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REPORT

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

Committee on the Internal Market and Consumer Protection

Rapporteur: Birgit Collin-Langen

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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 (A7-0343/2012),
- A. whereas opening up national markets in the important economic sector of consumer credit, promoting competition, addressing different levels of consumer protection, removing potential competition distortions between market operators 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, as shown by the European Parliament study on the implementation of the Consumer Credit Directive, certain key provisions of the Directive – such as Article 5 on pre-contractual information – have not achieved the intended harmonisation of Member States' consumer protection rules due to differences in interpretation and implementation by the Member States;
- E. 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;
- F. Whereas statistics show that the take-up of cross-border consumer credit has not increased since the Directive entered into force, although this could be explained by various factors, such as language, but also by the massive problems affecting the financial sector and by the lack of sufficient consumer information about the opportunities of cross-border consumer credit and the rights of consumers when concluding such contracts;
- G. whereas adequate consumer protection practices in the credit sector play a significant role in ensuring financial stability; whereas exchange rate volatility poses significant risks to consumers, especially during financial crises;
- H. whereas excessive foreign currency lending to consumers has increased the risk and losses borne by households;
- I. whereas the European Systemic Risk Board adopted on 21 September 2011 an important recommendation on lending in foreign currencies (ESRB/2011/1);

- K. 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;
- L. whereas it 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 of the impact of the Directive on the internal market and on 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 and by 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; considers that this could be achieved, inter alia, by better informing consumers about the opportunity to obtain consumer credit in other Member States and about the rights of consumers when concluding such contracts;
 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. Points out that one of the purposes of the Directive was to ensure the availability of information – thus facilitating the operation of the single market also in the field of credit – and that it is therefore necessary to evaluate whether the number of cross-border transactions is increasing;
 5. 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 serve an important role when it comes to improving consumer awareness of the risks involved in taking out a loan in a foreign currency;
 6. Calls, nevertheless, for supervisory authorities to require financial institutions to provide consumers with personalised, complete and easily understandable explanations regarding the risks involved in foreign currency lending, and regarding the impact on instalments of a severe depreciation of the legal tender of the Member State in which a consumer is domiciled as well as of an increase in the foreign interest rate; considers that these explanations should be provided before any contract is signed.
 7. Takes note of the concerns raised in some Member States about the way pre-contractual information is presented to consumers through the Standard European Consumer Credit Information (SECCI) form and which is of such technical nature that it affects consumers' capacity to understand it effectively; considers that the efficiency of the SECCI form should be an important aspect in the assessment of the impact of the Directive carried out by the Commission;
 8. 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; notes, in this context, that the rules on representative examples are sometimes not used as

prescribed and that there is need for improvement;

9. Calls for the advertising and marketing practices of financial institutions to be strictly monitored in order to avoid misleading or false information in the advertising or marketing of credit agreements;
10. 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;
11. 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 in such a way as to render the information provided to the consumer less understandable, transparent and comparable;
12. 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; acknowledges, in that regard, the expertise, assistance and financial education provided by consumer associations and their potential role in credit restructuring on behalf of households in distress;
13. Calls for consumers to have a right to be informed about the cost of additional services, and about their right to buy auxiliary services such as insurance from alternative suppliers; considers that financial institutions should be required to distinguish such services and related charges from those pertaining to the basic loan, and to make clear which services are essential to the extension of a loan and which are entirely at the discretion of the borrower;
14. 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; stresses the importance of making consumers aware that, should they exercise of the right of withdrawal from a contract where the supplier or service provider directly receives the sum corresponding to payment from the credit provider through an ancillary contract, no fees, commissions or costs shall be borne by the consumers in relation to the financial service provided;
15. Calls on the Commission to assess the extent of non-compliance with information duties in contracts where intermediaries are not bound by pre-contractual information requirements in order to establish how best to protect consumers in such situations;
16. Takes the view that particular attention should be paid to the complicated rules on early repayment;
17. States that, prior to interest rate changes, notification to consumers should afford them enough time to survey the market and to change credit provider before the changes take effect;
18. Notes the need to clarify the interpretation of the term ‘representative example’;
19. 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;

20. Calls on the Member States to ensure that national supervisors are granted all the necessary powers and resources to discharge their duties; calls on the national supervisory authorities to monitor compliance with, and enforce, the provisions of the Directive in an effective way;
21. Stresses that, when setting transposition deadlines in future, greater account should be taken of such changes in national law that the transposition process entails;
22. Calls on the Member States to extend the existing level of consumer protection to credit, including short-term credit, provided over the internet, through short message services or other distance communication media, which are becoming an increasingly common feature of the consumer credit market, involving amounts below the lower threshold of EUR 200, presently outside the scope of the Directive;
23. 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 and enforced;
24. Takes the view that, in the furtherance of a full and correct transposition, the practical impact of the Directive should be assessed before the Commission proposes any required amendments; calls on the Commission to present to Parliament and the Council an assessment report on the implementation of the Directive and a full assessment of its impact regarding consumer protection, taking into account the consequences of the financial crisis and the new EU legal framework for financial services;
25. 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 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.

8.6.2012

OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS

for the Committee on the Internal Market and Consumer Protection

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

Rapporteur: Theodor Dumitru Stolojan

SUGGESTIONS

The Committee on Economic and Monetary Affairs calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

- whereas Directive 2008/48/EC¹ on credit agreements for consumers was approved before the financial crisis;
 - whereas in a number of Member States excessive consumer credit contributed to the crisis;
 - whereas excessive foreign currency lending to consumers increased the risk and losses borne by households;
 - stressing the importance of the Recommendation of the European Systemic Risk Board of 21 September 2011 on lending in foreign currencies (ESRB/2011/1);
1. Calls for supervisory authorities to require financial institutions to provide consumers with personalised, complete and easily understandable information regarding the risks involved in foreign currency lending and the impact on instalments of a severe depreciation of the legal tender of the Member State in which a consumer is domiciled and of an increase in the foreign interest rate; considers that this information should be included in advertising concerning consumer credit agreements in foreign currency, in pre-contractual information and in consumer credit agreements;
 2. Calls for financial institutions to be required, in good time before the consumer is bound by any credit agreement or offer, to provide consumers with the personalised information

¹ OJ L 133, 22.5.2008, p. 66.

needed to compare the credits available on the market, assess their implications and take an informed decision on whether to conclude a credit agreement;

3. Calls for financial institutions to be required to provide consumers with a warning whenever, considering the consumer's financial situation, a credit agreement may involve a specific risk for the consumer;
4. Calls for supervisory authorities to closely monitor the funding and liquidity risks resulting from foreign currency lending, to take action to prevent excessive risks and to require financial institutions to have effective pricing, capital allocation and liquidity management systems to deal with foreign currency lending and to take account of the consumer's ability to withstand fluctuations in the exchange rate when assessing the consumer's creditworthiness; calls for Member States to require financial institutions to allow consumers to convert the loan into an alternative currency, in accordance with a transparent method disclosed to the consumer in pre-contractual information, and for financial institutions to provide a foreign exchange hedging facility at reasonable cost to consumers to limit the risk of adverse currency movement on repayments;
5. Calls for a revision of provisions relating to the annual percentage rate of charge in Directive 2008/48/EC to more adequately reflect the characteristics of foreign currency and variable rate lending;
6. Calls for credit institutions to take special care when granting consumer credit loans with a term of longer than five years to ensure that they are in the best interests of the consumer concerned;
7. Calls on financial institutions not to provide consumer credit which is secured by the consumer's house where the consumer does not have an adequate wage or salary and to only provide consumer credit where the consumer's creditworthiness has been determined – and, where applicable, suitable collateral has been acquired – in order to ensure an appropriate level of risk for both the consumer and the provider;
8. Calls for consumers to have a right to be informed about the cost of additional services and about their right to buy auxiliary services such as insurance from alternative suppliers; considers that financial institutions should be required to distinguish such services and related charges from those pertaining to the basic loan and to make clear which services are essential to the extension of a loan and which are entirely at the discretion of the borrower;
9. Points out that one of the purposes of the Directive was to ensure the availability of information – thus facilitating the operation of the single market also in the field of credit – and that it is therefore necessary to evaluate whether the number of cross-border transactions is increasing and whether further improvements are required;
10. Calls for the advertising and marketing practices of financial institutions to be strictly monitored in order to avoid misleading or false information in the advertising or marketing of credit agreements;
11. Calls on the Commission to present to the European Parliament and the Council an

assessment report on the implementation of the Directive and a full assessment of its impact regarding consumer protection, taking into account the consequences of the financial crisis and the new EU legal framework for financial services;

12. Calls for a revision of Directive 2008/48/EC with the aim of integrating it and the CARRP Directive into a single Directive.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	7.6.2012
Result of final vote	+: 38 -: 0 0: 0
Members present for the final vote	Elena Băsescu, Sharon Bowles, Udo Bullmann, George Sabin Cutaş, Leonardo Domenici, Derk Jan Eppink, Elisa Ferreira, Ildikó Gáll-Pelcz, Jean-Paul Gauzès, Sven Giegold, Sylvie Goulard, Liem Hoang Ngoc, Gunnar Hökmark, Philippe Lamberts, Werner Langen, Astrid Lulling, Arlene McCarthy, Alfredo Pallone, Antolín Sánchez Presedo, Olle Schmidt, Edward Scicluna, Peter Simon, Theodor Dumitru Stolojan, Sampo Terho, Marianne Thyssen, Corien Wortmann-Kool, Pablo Zalba Bidegain
Substitute(s) present for the final vote	David Casa, Philippe De Backer, Vicky Ford, Robert Goebbels, Olle Ludvigsson, Marisa Matias, Gianni Pittella, Andreas Schwab, Theodoros Skylakakis, Emilie Turunen
Substitute(s) under Rule 187(2) present for the final vote	Robert Sturdy

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	11.10.2012
Result of final vote	+: 33 -: 0 0: 2
Members present for the final vote	Pablo Arias Echeverría, Adam Bielan, Jorgo Chatzimarkakis, Sergio Gaetano Cofferati, Birgit Collin-Langen, Lara Comi, Anna Maria Corazza Bildt, António Fernando Correia de Campos, Vicente Miguel Garcés Ramón, Louis Grech, Mikael Gustafsson, Małgorzata Handzlik, Malcolm Harbour, Iliana Ivanova, Sandra Kalniete, Edvard Kožušník, Hans-Peter Mayer, Gesine Meissner, Sirpa Pietikäinen, Phil Prendergast, Zuzana Roithová, Heide Rühle, Christel Schaldemose, Andreas Schwab, Catherine Stihler, Róza Gräfin von Thun und Hohenstein, Gino Trematerra, Barbara Weiler
Substitute(s) present for the final vote	Regina Bastos, Ildikó Gáll-Pelcz, María Irigoyen Pérez, Olle Schmidt, Olga Sehnalová, Kyriacos Triantaphyllides, Kerstin Westphal