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Presidency note

15 November 2022

Dear colleagues,

Hereby we would like to invite you to another meeting of the Working Party on Consumer Protection and Information to provide you with the updates on the ongoing technical meetings with the European Parliament on the proposal for the new Consumer Credit Directive (CCD2) and inform you about compromise proposals, which were drafted by Presidency.

Our next meeting will take place on Friday 18 November 2022 from 10:00 in Brussels in physical format and is organised as attaché meeting.

After the 1st political trilogue on CCD2 (being held on 15 September) the Presidency started technical meetings with the European Parliament, which were followed by the 2nd political trilogue on 26 October. So far, we have held 14 technical meetings, where both co-legislators have exercised efforts to find some common ground for compromises.

The purpose of the upcoming Working Party is to inform Member States about the progress made at political and technical level of negotiations and discuss particular issues where the possible compromise solution may require some flexibility from both the Council and the Parliament. For that purpose, the Presidency invites Member States to reflect on the questions below and to express their views on possible areas of flexibility in order to reach a compromise:

1. Personalised offers (Art. 13)

Line 274 EP insists that Member States shall require that creditors, credit intermediaries communicate to the consumer who receive the offer the sources that have been used in the personalisation of the offer. Can Member States agree to have this provision in the legal text or in the recital?

2. Rules for advertising (Art. 32, Art. 33)

Within the set of rules for advertising consumer credits, EP proposes amendments relating to conduct of business rules (Art. 32) and competency requirements (Art. 33) (as the issue of advertising is of crucial importance for them).

Line 469a Can Member States accept that the *advertising credit product* should be part of the conduct of business obligations when providing credit to consumers?

Line 483 Can Member States accept that staff's knowledge and competence relating to the *advertising* credit product should also be required?

3. Scope – mortgages (Art. 2)

Line 106 EP insists that there is an undesirable regulatory gap between MCD and CCD for mortgages secured by rights to non-residential property. PRES is of the opinion that all mortgage credits should be regulated uniformly within the MCD. Do Member States agree that a compromise solution would be to include some kind of review clause into the CCD2 (announcing that those mortgages should be de lege ferenda covered by MCD2 while currently remaining unregulated)?

4. Pre-contractual information (Art. 10)

Line 199 Contrary to the Council's GA, the EP insists on keeping the reminder of the possibility to withdraw from the credit agreement and of the procedure to follow for withdrawing, in accordance with Article 26. That reminder shall be provided to the consumer, between one and seven days after the conclusion of the credit agreement or the acceptance of the credit offer. Considering the fact that EP changed *„at least one day"* into *„one to seven days"* could Member States accept the reminder to come back?

5. Creditworthiness assessment (Art. 18)

Line 318 Could Member States accept a compromise amendment in Article 18(2) as proposed by the Commission (new text)? "*2. The assessment of creditworthiness shall be carried out on the basis of relevant and accurate information on the consumer's income and expenses and other financial and economic circumstances which is necessary and proportionate to the nature, duration, value, and risks of the credit for the consumer. That information may include evidence of income or other sources of repayment, information on financial assets and liabilities, or information on other financial commitments. That information shall not include special categories of data referred to Article 9(1) of Regulation (EU) 2016/679. The information shall be obtained from relevant internal or external sources, including the consumer and, where necessary, on the basis of a consultation of a database referred to in Article 19 of this regulation. Social media shall not be considered as an external source for the purpose of this Directive.*"

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6. Right of withdrawal for linked credits (Art. 26, Art. 27)

Line 419b Within the set of rules regarding the right of withdrawal EP proposes that in case of a linked credits with extended return policy for a good, the right of withdrawal should also be extended. Could Member States accept, in the spirit of compromise, the following proposal made by Presidency in the Art. 27(1) instead? *„1. Member states shall ensure that a consumer who has exercised the right of withdrawal based on Union law or a return policy that ensures a full refund for a certain period of time exceeding withdrawal period based on Union law, concerning a contract for the supply of goods or services, shall no longer be bound by a linked credit agreement."*

7. Tying and bundling – right to be forgotten (Art. 14)

Line 284 Could Member States accept, in the spirit of compromise, the following Presidency proposal? *"4. … Member States may require that insurance policy related to a credit agreement shall not be based on personal data of consumers' diagnosis of oncological diseases as at the latest from 10 years after the end of their treatment, and as at the latest from 5 years after the end of treatment for consumers whose diagnosis was made before the age of 18[, irrespective of the consumer's consent to such processing]. Member States shall require that insurance policy offer related to a credit agreement shall be binding at least three days from the date of receipt by the consumer."*

8. Information to be included in credit agreement (Art. 21)

Line 364a Could Member States be flexible in accepting an additional item among the disclosures as proposed by the EP in Art. 21 *"(va) the relevant contact details of debt advisory services and a recommendation for the consumer to contact such services in the event of repayment difficulties."*?

9. SECCI (Art. 10)

In the interest of seeking the possible compromise solution the Presidency proposed changes in 1st page of SECCI, which bring together Council's and EP's items (newly included identity of creditor/intermediary, repayments, borrowing rate and early repayment info) while not restricting the readability and comparability of the document anyway. Commission drafted proposal considering 2 pages for „key SECCI". What approach for SECCI design would Member States prefer, taking into consideration EP position?

10. Repayment schedules for overdraft/overrunning (Art. 24, Art. 25)

Lines 403e, 412b Would Member States be open to accept that the consumer is allowed to repay a cancelled or reduced overdraft or overrunning facility if the number of instalments were less than 12 (as currently proposed by the EP) and if other adjustments to the EP proposal are made (for example deleting the condition, that if creditor does not offer the repayment schedule, the cancellation or reduction of overdraft or overrunning is invalid)?

11. Debt advisory services (Art. 36)

Line 509 As a compromise solution the EP proposed „limited charges" for private and NGO debt advisory services providers and „no charges" for the public one. Could this be acceptable for Member States?

12. Admission, registration and supervision (Art. 37)

Line 512b, 512c The EP strongly opposes to having any exclusions from admission and registration. In order to propose a compromise solution, could Member States agree to narrow down the exemption for retailers to SMEs only?

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We are looking forward to seeing you all!

Best regards,

Czech Presidency team

Council of the European Union
General Secretariat

Brussels, 15 November 2022

Interinstitutional files:
2021/0171 (COD)

WK 15714/2022 INIT

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NOTE

From:	Presidency
To:	Working Party on Consumer Protection and Information (Consumer Credits)
Subject:	Presidency note