protection, contractual clauses and the Safe Harbour Agreement).

A further section of the paper is devoted to sector-specific EU legislation – with explicit reference to privacy concerns – as an application or a derogation of the EU directives. As the EU legislation on data protection has become outdated, an overview is provided of the preliminary conclusions drawn from the current consultation process, as carried out by the European Commission on the implementation of the Directive on Data Protection.

The final section of the report draws an overall conclusion, followed by a wide range of recommendations addressed to all relevant actors: consumers, industry representatives and policy-makers. These aim at providing a critical and informative contribution to the debate about the challenges presented by new technologies to EU laws on privacy in financial services.

- **Point-of-Sale Consumer Credit Statistics, Albena Krastanova**  
(Freely downloadable from [www.ecri.be](http://www.ecri.be))

In November 2003, ECRI organised a seminar entitled “Consumer credit at the point-of-sale: Future prospects and challenges for regulatory policy on consumer credit in the EU”, bringing

together a wide-ranging panel of speakers from industry, financial entities, political institutions and academia to exchange views on the subject.

Following the lively interest aroused by the ECRI seminar, Albena Krastanova agreed to report on the interesting data and **statistics** that emerged during the conference. In particular, the survey data presented brings together records collected from different sources, offering an overview of the status of point-of-sale consumer credit and responding to the lack of information on this specific topic. Although it does not aim at reflecting the global market situation, the paper gives an idea of the main features of the point-of-sale consumer credit issue. Further information on the outcome of the research is available on the ECRI website at [www.ecri.be](http://www.ecri.be).

#### VII. Forthcoming publication

- ***The Efficiency of Consumer Credit Companies in the EU: A Cross-Country Frontier Analysis*, Laurent Weill**

The aim of this work is to provide empirical elements on the performance of consumer credit companies in the EU by applying efficiency-frontier techniques. These techniques, widely applied in banking literature, provide sophisticated measures of performance: the efficiency scores. The survey measures the cost and profit efficiency of consumer credit companies in seven EU countries in the period of 1996-2000.

After investigating the market structure of EU consumer credit industries, the report provides evidence on a rather large level of cost and profit inefficiencies in the EU, but also on great differences among countries. It shows, however, that cross-country differences in efficiency are caused by the environment to a significant degree. The analysis of the

determinants of efficiency shows few significant correlates. Finally, the evolution of efficiency between 1996 and 2000 does not support the hypothesis of a process of convergence on cost and profit efficiency among EU countries. Thus, the results tend to support the absence of a positive impact of EU integration on the efficiency of consumer credit companies.