

Credit agreements for consumers

2002/0222(COD) - 20/09/2007 - Council position

The Council considers that its common position, takes good account of the European Parliament's first-reading opinion. Taking into account also the other innovations agreed by the Council, the common position represents a balance of concerns and interests, ensuring a high level of consumer protection and a good functioning of the internal market, in line with the European Parliament's first-reading opinion and the Commission's modified proposal.

In its plenary vote on 20 April 2004, the European Parliament adopted 152 amendments to the Commission's initial proposal. The Commission incorporated 110 amendments into its modified proposal. The Council introduced in the common position 104 amendments accepted by the Commission and 5 amendments not accepted by the Commission. The Council did not include in the common position 6 amendments accepted by the Commission and 37 amendments not accepted by the Commission.

The Council also shared the view that the directive should ensure a high level of harmonisation in substantial areas covered by its scope and should represent a "European added value" for the internal market, consumer choice and consumer protection. The Council identified five main areas in which such a "European added value" should be achieved: i) pre-contractual information; ii) contractual information; iii) right of withdrawal; iv) early repayment; v) calculation of the Annual Percentage Rate (APR).

In its common position, the Council introduced several amendments to the following issues:

Scope of the Directive: (24 EP amendments accepted in full or in part, 4 rejected): the Council streamlined the scope of the draft Directive (already limited following the exclusion of mortgage credit agreements, surety agreements and guarantors and the introduction of a light regime for overdrafts). In that respect, the Council agreed the following changes:

- a comprehensive exclusion of credits related to immovable properties and of surety agreements, owing to their relationship with the question of mortgage credit;
- the exclusion of small credits (below EUR 200) and wider coverage for larger credits by increasing the upper limit from EUR 50 000 to EUR 100 000;
- the exclusion of short-term overdrafts to be repaid within one month;
- the exclusion of credits that are free of any interest and charges and the exclusion of short-term credits with very small charges.

The Council also agreed on specific "light" regimes for particular types of credits, namely overdraft facilities, overrunning, credits offered by certain organisations with restricted membership and established for the mutual benefit of its members and credits for deferred payments.

Pre-contractual information (6 EP amendments taken on board, in full or in part; 2 rejected): the Council considered that consumers should receive sufficient information to allow them to make informed and responsible decisions before signing the contract. To that effect, the Council made the following changes:

- deletion of the principle of responsible lending in Article 5, as this was considered to create some legal uncertainty. Instead, an obligation for creditors to assess the creditworthiness of the consumer was introduced in the new Article 8;
- extension of the list of pre-contractual information to be provided to the consumer;

- creation of a “Standard European Consumer Credit Information” form (new Annex II) and of a “European Consumer Credit Information for Overdrafts” form (new Annex III) for the provision of pre-contractual information. These standard forms, which include information as provided for in Articles 5 and 6, will make it easier for consumers to compare different offers, including on a cross-border basis;
- clarification on what pre-contractual information shall be provided in case of voice telephony communications (Distance selling of financial services) and if the consumer requests that the overdraft facility be made available with immediate effect;
- flexibility left to Member States as regards the indication of the APR for overdrafts;
- introduction of an obligation to supply to the consumer with a copy of a credit agreement if he so requests (combined with the information about this right given in the above-mentioned European standard form).

Contractual information (10 EP amendments taken on board, in full or in part; 3 rejected): in relation to the changes made to the list of pre-contractual information, the Council also extended the list of information to be provided to the consumer at the time of the conclusion of the credit agreement. The following additional information must be provided to the consumer:

- the type of credit;
- a description of the product and service and its cash price in cases of deferred payment;
- an amortisation table, also where a variable interest rate applies;
- more comprehensive information on charges related to the credit agreement and the conditions for changing them;
- a warning on the consequences of missing payments;
- more comprehensive information on the right of withdrawal;
- information on the existence of alternative redress mechanisms;
- a reference to other contractual terms and conditions;
- the name and address of the competent supervisory authority.

Right of withdrawal (3 EP amendments taken on board, in full or in part; 1 rejected): the Council agreed to provide for a uniform right of withdrawal of 14 calendar days. The Council clarified the obligations of consumers when exercising their right of withdrawal and the interlink with the right of withdrawal provisions in Directives 85/577/EEC (Doorstep selling) and 2002/65/EC (Distance selling of financial services). These clarifications are the following:

- addition of the obligation for the consumer to repay to the creditor, within 30 days of the date of withdrawal notification, the amount of credit already drawn down, including interest;
- addition of a provision on the cancellation of the ancillary service related to the credit agreement in the event of withdrawal from the credit agreement;
- in cases of distance or doorstep selling of consumer credits, the right of withdrawal will be regulated in accordance with the provisions of the consumer credit Directive and not in accordance with Directives 85/577/EEC and 2002/65/EC;
- Member States may provide that the right of withdrawal does not apply if the credit agreement has been concluded through the services of a notary.

Early repayment (1 EP amendment accepted; 1 rejected): while recognising the right of a consumer to repay a credit earlier, the Council agreed to grant creditors a limited right to compensation for possible costs directly linked to early repayment. The compensation will apply only if it is related to credit agreements with a fixed borrowing rate and the applicable reference interest rate decreases between the moment of the conclusion of the credit agreement and the early repayment. The compensation is further limited to 1% of the amount of the credit repaid early (or 0.5% if repayment takes place within the final year of the credit agreement) and must not exceed the amount of the interest that the consumer would have paid if there had been no early repayment. In addition, flexibility was left to Member States to set in their

national legislation the threshold under which no indemnity has to be paid. This threshold may be set between EUR 0 and EUR 10 000 of early repayment within 12 months.

Calculation of the APR (10 EP amendments accepted, in full or in part; 7 rejected): the Council provided for a uniform means of calculating the APR and included a standard set of assumptions to be used by credit providers for APR calculations in different circumstances. In order to cope with the product innovations and the need to calculate the APR for possible new types of credits in the future, the Council introduced a comitology provision under the regulatory procedure with scrutiny to determine additional assumptions if necessary. Consequently, the Council set up an appropriate committee.

Mutual recognition clause (1 EP amendments accepted, 3 rejected): the Council considered that the implementation of a mutual recognition clause as proposed by the Commission, i.e. a clause that would complement the minimum harmonisation on certain specific issues, would not fulfil the objectives of the proposed Directive. It would be too difficult for consumers to understand and might lead to legal uncertainty owing to the application of the law of different Member States. Therefore, the Council deleted this clause. As a supplementary measure, the Council added a new Article in order to ensure transparency concerning regulatory choices allowed for Member States in respect of those issues where full harmonisation was not achieved and flexibility was left to Member States.

Review by the Commission: the Council agreed that the periodic five-year review conducted by the Commission should also include:

- a review of the percentages used to limit maximum compensation in the event of early repayment;
- monitoring of the effects on the internal market and consumers and publication of regulatory choices as reported by Member States.

Lastly, the Council endorsed the Commission's modified proposal of October 2005 in limiting the scope of other provisions, notably simplifying the wording on Database access (Article 9) and Assignment of rights (Article 17) and deleting a number of Articles (namely on Joint and several liability, which in turn prompted the need for a new Article 15 on Linked credit agreements).