

Mr David Byrne
Member of the
European Commission
Health and Consumer Protection
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4 October 2004

THE SECRETARY GENERAL

Dear Commissioner Byrne,

RE: CONSUMER CREDIT DIRECTIVE

Following the vote by the European Parliament in first reading and in view of the forthcoming discussions on the above-mentioned proposal, we would like to draw your attention to important concerns that this proposal has raised among the business community.

UNICE welcomes the efforts of all those involved to move towards a text that both promotes an internal market in consumer credit and gives EU citizens an appropriate level of protection. However, we remain concerned that some of these proposals might impose requirements that will not bring real benefits to consumers, and are likely to cause damage to both economic operators and national economies by undermining consumer-credit-financed consumption.

New, complicated and detailed regulations are unnecessary and have negative repercussions for economic development. European legislation should be aimed at providing greater stimulation for an economic upswing.

UNICE members are particularly concerned about the following provisions of the draft directive:

Responsible Lending and Borrowing

Responsible lending and borrowing are clearly connected with the exchange of accurate information between the parties. The final decision regarding the consumer's creditworthiness is taken by the creditor. The final choice of financial product lies with the consumer. The obligation for the creditor or the credit intermediary to 'seek to establish the best type of credit for the customer' removes the consumer's final choice and transfers this responsibility to the creditor.

In order to maintain the balance between the parties these paragraphs should be deleted as recital 15 was deleted. Furthermore, we do not support the requirement to undertake an assessment of the 'advantages and disadvantages associated with the product proposed' as this is a subjective assessment. Consumers will face unacceptably intrusive questioning and this new obligation will make point-of-sale lending, remote lending (for example over the internet) and direct marketing much less tractable.

These new rules are likely to lead to an unduly risk-averse credit market. The duty to advise can be discharged only by the creditor making a detailed enquiry into the personal affairs of the consumer well beyond that required to make a financial assessment (for example the purpose of the credit).

Exclusion of Mortgages

We support the European Parliament's amendments. Loans secured on the consumer's home are different in character. A large number of home loans are already exempt from the Directive because they are covered by the voluntary Code of Conduct. There is no logical reason for exempting some secured loans but not others – partial exemptions will lead to different regulatory regimes in different member states, confuse consumers and increase costs for consumers.

We are also aware of much work in progress reviewing the present mortgage code and would encourage the European Commission not to pre-empt the findings of this report.

Right of Withdrawal / Linked Transactions

Article 11 seeks to protect consumers by conferring a 14-day cooling-off period. Whilst a few consumer organisations welcome this, most consumers wish to take goods away with them on the day of purchase and have no intention of withdrawing from the credit arrangement or from the purchase. A cooling-off period in the form drafted could result in some retailers being unwilling to allow consumers to take possession of the goods until the fourteen-day period has elapsed. This is because, if the goods were returned they could not be sold again or could not be sold as new. This will especially harm retailers who are less able to absorb the cost of such returns or to pass it on in higher prices across the board.

This article has caused great confusion and it has been suggested that this is not what the text is intended to achieve. However, our clear interpretation of the text as drafted is that it will result in the unintended consequence outlined above, leading to customers making choices around different types of credit based on delivery dates rather than the appropriateness of the lending product.

Therefore the proposal should allow a reduction or a complete waiver of this cooling-off period by mutual consent of the parties to the agreement when the consumer wishes to obtain rapid delivery of the goods.

In addition the period for consumers to withdraw from the agreement should be 7 days starting from the day the consumer signs the credit agreement.

Credit Intermediaries

The proposal seeks to regulate credit intermediaries as we understand that this is an issue in some member states. We are concerned that the definition is too wide and will inadvertently impose unduly onerous duties on a wide range of businesses such as high street retailers, motor dealers and individuals who were never intended to be included.

So for example, co-branding and affinity partners (for example, a credit card which is branded in the name of a football team or charity as well as that of the credit provider) could find themselves having to comply with incongruous obligations, as could home-shopping agents and home-credit agents (often housewives running micro businesses) where ultimately the creditor accepts full responsibility and of whom there are several million within the EU.

UNICE thus believes that the definition of credit intermediaries should be restricted to any natural or legal person whose principal activity consists in acting as a credit intermediary against remuneration.

Finally, it can be underlined that given the huge number of points of sale offering credit, it will be difficult and burdensome to subject these retailers to financial supervision by public authorities.

Guarantee Liabilities

The proposal seeks to protect consumers by limiting the amount of their liability, whereas the current law allows guarantors to assume full liability. This will likely reduce the supply of credit and/or increase the cost of credit given the inherent alterations to the level of risk that lenders assume.

Unfair terms

The proposal prohibits any clause providing that the consumer has to contract with the same creditor to refinance the residual value and, in general, for any final payment on a credit agreement for financing the purchase of movable property or service (article 19 b). This leads to a ban on "balloon agreements" by making an erroneous assessment of the consumer's exposure.

This article 19 b should be deleted, as in the form voted by the European Parliament.

Assignment of rights

The proposal seeks to protect consumers by informing them that the credit agreement has been assigned to a third party (article 17). Such requirement would increase administrative charges for professionals and in practice it would make securitisation quite impossible whereas such information is of no interest for the consumer because the credit management will still rest on the creditor. Therefore such assignment has no impact on the consumer. UNICE considers that this requirement should be deleted in the context of securitisation.

UNICE believes that the above-mentioned comments are critical issues for business that need to be addressed in these discussions in order to avoid the risk that this proposal strongly perturbs the markets concerned without leading to the emergence of an internal market in this area.

I hope you can take into account UNICE's observations in your deliberations on this matter. In the meantime, we remain at your disposal to provide you with any further information you may require.

Yours sincerely,



Philippe de Buck