

Credit agreements: residential immovable property

2011/0062(COD) - 10/09/2013 - Text adopted by Parliament, partial vote at 1st reading/single reading

The European Parliament adopted amendments to the proposal for a directive of the European Parliament and of the Council on credit agreements relating to residential property.

The matter had been sent back for consideration to the competent committee. The vote on the legislative resolution is put forward to a later session.

The main amendments adopted by Parliament are as follows:

Objective and scope: the Directive lays down a **common framework** for certain aspects of Member States' rules concerning agreements covering credit for consumers secured by a mortgage or otherwise relating to residential immovable property, including an obligation to carry out a creditworthiness assessment before granting a credit.

The Directive lays down provisions subject to maximum harmonisation in relation to the provision of pre-contractual information through the European Standardised Information Sheet (ESIS) standardised format and the calculation of the APRC.

However, taking into account the specificity of credit agreements relating to immovable property in Member States, the latter are allowed to introduce **more stringent provisions** than those laid down in the Directive in those areas not clearly specified as being subject to maximum harmonization in order to protect consumers.

Education of consumers: in order to increase the ability of consumers to make informed decisions for themselves about borrowing and managing debt responsibly, Member States should promote measures to **support the education of consumers** in relation to responsible borrowing and debt management in particular relating to mortgage credit agreements.

Information prior to the conclusion of the credit agreement: clear and comprehensible general information about credit agreements must be made available by creditors or, where applicable, by tied credit intermediaries or their appointed representatives at all times on paper or on another durable medium or in electronic form without charge.

The standard information to be included in advertising must include where applicable, the duration of the credit agreement; the total amount payable by the consumer; the number of instalments; a warning regarding the fact that possible fluctuations of the exchange rate could affect the amount payable by the consumer.

General information must include the following: (i) where foreign currency loans are available, an indication of the foreign currency or currencies; (ii) a representative example of the total amount of credit, the total cost of the credit to the consumer, the total amount payable by the consumer and the APRC; (iii) an indication of possible further costs, not included in the total cost of the credit to the consumer, to be paid in connection with a credit agreement; (iv) a general warning concerning possible consequences of non-compliance with the commitments linked to the credit agreement.

Reflection period: Member States shall specify a time period of **at least seven days** during which the consumer will have sufficient time to compare offers, assess their implications and make an informed decision. The time period shall be either a reflection period before the conclusion of the credit agreement or a period for exercising a right of withdrawal after the conclusion of the credit agreement or a combination of the two.

Tying practices: as a general rule, tying practices should not be allowed unless the financial service or product offered together with the credit agreement could not be offered separately as it is a fully integrated part of the credit, for example in the event of a secured overdraft.

Obligation to assess the creditworthiness of the consumer: before concluding a credit agreement, the creditor must make a **thorough assessment** of the consumer's creditworthiness. That assessment shall take appropriate account of factors relevant to verifying the **prospect of the consumer meeting his obligations** under the credit agreement.

The assessment of creditworthiness shall be carried out on the basis of information on the consumer's income and expenses and other financial and economic circumstances that is necessary, sufficient and proportionate.

The information shall be obtained by the creditor from relevant internal or external sources, including the consumer.

Foreign currency loans: where a credit agreement relates to a foreign currency loan, an **appropriate regulatory framework** must be in place at the time the credit agreement is concluded to at least ensure that: (i) the consumer has a right to convert the credit agreement into an alternative currency under specified conditions; or (ii) there are other arrangements in place to limit the exchange rate risk to which the consumer is exposed under the credit agreement.

Early repayment: the consumer must have a right to discharge fully or partially his obligations under a credit agreement prior to the expiry of that agreement. Member States may provide that the creditor is entitled to fair and objective compensation, where justified, for possible costs directly linked to the early repayment but **shall not impose a sanction on the consumer**.

Information concerning changes in the borrowing rate: the creditor must inform the consumer of any change in the borrowing rate, on paper or another durable medium, before the change takes effect. The information shall at least state the amount of the payments to be made after the new borrowing rate takes effect and, in cases where the number or frequency of the payments changes, particulars thereof.

Arrears and foreclosure: Members consider that creditors should exercise **reasonable forbearance** before foreclosure proceedings are initiated. Where the creditor is permitted to define and impose charges on the consumer arising from the default, those charges must be no greater than is necessary to compensate the creditor for costs it has incurred as a result of the default.

The parties to a credit agreement may expressly agree that **return or transfer to the creditor of the security or proceeds from the sale of the security** is sufficient to repay the credit.