

Credit agreements for consumers

2002/0222(COD) - 28/10/2004 - Modified legislative proposal

Following the first reading of the proposed Directive on Consumer Credit, the European Commission has taken many of the European Parliament's views into account and amended its initial proposal accordingly.

In summary, the Commission accepts the Parliamentary proposal to limit the scope of the Directive and to delete those provisions already covered elsewhere by Community legislation – or those provisions already adequately covered by the Member States. The Commission has additionally taken on board the concept of "linked credit" as well as a revised version of the calculation method for the APR.

Further, more attention is given to pre-contractual and contractual information requirements. Forty-five amendments have been accepted in their entirety given that they add clarity to the text and improve upon certain definitions. Forty-four amendments have been rejected. The rest have been accepted in part or in principle subject to reformulation. They are as follows:

- On the question of "Scope", the Commission accepts that the following agreements will be excluded from the scope of the Directive - surety agreements guaranteeing business loans, agreements certified by a court, credit agreements where the consumer is required to repay within 3 months free of charge, credit concluded with pawn shops and loans above EUR 100 000. In addition the Commission suggests the introduction of two "light regimes". The first refers to overdrafts, whilst the second concerns specific credit agreements on smaller loans (below EUR 300), loans granted to a restricted public at a lower interest rate than usually proposed on the market or free interest, when the creditor is fulfilling a statutory duty with a general interest purpose, loans granted by non-profit associations such as credit unions, and credit agreements aiming at refinancing the existing debts of a consumer in order to avoid legal proceedings. Any loans relating to the so-called "light regimes" must make mention of the total amount of credit, the borrowing rate, the annual percentage rate of charge by means of a representative example mentioning all the financial data and assumptions used for calculating the rate, the charges applicable and the conditions for amending those charges, the conditions and procedures for terminating the agreement. As far as the "second light regime" is concerned mention must also be made of the duration of the credit agreement and the amount, number and frequency of payments to be made.

- On the question of "Linked credit agreements", the Directive has been amended in such a way that it will now allow a consumer to withdraw from the credit agreement if he is allowed to withdraw from the purchase agreement. The Directive will not, however, include consequences for purchase contracts in case of withdrawal from the credit agreement. At the same time EU established principles on the right to pursue remedies against the creditor would remain included in the main text.

- Regarding "standard information", the Commission has deleted an Article on advertising, which is replaced by a new Article on "standard information". This article states that any advertising concerning credit agreement must include standard information on the cost of credit. It then goes on to list what information must and must not be included in advertising campaigns.

- On the matter of "pre-contractual information", creditors must draw up a contract which contains all the basic information a consumer needs to be able to shop around and compare offers, including the total cost of credit and the APR. In addition the Commission has decided to include the concept of "responsible lending" under provisions relating to "pre-contractual information".

- On the question of "contractual information", the Commission suggest that all of the data provided in the credit agreement must be comprehensive and contain all the information provided at a pre-contractual

stage – with a fully calculated APRC – as well as a detailed amortisation table in the case of fixed rate loans. Further, charges in case of defaulting need to be indicated so that the consumer can appreciate the implications of default. The modified proposal explicitly lists all the contractual information requirements.

- Regarding "Provisions covered by existing Community legislation", the Commission accepts the Parliamentary suggestion that the proposed Directive should not cover areas already dealt with by existing Community legislation – such as doorstep selling, data protection and unfair contract terms. The Commission does, however, propose changing certain aspects of those Community Directives on, for example, doorstep selling, taking into account the new provisions of the Consumer Credit Directive.

- On the matter of "APR", the Commission notes that at the pre-contractual stage, information regarding APR must be clear and transparent. In addition calculations must be clear enough for the consumer to be able to make a genuinely informed choice regarding other comparable offers. The APR itself will be calculated on the basis of the "total cost of credit", which will include all costs concerning ancillary agreements concluded by the consumer with or via the creditor, when these agreements are compulsory to obtain the credit or the advertised rate. The Directive then goes on to define the total cost of credit.

- On the question of "early repayment", the new Directive awards consumer the right to repay early and at any time during the course of the contract. At the same time, the creditor is entitled to claim "fair and objective" indemnities except in cases for credit agreements where the period used to fix the borrowing rate is less than one year and if repayment has been made under an insurance contract intended to provide conventional credit repayment guarantees. The revised recital will clarify what "fair and objective" actually means.

- On the question of "withdrawal", consumers are granted 14 days in which they can withdraw from an agreement. The Commission proposes maintaining the 14 day deadline given that it is consistent with other related Community legislation such as distance marketing of financial services.

- Concerning the matter of "overrunning the total amount of credit" the Commission has included specific provisions to cover such an eventuality. As such a creditor must inform a consumer that he has overrun the credit amount. The creditor must then include information on the amount involved, the borrowing rate and/or the penalties, charges or interest on arrears applicable. Any significant overrunning of the total amount of credit exceeding three months must be rectified, possibly through a new credit agreement providing for a higher total amount of credit.

- On the matter of "credit intermediaries", the Commission maintains the initial definition of credit intermediaries. However, the regulation and supervision of these intermediaries will be left to the Member States.

- Lastly, in light of the proposed amendments and the modification of the initial proposal, the Commission notes that a number of Chapters and articles will have to be re-organised and re-numbered for the sake of both clarity and consistency.