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DRAFT REPORT

on the implementation of the Consumer Credit Directive 2008/48/EC
(2012/2037(INI))

Committee on the Internal Market and Consumer Protection

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the implementation of the Consumer Credit Directive 2008/48/EC (2012/2037(INI))

The European Parliament,

- having regard to Rule 48 of its Rules of Procedure,
- having regard to the report of the Committee on the Internal Market and Consumer Protection and the opinion of the Committee on Economic and Monetary Affairs (A7-0000/2012),
- A. whereas opening up national markets in the important economic sector of consumer credit, promoting competition and improving the functioning of the internal market are political tasks incumbent on the EU and are in the interests of consumers and creditors;
- B. whereas the targeted definitive harmonisation brought about by the Consumer Credit Directive in five sub-areas, on the basis of arrangements which offer the Member States little in the way of leeway, in particular as regards possible different approaches to implementation, has created a common European legal framework to protect consumers;
- C. whereas, however, some legal and practical obstacles have still to be overcome;
- D. whereas, given the short deadline and the number and scale of the legal changes to be made, not all the Member States transposed the Consumer Credit Directive in time or, in some cases, entirely correctly;
- E. Whereas statistics show that since the directive entered into force take-up of cross-border consumer credit has not increased, although one reason for this could be the massive problems affecting the financial sector;
- F. whereas under the terms of Article 27 of the directive the Commission is required to undertake a review of certain aspects of the directive, and whereas, in that connection, it has already asked for a preparatory study to be carried out;
- G. whereas Parliament is particularly keen to be kept informed about the stages in and outcome of the review and to have the possibility of delivering an opinion;
 1. Welcomes the fact that, in preparation for its review, the Commission is already conducting a study into the impact of the directive on the internal market and consumer protection, in order to determine exactly what bearing it will have on the take-up of cross-border credit, and applauds the comprehensive work carried out by the Commission, national legislators and credit institutions;
 2. Points out that improving the cross-border consumer credit market would generate European added value by boosting the internal market;
 3. Acknowledges that cross-border consumer credit accounts for less than 2 % of the total credit market and that roughly 20 % of the loans in question are taken out online;
 4. Takes the view that the provisions on pre-contractual information, the explanations required pursuant to Article 5(6) and the creditworthiness assessment provided for in Article 8 are sufficient to offset the risks involved in taking out a loan in a foreign

currency;

5. Points out that systemic risks in the financial sector can be countered by means of supervisory measures, so that the Consumer Credit Directive does not need to be amended to deal with that issue;
6. Welcomes the ‘sweep’ operation carried out by the Commission in September 2011, which revealed that 70 % of the financial institution websites checked failed to include relevant information in their advertising material and certain items of key information in the credit offer itself and contained misleading presentations of costs, and calls on the Commission and the Member States to take appropriate steps to remedy this problem;
7. Notes that some Member States have taken up the option of extending the scope of the directive to cover other financial products, a move which does not seem to have given rise to inconsistencies in application;
8. Emphasises that legal provisions should reflect standard practice and the needs of the average consumer and the average businessman, and should not represent a response to a small number of abuses of the rules;
9. Notes that more comprehensive provisions do not always make for more effective consumer protection and that, in the case of inexperienced consumers in particular, too much information can serve to confuse rather than help;
10. Considers that more detailed consideration should be given to the problems which could arise in connection with the exercise of the right of withdrawal in cases where linked agreements have been concluded;
11. Takes the view that particular attention should be paid to the complicated rules on early repayment;
12. Notes the need to clarify the interpretation of the term ‘representative example’;
13. Emphasises that a uniform method of calculating the annual percentage rate of charge should be laid down, that ambiguous provisions should be clarified and that consistency should be established with all other legal instruments;
14. Urges that in future Member States should have three rather than two years to transpose a directive which entails such comprehensive changes to national law;
15. Urges the Commission to check how the existing level of consumer protection can be maintained in connection with SMS loans, which are becoming an increasingly common feature of the consumer credit market;
16. Emphasises that at present there is no need to revise the directive, but that instead priority should be given to ensuring that it is correctly transposed;
17. Takes the view that, once the directive has been fully and correctly transposed and applied, its practical impact should first be assessed before the Commission reports to Parliament on what, if any, amendments are required;
18. Instructs its President to forward this resolution to the Council and the Commission.

EXPLANATORY STATEMENT

The Consumer Credit Directive has two objectives: guaranteeing a high level of consumer protection and strengthening the internal market in cross-border consumer credit.

There is no doubt that the definitive harmonisation of some key aspects of credit law has significantly raised the level of consumer protection in Europe. The increase in the cross-border take-up of consumer credit would seem to have been insignificant, however. This may be because only very few financial institutions offer cross-border consumer credit and because the market as a whole has been in decline in recent years, as a result of the financial crisis.

What is more, the obstacles to the take-up of cross-border consumer credit are more likely to be linked to the language barrier or the to lack of any personal relationship with the financial institution concerned than to legal considerations.

Individual problem areas in the context of the review of the directive:

1. Transposition deadline:

Some Member States failed to transpose all or some of the provisions of the directive by the deadline set. The main reasons were the short deadline (two years) and the scale of the process. A large number of provisions had to be changed or introduced for the first time in a very wide variety of areas, including consumer protection, general rules governing credit and access to databases. These procedures are very complex and involve both national legislators and financial institutions. It would be appropriate in future to allow them more time, by setting a three-year transposition deadline.

2. Scope:

Many Member States have extended the scope of the directive to cover other financial products, for example mortgage-secured loans or hiring and leasing agreements. This would not appear to have given rise to problems.

3. Advertising:

The Member States have transposed the provisions on advertising in various ways. Some problems arose regarding the precise meaning of the term ‘representative example’.

In 2011 the Commission carried out a review of 562 consumer credit websites (sweep). The outcome was as follows: on 46 % of the websites checked mandatory information was lacking in the advertising material, on 43 % clear information concerning the overall costs, the duration of the agreement and certain credit-related costs was lacking, and on 20 % the presentation of the costs was misleading. In the current implementation phase the national authorities are contacting the firms concerned, seeking clarifications and calling on them to remedy the shortcomings identified.

4. Pre-contractual information:

The provisions on pre-contractual information, which must be made available to the consumer in the form of a standard sheet, have been definitively harmonised. Some Member States transposed the provisions word for word, others made linguistic improvements or adjustments.

In some Member States the effectiveness of the standard information sheet has been called into question. The information provided has been criticised as too detailed, difficult to understand and sometimes too technical, giving rise to reluctance among consumers to take out loans. In addition, it is doubtful whether the standard sheet really enables consumers to compare offers from different credit providers. It should also be pointed out that the requirement to provide the standard information sheet has increased creditors' costs and, as a result, the cost of credit itself.

5. Contractual information:

The new, comprehensive arrangements do not seem to have given rise to problems during the transposition process.

6. Right of withdrawal:

The right of withdrawal, which already existed in some Member States, has been uniformly and definitively introduced. The issue of when the withdrawal period starts to run remains problematical. Some Member States have stipulated that the withdrawal period starts to run only after a cooling-off period has elapsed or only after shortcomings in the contractual information have been remedied. In addition, doubts have arisen as to whether the right of withdrawal can be exercised only after the credit has been repaid.

7. Early repayment:

Transposition of the provisions on early repayment does not seem to have given rise to major problems. In some Member States which had previously made no provision for creditor compensation critical voices suggested that the new rule would reduce the level of consumer protection.

8. Calculation of the annual percentage rate of charge:

The provisions on calculating the annual percentage rate of charge were expanded in 2011 under the comitology procedure. Uncertainty seems to persist in individual cases, however.

The Commission has put forward guidelines on the interpretation of the concept of 'annual percentage rate of charge', but they are not legally binding.

It would be desirable for the provisions on calculating the annual percentage rate of charge to be applied uniformly in all relevant EU legal instruments.

9. Explanations:

The Member States have transposed the requirement laid down in Article 5(6) to provide

explanations in a variety of different ways. Some Member States have sought to tighten it up by listing the specific individual measures required. For example, Austria has introduced a special rule making it compulsory to warn consumers about the risks involved in taking out a loan in a foreign currency.

10. Creditworthiness assessment:

The Member States have transposed the requirement to assess the creditworthiness of the consumer in different ways. Some have tightened it up by making consultation of the database mandatory. Others leave the issue of determining whether the requirements have been met to the courts.

11. SMS loans:

The demand for SMS loans is increasing all the time; Loans of this type are available not only in Scandinavia, but also in the United Kingdom and the eastern European Member States. The onus is now on the Member States to pay close attention to this problem and guarantee effective consumer protection. In that connection, they should take due account of specific national circumstances and, if necessary, take measures which go beyond the provisions of the Consumer Credit Directive.

12. Conclusion:

The Commission should now review the way the directive has been transposed and urge the Member States to apply it correctly. Stakeholders should then be given time to get used to the new rules and gain experience of the way they are applied. Thereafter a detailed assessment should be carried out of the legal and practical impact of the directive and, on that basis, consideration given to what, if any, amendments are required.