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The Council of the EU adopts the new Consumer Credit Directive

On Monday 9 October, the European Council adopted the final text of the new Consumer Credit Directive. This will repeal the current Directive 2008/48/EC of 23 April 2008 on credit agreements for consumers. The new Directive seeks to ensure a higher level of protection for consumers in the European Union and to promote the development of a single credit market. This concludes the processing of the CCD, pending its publication in the OJEU.

In this legal briefing, we analyse the most important aspects of this Directive.

1. Scope of application

- i) The CCD introduces changes to credit contracts that are outside the scope of application of the CCD 2008. The most relevant exclusions are as follows:
- » Credit contracts where the total amount exceeds 100,000 euros. The CCD removes the exclusion of credit contracts of less than 200 euros and raises the threshold from 75,000 euros to 100,000 euros¹. However, the CCD enables Member States to exempt credit contracts below 200 euros from certain obligations regarding advertising, pre-contractual information and information applicable to the contract.
 - » Leasing or financial leasing contracts which do not provide for an obligation or option to purchase the object of the contract, either in the contract itself or in any other contract. The new text states that, if a leasing or financial leasing contract includes an option to purchase, this contract would be covered by the CCD.
 - » Deferred payments granted by micro-enterprises or SMEs:
 - where it gives the consumer time to pay for goods delivered or services provided by that supplier, without credit being granted by a third party;
 - where the sales price is due without interest and without any other costs and with only limited charges due from the consumer for payments that are overdue and owing; and
 - where payment is due in full within 50 days of delivery of the goods or services.
 - » Deferred payments granted by companies that are not considered micro-enterprises or SMEs:
 - where the credit is neither offered nor acquired by a third party;
 - where the payment is due in full within 14 days of delivery of the goods or services, and
 - where the sale price is payable without interest and without any other costs and with only limited charges due from the consumer for payments that are overdue and owing.
 - » Credit contracts relating to loans granted to a restricted group, under a statutory provision with a general interest objective, and at a borrowing rate lower than that normally available on the market or without interest or on terms which are more favourable to the consumer than those normally available on the market.

¹ The 100,000 euros threshold will be assessed every four years by the European Commission.

- » Credit contracts in force three years after the entry into force of the CCD.
 - » Member States are authorised to exclude credit contracts in the form of deferred debit cards offered by a credit or payment institution where: (i) the credit must be repaid within 40 days; and (ii) they are granted without interest and with only limited fees linked to the provision of the payment service.
- ii)** Credit contracts known as “buy now, pay later” which are characterised by the fact that they are granted free of interest and without any other charges or because they must be repaid within three months and with only minimal charges are no longer excluded from the scope of the CCD. However, the CCD leaves the door open for Member States to exempt these contracts from certain obligations regarding advertising, pre-contractual information and information applicable to the contract.
- iii)** Crowdfunding platforms which grant credit directly to consumers or broker the granting of credit between lenders and consumers will also be subject to compliance with the obligations contained in the CCD.

2. Advertising obligations

- i)** The CCD generally includes the following obligations:
- » Advertising must be provided in a clear, concise and prominent manner, through a representative example. Basic information must be displayed at the outset, clearly and in an attractive format.
 - » It must be clearly legible and adapted to take into account the technical limitations of certain media, such as mobile phone screens.
 - » The total amount of the credit and the repayment duration chosen by the creditor for the representative example should reflect the details of the credit contract advertised by the creditor.
 - » In digital channels, some of the basic information in the representative example may be provided by clicking, scrolling or swiping. The basic information should be clearly delineated from any additional information relating to the credit.
 - » Temporary promotional conditions, such as reduced introductory interest rates for the first months of the credit contract, should be clearly identified as such. Consumers should be able to see all essential information at a glance, even when looking at it on a mobile phone screen.
 - » The telephone number and email address of the creditor and, where applicable, of the credit intermediary should also be provided to the consumer so that he can contact them quickly and efficiently.
 - » Where advertising is broadcast through channels which do not allow the information to be displayed, such as radio advertising, the amount of information communicated should be reduced.
 - » Advertising should contain a clear and prominent warning to make consumers aware that borrowing money costs money. Advertising that encourages consumers to apply for credit by suggesting that credit would improve their financial situation or by stating that credit has little or no influence on the assessment of a credit application is prohibited.

3. Pre-contractual information obligations

- i)** Pre-contractual information (i.e., the conditions and the cost of the credit and its obligations) should be provided with adequate explanations, which consumers can examine at their convenience, well in advance and not at the time of the conclusion of the credit contract.

- ii) The main elements of the credit should be provided prominently on the first page of the Standard European Consumer Credit Information form (the “**Form**”), enabling consumers to see all the essential information at a glance, even on a mobile phone screen. If the one-page limit cannot be complied with, the information should be displayed on a maximum of two pages.
- iii) The information provided in the Form must be clear, fully legible and adapted to take account of the technical limitations of certain media, such as mobile phone screens.
- iv) The pre-contractual information must include the annual percentage rate of charge (“**APR**”) for the credit, calculated in the same way throughout the EU. At this stage, the APR can only be given using a representative example and should therefore reflect, for example, the average duration and total amount of the credit granted.
- v) Where pre-contractual information is provided less than one day before the consumer is bound by any credit offer or credit contract, the creditor and, where applicable, the credit intermediary must remind the consumer, between one and seven days after the conclusion of the contract or the consumer’s submission of the binding credit offer, of the possibility of withdrawing from the credit contract.
- vi) The total cost of the credit to the consumer must include all costs, including interest, commissions, taxes, the remuneration of credit intermediaries and any other charges payable by the consumer in connection with the credit contract, with the exception of notarial costs.
- vii) Credit contracts where the borrowing rate is revised periodically according to changes in a reference rate provided for in the credit contract must not be considered credit contracts with a fixed borrowing rate.
- viii) Member States may maintain or adopt national provisions prohibiting the creditor from requiring the consumer, in connection with the credit contract, to open bank accounts or to conclude contracts for other ancillary services or to pay charges or fees for such bank accounts or ancillary services. The costs of such ancillary services, in particular, insurance premiums, should be included in the total cost of the credit.
- ix) Prior to the conclusion of a credit contract, creditors and, where applicable, credit intermediaries should assist consumers in relation to the credit products they offer them by providing, free of charge, adequate explanations of the relevant information, including the legal and financial consequences that may arise from the incorrect fulfilment of contractual obligations.
- x) Regarding the ongoing development of artificial intelligence, if creditors and credit intermediaries personalise the price of their offers for specific consumers or specific categories of consumers on the basis of automated decision-making, they must clearly inform consumers that the price they are offered is personalised on the basis of automated processing of personal data so that they can take the potential risks into account in their purchasing decision.

4. Authorisation or registration procedure

- i) Creditors and credit intermediaries, other than credit institutions, shall be subject to a procedure for authorisation or registration of credit institutions and to supervisory mechanisms implemented by a supervisory authority.
- ii) Member States may exempt from the recognition and registration requirements suppliers of goods or service providers which are considered to be micro-enterprises or SMEs and which act as credit intermediaries in an ancillary capacity or which grant credit in the form of deferred payment for the purchase of goods and services which they themselves offer, without any third party offering credit, if the credit is granted free of interest and without any other charges, except for charges limited to late payments.

5. Other new features

- i) Regarding tied sales, in order to give the consumer additional time to compare insurance offers before purchasing an insurance policy, the consumer should be given at least three days to compare insurance offers related to the credit contract, without the offer being modified.
- ii) Member States shall establish minimum knowledge and competence requirements, concerning the making, offering and granting of credit contracts, for staff working for creditors and credit intermediaries. Such staff include individuals performing administrative and customer service functions, as well as managers and members of boards of directors. In contrast, human resources and information and communications technology staff would not be subject to these requirements.

6. Entry into force, entry into application and transposition of the CCD

- i) The CCD shall enter into force twenty days after its publication in the Official Journal of the European Union.
- ii) Member States have a maximum of 24 months from the entry into force of the Directive to adopt the appropriate legal provisions to comply with the provisions of the CCD.
- iii) The CCD will become applicable three years after its entry into force.
- iv) Credit contracts concluded prior to the entry into application of the CCD shall be governed by the CCD 2008 until their termination. However, in the case of open-ended credit contracts concluded before the entry into force of the CCD, they shall remain subject to the CCD 2008 but some of the obligations contained in Articles 23, 24, 25, 28 and 39 shall also apply to them, i.e., requirements applicable to changes in the borrowing rate, overdraft facilities, tacit overdraft facilities, open-ended contracts and assignment of rights.

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