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“Focus on obstacles to competition and clarifications in lending”

Statement on the consultation on the reform of the Consumer Credit Directive

European lending regulations should not in fact be reformed every couple of years. However, if they are already to be subject to review, the focus should be on the actual obstacles to cross-border competition as well. Moreover, rules on lending should be formulated clearly and in line with practice. That alone provides the necessary legal certainty for credit institutions and consumers. These were the comments of Christian König, Managing Director of the European Federation of Building Societies, in relation to the discussion currently launched by the European Commission on a reform of the Consumer Credit Directive.

The European internal market has now been in existence for over 25 years. Nevertheless, today fewer than 7 per cent of consumer credits are concluded cross-border. Language barriers are the main reason for this. “Regulations”, according to König, “make no difference”. The European Commission must bear this in mind. However, the number of cross-border agreements could be higher. To this end, the EU would have to dismantle the barriers it has created itself.

König: “According to the Rome I Regulation, the consumer himself, even after countless consumer protection directives and regulations, does not have freedom of choice of applicable law to conclude a credit agreement, with possibly more favourable conditions, offered by a creditor in another EU Member State.” Credit institutions are still prohibited from offering agreements under their domestic law to citizens in another EU Member State. This limits the desirable diversity. These barriers have long ceased to exist in the movement of goods.

With respect to lending, the European legislator could provide legal clarity in the rules on the creditworthiness assessment. “Uniform limit values for income and level of debt make no sense with the income disparities in the EU”, the Federation spokesman explained. It is important in any case, when calculating the borrowing capacity, to take account of household income – not the individual income of the borrower. The provisions on credits denominated in foreign currency, which differentiate between currency of income and currency of residence, have failed in their protective purpose and have led at present to the exclusion of trans-frontier commuters.

Due to the low interest rate problem, new questions have also arisen for the European legislator: “In principle, should negative interest rate agreements also be possible?” The case-law of individual Member States has yielded different results here. “And what may the components be of a loan agreement corresponding to the European model?” Interest and charges, both included in the annual percentage rate of charge – this is possible now for example in Austria, but not in Germany. “This inconsistency must be resolved”, König advocated.