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**Mailing list Consumer protection/Data protection**

Brussels, 29 July 2022  
CK/KH

**Consumer Credit Directive – draft report IMCO (part II)**

Dear Sir or Madam,

Please find attached the final report on the revised Consumer Credit Directive (CCD). This compromise was negotiated by the European Parliament's Committee on Internal Market and Consumer Protection (IMCO) on 12 July 2022 (*see EFBS Circular of 12 July 2022*). It still has to be confirmed by the Plenary of the European Parliament after the summer break (at the earliest in early September 2022). Afterwards, the so-called trilogue negotiations between the Parliament, the Council (*for the general approach of the Council see the EFBS circular of 10 June 2022*) and the Commission can begin. The negotiations on the revised CCD are expected to be concluded by the end of the year.

Here you will find an overview of the relevant IMCO amendment proposals compared to the Commission proposal. The amendments presented below are also contrasted with the amendments proposed by the Council.

**Relevant changes of the IMCO Committee**

**Non-discrimination**

In **Art. 6** IMCO clarifies that if a creditor or a credit intermediary refuses to conduct business with a consumer in a Member State, it shall not be considered as a discrimination.

The Council is in favour of deleting the prohibition of discrimination proposed by the Commission and only states in its general approach that the principle of non-discrimination is a fundamental right of the EU.

**Green credits**

While amendments were discussed that provided for a lower margin for green credits, by initially proposing a lower ceiling for green credits following the Portuguese model, a **new Art. 6 a** was finally proposed by the IMCO Committee. It enables Member States to encourage creditors to develop and offer consumer credit products that support the digital and green transition. In this context, IMCO proposes that the Commission take stock of the initiatives undertaken by the Member States 12 months after the transposition deadline of the Directive.

The Commission and the Council had not proposed any changes on this issue yet.

## **Advertisement**

With regard to advertising requirements (**Art. 7 and Art. 8**), IMCO has added to the Commission's proposal that advertising or marketing communication must not give rise to false expectations to consumers regarding the total cost or the total amount of a credit payable by the consumer.

IMCO has further tightened Art. 8 para. 1 by taking over the wording from the Mortgage Credit Directive (Directive 2014/17/EU) which states that creditors wishing to advertise an interest rate or costs must include a minimum list of information in the advertisement, including, for example, the borrowing rate, whether it is fixed or variable or both, any charges, the total cost of credit, duration etc. IMCO has now advocated that any advertisement for consumer credits should always include these minimum elements in the advertisement. This makes the advertising requirement for consumer credits more complex and burdensome than for mortgage credits.

Another new proposal is a warning notice, which, similar to cigarette advertising, should prominently and clearly inform the consumer that borrowing money costs money. The warning is also specified by the Committee as follows "Caution! Borrowing money costs money!" (Art. 8 para. 2 f a).

Similar to the Mortgage Credit Directive, the IMCO Committee also proposes that the information components of the APR and the warning must be prominently displayed and in larger format than all other information (Art. 8 para. 2 subpara. 1 a).

Art. 8 para. 3 a further states now that when the medium used to communicate the standard information does not allow for the information to be visually displaced in a clear manner, the consumer shall be able to access further information by means of clicking, scrolling or swiping. The minimum information for advertising regulated in Art. 8 para. 2 must then be integrated into the website in any case and, according to the Committee's new proposals, the conclusion of the credit agreement should only be possible once the consumer has received this information. According to the Committee's proposals, the Commission should be empowered (implementing acts) to draw up the template and the format of the standard information (Art. 8 para. 3 b).

In addition, IMCO has proposed that Member States should prohibit advertising in individual cases if it encourages consumers to become over-indebted, e.g. by advertising that they will not consult a database or that existing loans do not play a role in the assessment of a credit application. A further advertising ban is to be issued if social achievements or success are advertised with the credit. However, IMCO has not specified the term "social achievement".

Member States may also prohibit advertising for credit products which offers "grace periods" of more than three months for the repayment of credit instalments (Art. 8 para. 3 d).

All these advertising practices can already be prohibited by the Member States today. Therefore, there is no need for authorisation under European law.

## **General information requirements**

With regard to the information obligations (**Art. 9**), IMCO has not made many changes. New is that, according to the IMCO amendments, the general information must be provided on paper or on a durable medium of the consumer's choice. A similar amendment had been proposed by the Council. According to Art. 9, general information on the granting of credit must be provided on a durable medium or in electronic form.

## **Pre-contractual information**

With regard to pre-contractual information, however, IMCO has made some substantial changes compared to the Commission proposal and has also moved in the direction of the Council. The time of presentation of the pre-contractual information (**Art. 10 para. 1**) has been changed by IMCO to the effect that this information must be delivered "in due time" and in any case before the consumer becomes legally bound. The European Commission's proposal in Art. 10 para. 1 has been retained with regard to the creditors' reminder obligation if the pre-contractual information sheet was provided less than one day before the conclusion of the contract. In this case, the creditor must inform the consumer on paper or on a durable medium one to seven days after the conclusion of the contract about the right of withdrawal. In other words, the IMCO proposal does not make a real time of presentation mandatory but creates an obligation to remind the consumer of the right of withdrawal if there is less than one day between the pre-contractual information and the conclusion of the contract. IMCO therefore rejects the European Commission's strict reflection period. Ultimately, the question of the timeliness of the handover of pre-contractual information is likely to pose a problem of proof in practice in future.

In contrast, the Council considers the Commission's original proposal for a reflection period ("at least one day before") for credit agreements as not very suitable. The Council also considers the solution of sending the consumer a reminder of his right of withdrawal if the creditor cannot meet the one-day deadline between the submission of the pre-contractual information and the signing of the contract to be less practicable and relevant. Against this background, the Council proposes in its general approach to revert to the wording of the current Directive ("in good time") and to delete the derogation rule.

## **Scope and content of the pre-contractual information**

The pre-contractual information sheet (SECCI) for consumer credit contains 23 information components. IMCO has now added two more components. Firstly, Article 10 para. 3 provides that the creditor must include a warning and explanation of the legal and financial consequences of missing or late payments including related costs. The Committee has also introduced an obligation into the SECCI that is already known from the Mortgage Credit Directive, namely the addition of a comprehensive repayment schedule containing all payments over the duration of the contract. IMCO also added that in the event that different borrowing rates apply, the creditor must then assume that interest rates will rise in a reasonable manner.

The one-page summary of the essential information (SECCO) originally proposed by the European Commission in addition to the SECCI was criticised by the credit industry in previous legislative procedures as a "summary of the summary". According to the IMCO amendments, the essentials of the contract should now be listed at the beginning of the SECCI and must be clearly distinguished from the rest of the form (cover sheet instead of a summary).

Unfortunately, IMCO has now extended the list of essential information for the cover sheet to eight information items. The Committee adds, for example, in Article 10 para. 4 c that in the case of variable interest rate agreements, an appropriate simulation of the costs resulting from the increase in interest rates for the consumer must be included. It was also newly added that a warning and explanations must also be included for this (Art. 10 para. 4 f). Information on the right of withdrawal (Art. 10 para. 4 f a) and on the right to early repayment (Art. 10 para. 4 f b) are added to the essential information for the "cover sheet". These two amendments show that IMCO has unfortunately not considered the petition to reduce the information to the essentials. Instead, IMCO has increased the "information overload". The Council also prefers to merge the two forms (SECCO and SECCI).

The background to the Commission's idea was the design of a kind of info box to present the essentials of the credit offer clearly and concisely on one page for the consumer so that he or she can better compare the offers. To what extent, for example, the right of withdrawal and the right to early repayment, which are identical for all credit agreements, should be relevant for the comparison is not clear.

In Art. 10 para. 5, the Committee has authorised the Commission to regulate the format and presentation of the SECCI by means of delegated acts.

While the Commission had proposed simplifications and reduced pre-contractual obligations with regard to the scope of the information requirements in Art. 10 para. 6 and 7 for contracts concluded by telephone and at a distance, IMCO now proposes in Art. 10 para. 7 a that if the contract is concluded at a distance at the consumer's request, the pre-contractual information must be provided in a manner that allows automated reading and legal assessment in order to comply with the requirements of this Directive.

### **Requirements for the creditworthiness assessment**

The Commission proposed comprehensive standards for the creditworthiness assessment in Art. 18 and clarified in para. 1 that this creditworthiness assessment has to be carried out in the interest of the consumer in order to avoid irresponsible lending and over-indebtedness. To this end, the Commission had identified an extensive list of information to be requested, verified, and taken into account by the creditor in the creditworthiness assessment (Art. 18 para. 2). IMCO has deleted this very detailed list without replacement. Instead, the EBA is to be instructed to draw up corresponding guidelines on creditworthiness assessment. These guidelines shall specify the type of data recommended to perform the creditworthiness assessment and take into account the interest of the consumers, the protection against over-indebtedness and the types of credits offered in the Union. Further, the guidelines shall be reviewed every two years.

In addition, it was added in Art. 18 para. 2 1 a that creditors may not use personal data such as ethnic origin, political opinions or religious beliefs, trade union membership or sexual orientation in the credit assessment.

Also newly added in Art. 18 para. 2 c is that consumers should have access to adequate and effective remedies, which also include claims for compensation for damage.

Each time the loan amount is increased, a new assessment must be made (Art. 18 para. 3 a). It is also clarified that in the case of a credit application by more than one consumer, the joint repayment capacity of the consumers is to be taken into account (Art. 18 para. 3 c). This clarification has also been made by the Council.

Newly added by IMCO is the right to be "forgotten". For example, ten years after the treatment for an illness, it should not have any significance for the creditworthiness assessment (Art. 18 para. 3 b).

IMCO also clarified that a positive creditworthiness assessment does not oblige the creditor to grant the credit (Art. 18 para. 4).

Even if the creditworthiness assessment leads to a negative result, the loan (e.g. student loan) can still be granted with a corresponding note that the loan may lead to over-indebtedness (Art. 18 para. 4).

The obligation of the creditor to inform the consumer on paper or on a durable medium of the reasons for refusing to grant credit (Art. 18 para 7), as proposed by the Commission, was deleted by the Committee. Instead, the creditor only has the obligation, where applicable, to provide the consumer with information on available debt counselling.

The obligation to repeat the creditworthiness assessment every two years in case of an open-ended credit was also added (Art. 18 para. 9 a).

## **Right of withdrawal**

In order to increase legal certainty, the IMCO Committee and the Council propose, in contrast to the Commission proposal, to limit the right of withdrawal (**Art 26 para. 1 b**) in time, to one year and two weeks if the contractual information has not been provided to the consumer in accordance with the obligations of the directives, unless the information on the right of withdrawal itself has not been provided to the consumer.

## **Caps**

The IMCO Committee welcomes the Commission's proposal in **Art. 31 para. 1** to set ceilings at Member State level on interest rates, the APR or the total amount of a loan.

In addition, IMCO stipulates in Art. 31 para. 2 a that Member States may introduce prohibitions or limitations on certain charges or fees applied by creditors in their Member State. Also new in Art. 31

para. 2 b is that the Commission shall publish the caps introduced by the Member States. According to Art. 31 para. 2 c, 12 months after the transposition of the Directive, the EBA shall submit a report to the European Parliament, the Council, and the Commission on the implementation in the Member States of the caps referred to in paragraph 1.

The Council only proposes a wording that allows for national measures to be taken into account that are equivalent to interest rate caps, have proven to be effective and also aim to protect the consumer from excessive high rates or costs. The banking industry has so far opposed the integration of caps in the revised Consumer Credit Directive because they contradict the principle of private autonomy and the free market economy.

If you have any questions, please do not hesitate to contact us.

Yours sincerely,



Christian König  
Managing Director  
European Federation of Building Societies

**Attachment**