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From: Presidency
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Subject: Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF
THE COUNCIL on consumer credits
AOB : Progress report

Delegations will find attached the progress report on the Proposal for a directive on consumer credits, with a view to the AOB items at the meeting of the Competitiveness Council on 25 November 2021.

I. INTRODUCTION

1. On 30 June 2021 the Commission submitted to the European Parliament and to the Council a proposal for a Directive on consumer credits¹ repealing and replacing the Consumer Credit Directive².
2. The review of the Consumer Credit Directive was announced in the New Consumer Agenda³. The new proposal should raise financial consumer protection to a higher level and, at the same time, it should shall contribute to a clearer and more harmonised EU legal framework for the provision of retail financial services in and between Member States.
3. Digitalisation has profoundly changed the lending sector and the behaviour of consumers, who now want a digitalised, simple and fast process for obtaining credit and often prefer that process to be completely online. New market players, such as peer-to-peer lending platforms (P2P), offer credit agreements in different forms. New credit products, such as short-term high-cost credits and ‘buy now, pay later’ schemes, have increased in the market. Digitalisation has also brought new ways of obtaining information digitally and assessing the creditworthiness of consumers using automated decision-making systems and non-traditional data.
4. The COVID-19 public health crisis and the measures taken to tackle it have disrupted the EU economy and had a major impact on the credit market and consumers, especially vulnerable ones. It has also increased the use of digital tools. Member States have adopted many measures aimed at alleviating the financial burden on consumers, such as loan repayment moratoria.
5. The Consumer Credit Directive was adopted in 2008 and now needs to be updated to cover new products and new providers that have emerged in the consumer credit market with digitalisation, which has been accelerated also by the COVID-19 crisis. The objectives of the Consumer Credit Directive of ensuring high standards of consumer protection and fostering the development of an internal market for credit are still relevant for the proposal. Additionally,

¹ Proposal for a Directive of European Parliament and of the Council on Consumer Credits (Document 2021/171+ Annexes 1 to 5, 347/2021)

² Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ L 133, 22.5.2008, p. 66-92)

³ New Consumer Agenda (COM/2020/696 final)

there is a need to ensure a higher level of harmonisation across the EU to contribute to a smoother functioning of the internal market for consumer credit and a consistently high level of consumer protection.

6. Without diverging from the General Data Protection Regulation⁴ this proposal aims to address the concerns identified in the processing of personal data in the consumer credit market, i.e. the use of alternative sources of data for creditworthiness assessments or the transparency of assessments carried out using machine learning techniques.
7. The European Data Protection Supervisor issued its opinion on 26 August 2021⁵.
8. The European Economic and Social Committee issued its opinion on the New Consumer Agenda on 27 April 2020⁶ and on the proposal on 21 October 2021.⁷
9. In the European Parliament, a final decision concerning the committee responsible has been taken. The main committee responsible is the Committee on the Internal Market and Consumer Protection (IMCO). The rapporteur is Kateřina Konečná (The Left, Czechia). The Committee on Economic Affairs (ECON) is the committee for opinion.
10. The legal basis for the proposed Directive is Article 114 TFEU on internal market completion, with due regard to Article 169 TFEU⁸. This confers on the EU the competence to enact measures for the approximation of national rules regarding the establishment and functioning of the internal market. By creating a high level of consumer protection, the proposal aims to increase consumer trust and help the internal market function smoothly.

II. WORK WITHIN THE COUNCIL

11. On 13 July 2021, during the Slovenian Presidency, the Commission presented the new proposal for a Directive on consumer credits and the accompanying impact assessment to the Working Party on Consumer Protection and Information.

⁴ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1-88)

⁵ European Data Protection Supervisor – Summary of Opinion (OJ L 403, 6.10.2021, p.5-7)

⁶ INT/922 – EESC-2020-05391-00-01-AC-TRA

⁷ INT/956 – EESC-2021-03601-00-00-AC-TRA

⁸ Consolidated version of the Treaty on the Functioning of the European Union (*OJ C 326, 26.10.2012, p. 47-390*)

12. The impact assessment was examined in detail at the meeting of the Working Party of 13 July 2021 with a focus on the problem definition and drivers, as well as on the different options considered and their impacts.
13. The examination of the proposal by the Working Party started on 19 July 2021 under the Slovenian Presidency and was concluded by the end of September 2021, in five meetings (first reading).
14. At the informal meeting of Consumer Protection Ministers held on 24 September 2021 in Brdo, EU Ministers expressed their broad support for the Commission's proposal. They believe that the proposal goes in the right direction and addresses the problems consumers are facing today. In order to ensure a high level of consumer protection and at the same time enable innovation and a strong internal market, there is a need to amend the current legislation.
15. Working Party meetings, conducted by the Presidency, were structured around thematic blocks (scope and general provisions, information, practices exploiting consumer behaviour or situation, creditworthiness assessment, over-indebtedness, enforcement, other relevant articles and final provisions) with a focus on the articles that the proposal regulates anew or modifies, to encourage constructive discussions among delegates and receive their valuable contributions for the ongoing work on the proposal.
16. The Working Party on Consumer Protection and Information completed a first full reading of the proposal on 30 September 2021, therefore it is essential to report the progress made in the discussions to the Competitiveness Council (COMPET Council) on 25 November 2021.

III. STATE OF PLAY AND MAIN ISSUES

17. The Member States have largely welcomed the new proposal by recognising its importance – for the internal market and for establishing higher consumer protection in the digital age. The Member States have also expressed their strong support for the Commission's proposal to regulate new risky credit products and new credit providers on the market.
18. Some Member States raised specific issues, in particular relating to extending the scope to new consumer credit providers and new products emerging in the digital market. Others raised issues and expressed opinions about information disclosure, the assessment of

creditworthiness, caps on interest rates, annual percentage rate of charge (APRC) or credit costs, and the transition period for SMEs.

19. The Presidency has identified general support among the Member States for the level of ambition of the proposal and its overall objectives. In particular, there is broad support for (i) the need to find a fair balance between consumer protection and the measures proposed, (ii) ensuring key information for the consumer to reduce consumer detriment and risks in taking out loans, (iii) the inclusion of measures to address over-indebtedness.
20. Furthermore, in the interest of legal certainty and effectiveness several Member States have called for more clarity regarding the coordination between the proposal and other EU and national policies, such as the General Data Protection Regulation, the Crowdfunding Regulation⁹ and PSD2.¹⁰
21. With a view to advancing work on the proposal and encouraging discussions in the Working Party on Consumer Protection and Information, the Slovenian Presidency has prepared targeted questions on ten main issues: extension of the scope to currently exempted credit products; inclusion of crowdfunding credit services (P2P lending); simplification of certain information requirements in advertising; pre-contractual disclosure: inclusion of a Standard European Consumer Credit Overview (SECCO); pre-contractual disclosure: timing and reminder of the possibility to withdraw; possibility to offer credit even when the creditworthiness assessment is negative in specific and well justified circumstances; inclusion of caps on interest rates, APRC or total costs of credit; inclusion of the provision on the principle of non-discrimination; admission, registration and supervision of non-credit institutions; and specific transitional period for SMEs.
22. During the constructive and solution-oriented discussions at Working Party level, the Slovenian Presidency established that there was general support among the Member States for the Commission's proposal. However, based on the discussions and written comments that the

⁹ Regulation (EU) 2020/1503 on European crowdfunding service providers for business, and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937 (OJ L 347, 20.10.2020, p.1-49)

¹⁰ Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35-127)

Member States have provided, there is some scope to improve the Commission's proposal and to enhance consumer protection in a digital world.

23. The Slovenian Presidency had already identified some issues raised by Member States, which will require some additional work in the negotiations. The following points have been recognised as the most sensitive political and legal issues:

a) Proportionate regime for specific credits excluded from the current Directive

24. Member States expressed their commitment to finding a fair balance between consumer protection and the measures proposed. They are opposed to creating unnecessary burdens for businesses, intermediaries and consumers.
25. A number of delegations have requested clarifications on the provisions about the scope of the proposal. They asked, in particular, for further clarification on the extension of scope to leasing contracts with no obligation to purchase and on the inclusion of operational leasing.
26. During the discussions some delegations proposed to apply proportionate regime for certain credits, such as interest-free credits with no charges, credits below EUR 200, credits to be repaid in three months with insignificant costs and overdraft facilities to be repaid in one month. A number of delegations expressed their support for such a regime only if existing national provisions ensuring that all the rules of the Directive apply to those credits can be kept.

b) Inclusion of crowdfunding credit services (P2P lending) in the scope of proposal

27. Crowdfunding is a form of finance available to consumers, typically for small expenses or investments. A provider of crowdfunding credit services operates a digital platform open to the public in order to match or facilitate the matching of prospective lenders (investors) with consumers that seek funding.
28. The Crowdfunding Regulation explicitly excludes from its scope crowdfunding services in relation to lending to consumers as defined in point (a) of Article 3 of the Consumer Credit Directive. The aim of the proposal for a Directive on consumer credits is to ensure the protection of consumers who seek to take out a credit through a provider of crowdfunding credit services. In this way, consumers would be equally protected and a level playing field with traditional providers would be guaranteed.

29. In general, Member States agree that crowdfunding credit services should be regulated, but have questioned if it is appropriate to do so following the proposal's approach. Some Member States suggested having a dedicated chapter focusing on such services in the proposal, others suggesting regulating them with separate legislation.
30. Some Member States expressed doubts about the consistency of the proposal with the Crowdfunding Regulation's obligations (e.g. in terms of authorisation). Others have called for measures to ensure also the protection of consumers acting as investors in the case of P2P lending and have proposed that measures similar to those in the Crowdfunding Regulation should be adopted.
31. Member States agreed on the need to reconsider the proposed provisions in detail to clarify the applicable framework to crowdfunding credit services, for instance by determining which articles of the proposal should apply to crowdfunding credit services providers in the event of a new chapter being included in the proposal. Some Member States stated that further consideration should be given to whether the proposal is appropriate in terms of addressing all the crowdfunding services issues raised by Member States.

c) Pre-contractual information

32. Delegations commented on the new 'staged disclosure' proposed by the Commission and on the timing of the obligation to provide pre-contractual information and on the reminder of the possibility to withdraw being sent to the consumer after the credit contract is signed if the pre-contractual information is provided less than one day before the contract is concluded. Member States broadly support the provision of the pre-contractual information before concluding the contract, thereby allowing enough time for the consumers to compare offers and to make an informed choice.
33. On the 'staged disclosure', some delegations support the approach under the proposal (i.e. an overview form with key elements in addition to the standard pre-contractual information form). Others suggested merging the two forms and presenting the key elements of the credit on the front page of the standard pre-contractual information form, while avoiding repetitions. There is broad agreement on the need to avoid information overload and to make use of behavioural insights to better provide information to consumers.

34. Member States' views on the timing of pre-contractual information varied a little. While some delegations support the proposal of having the information at least one day before the contract is signed, others are of the opinion that the existing provisions (according to which the pre-contractual information should be provided 'in good time before' before the credit contract is signed) are sufficient and that there is no need to introduce changes.

a) Creditworthiness assessment

35. Building on the Consumer Credit Directive, the proposal includes the obligation to carry out a creditworthiness assessment. It requires the creditor or the provider of crowdfunding credit services to assess the consumer's ability to repay the credit, taking into account the consumer's interests and based on necessary and proportionate information on income and expenses and other financial and economic circumstances. It also requires that, in principle, credit is made available to consumers where the result of the creditworthiness assessment indicates that the obligations are likely to be met.

36. However, according to the proposal, even if the creditworthiness assessment is negative, in specific and well justified circumstances the creditor or the provider of crowdfunding credit services may exceptionally make credit available to consumer. Such exceptional circumstances, e.g. student loans or loans for health expenses, are better explained in the proposal's recitals. Some Member States questioned the application of exemption, because it could weaken the creditworthiness assessment provision. Others would like to keep a more flexible approach. In the interest of legal certainty, many Member States have called for more clarity regarding the exemption of the prohibition from granting the credit in case of negative creditworthiness assessment for consumers in situations of vulnerability. Many Member States were of the opinion that exemption should be excluded.

e) Other issues

37. Other issues pointed out by the delegations for further discussion included simplifying certain information requirements in advertising, inclusion of caps on interest rates, APRC or total costs of credit, inclusion of the provision on the principle of non-discrimination, admission, registration and supervision of non-credit institutions, specific transitional period for SMEs.

IV. CONCLUSIONS

38. Significant and fast progress has been made on the examination of the proposal. The first reading of the proposal as well as of the relevant recitals has been completed. The Slovenian Presidency devoted additional time to discussing the respective articles, offering delegations the opportunity to better comprehend the provisions of the proposal and the positions of the Member States. More work and discussions are needed before a general approach, for which the present progress report is a contribution, a political stepping stone and a signpost for the key political issues. The Slovenian Presidency is committed to working closely with the incoming French Presidency in order to facilitate a compromise in the near future.
39. The Council (Competitiveness) is invited to take note of the present progress report from the Presidency.
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