

European Contract Law

Consumer credit in EU and agreements

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Credit in actual society

Some ideas:

- Shift from cash society to credit society
- Development of interaction between financial services
- Basic idea to offer credit to consumers → the “democratisation” of credit

Types of credit to consumers

- Credit to buy real properties or to retain property rights in land or in an existing or projected building
- Credit to buy goods and hire → consumer credit

Council directive 87/102/ECC and further developments

Basic ideas:

- 1) Credit agreements shall be in writing !!
- 2) A number of precontractual information to be given to consumers
- 3) Right to discharge obligations under a credit agreement before the time fixed by the agreement
- 4) Relation between the contract of supply of goods or services and credit agreement

Problems:

The low degree of development of the cross-border credit market in Europe is explained by a number of factors, the main ones being:

- the technical difficulties of penetrating another market,
- the lack of sufficient harmonisation of national legislation,
- and the developments in techniques and forms of credit since the Directive 87 was submitted by the Commission and adopted by the Council.

The revision of the Directive requires:

- adaptation of the legal framework to the new credit techniques;
- rebalancing of the rights and obligations;
- protection credit consumer and credit grantor .

The role of credit intermediaries

Article 12(1) of Directive 87/102 offered Member States three options for monitoring the implementation of the Directive particularly as regards credit intermediaries. The report on the implementation of the Directive suggested making the third option listed in this article compulsory → this option stipulated that Member States must promote the establishment of appropriate bodies to receive complaints concerning credit agreements or credit conditions and to provide consumers with appropriate information or advice.

More stringent control of credit intermediaries entails a number of steps:

- registration of such persons;
- the creation of an access threshold in terms of professional aptitude;
- the option, where required, of suspending or withdrawing their licence;
- making any complaints public.

Several Member States have introduced a system of maximum rates and/or usurious rates. The report on the implementation of the Directive revealed major differences of approach across the Member States and expressed the Commission's hope that the debate on usury could be addressed at the Community level

Joint and several liability of the lender and the supplier

A substantial number of disputes arise between consumers and the suppliers of goods and services funded under a credit agreement. Drawing on the rules of common law, the Commission, in its initial proposal for a Directive 87/102, considered giving the consumer the option of taking action directly against the lender without being obliged to first institute proceedings against the supplier of the goods or services. This approach is based on the notion that the signing of a contract of supply of goods or services is conditioned by the existence of a credit agreement. This generates a certain form of joint and several liability between the supplier of goods and services and the lender, and holds a number of legal implications for the latter.

The formula ultimately adopted in Article 11 (subsidiary liability) is the result of a compromise. It stipulates that in certain circumstances the consumer can request payment from the lender if the complaint against the supplier is justified and the latter does not indemnify the consumer. The transposal of this article has nevertheless given rise to a certain volume of ineffective legislation³⁶ in some Member States. In others, particularly France, Germany and the United Kingdom, the legislation has gone well beyond the principle set out in Article 11

Some changes.....

→A new directive?

→Many proposals 2002, 2004, 2005

And finally.....Directive EC/2008/48!

Directive EC/2008/48

The European Parliament and Council adopted a new Directive No. 2008/48EC on credit agreements for consumers.

The fundamental aim of this Directive is to create conditions for the emergence of an internal market in consumer credit, to offer a sufficient degree of consumer protection and to harmonise the Community regulation in this field.

In the interest of strengthening consumer awareness, the Directive differentiates between pre-contractual and contractual information. *Pre-contractual information* must be provided in the form of a Standard European Consumer Credit Information form which establishes the minimum new information which must be made available to the consumer.

Problems:

1) What is the notion of responsible credit?

See article 8: Obligation to assess the creditworthiness of the consumer

2) What is the sort of the rules on protection of consumer suretyship ? Discussion of the German case

Consequences of credits and other events in life: the risk of over-indebtedness

- When is a consumer over indebted ?
- Models: Debt mitigation or bankruptcy ?
- What is the European perspective ?
- Should we talk about responsible credit? What is the role of the lender?