



**COUNCIL OF
THE EUROPEAN UNION**

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NOTE

from: Presidency
to: Council

No. Cion prop.: 13193/05 CONSOM 37 CODEC 865

No. prev. doc.: 15591/06 CONSOM 127 CODEC 1350 JUSTCIV 254

Subject: Modified proposal for a Directive of the European Parliament and of the Council on credit agreements for consumers amending Council Directive 93/13/EEC
- Progress report
(Public debate)

I. INTRODUCTION

1. In October 2005, the Commission submitted to the Council the above mentioned modified proposal¹, based on Article 95 of the Treaty. In this text, the Commission incorporated 108 of the 152 amendments proposed by the European Parliament in its first reading opinion adopted on 20 April 2004².
2. The Economic and Social Committee gave its opinion on the original proposal on 16-17 July 2003³.

¹ 13193/05.

² 8493/04.

³ OJ C 234, 30.9.2003, p. 1.

3. The (Competitiveness) Council held a policy debate on 29 May 2006, asking for political guidance on:
- the level of harmonisation, including the combination of harmonisation with the mutual recognition clause;
 - early repayment, notably the principle and conditions for payment of an indemnity to the creditor following the exercise of such a right; and
 - cross-border comparability of consumer credit agreements, in particular the use and calculation of the annual percentage rate.

As a result of the Council's debate⁴, the mutual recognition clause was deleted in June 2006 from the text under consideration⁵.

4. The Working Party on Consumer Protection and Information continued the examination of the proposal under the Finnish Presidency. Ten meetings of the Working Party, totalling 12 working days, were held between July and end of November 2006. The first global compromise proposal⁶ was submitted by the Presidency on 2 October 2006. Following its examination by the Working Party, the Permanent Representatives Committee was asked to give a political guidance on the questions of the right of withdrawal and early repayment⁷.
5. Following the Permanent Representatives Committee's policy debate on 18 October 2006, the Presidency submitted to the Working Party two other compromise proposals⁸ with a view to meeting concerns expressed by delegations. In addition, the issue was referred to the Permanent Representatives Committee on 24 and 29 November 2006 with the view to submit the compromise text⁹ to the Council (Competitiveness). Although many delegations expressed their support to the Presidency's compromise proposal, there was not a qualified majority to reach a political agreement on the proposal.

⁴ The summary of the Council's policy debate is set out in document 10265/06.

⁵ See page 35 of doc. 10597/06.

⁶ 13357/06.

⁷ The questionnaire can be found in doc. 13845/06.

⁸ 15176/06 of 14 November 2006 and 15521/06 of 20 November 2006.

⁹ Respectively 15360/06 of 22 November 2006 and 15591/06 of 28 November 2006.

6. The Presidency planned for a political agreement on this proposal at the Council (Competitiveness) on 4 December 2006, but in view of the above-mentioned it decided to submit a progress report in order to inform the Council of the current state of play of negotiations and to highlight the main issues of concern that will, in the Presidency's view, need to be addressed in the future in order to reach a political agreement.

II. CURRENT STATE OF PLAY

7. In spite of a number of changes proposed successively by the Presidency to meet concerns of the delegations, the Member States have requested additional modifications aimed at meeting their national constraints. These requests are difficult to reconcile without lowering the level of harmonisation of the proposed Directive, which is not supported by the Commission. On the contrary, the Commission maintains its position on the necessity to provide for more detailed harmonised rules and to limit the degree of flexibility on issues which were previously covered by the mutual recognition clause.
8. In addition, several delegations maintained a substantial reservation on the added value of the text for their national consumer credit legislation and/or the *Community acquis*. Some of them also questioned the usefulness of continuing the negotiations in the absence of an impact assessment.
9. It has been difficult to achieve progress in a situation where the views of the Commission and the Member States have gone in opposite directions. Furthermore, the differences in national consumer credit legislation and markets do not favour the possibility for a compromise and, thus, divergences of opinions have remained.
10. Those divergences mainly concern:
 - a. the scope of the proposal (notably as regards short term credit agreements and specific credit agreements to which only certain provisions of the proposal would be applicable, i.e. credit agreements in the form of overdraft facilities and overrunning);

- b. the scope and the nature of information to be given to the consumer at each stage leading to the conclusion of the consumer credit agreement (particularly in advertising);
- c. the right of withdrawal (the principle itself) and its relationship to early repayment, especially for linked credit agreements;
- d. the creditor's possible right to compensation in case of early repayment;
- e. the definition of the annual percentage of rate of charge (APR), in particular the inclusion of taxes, and the method for its calculation.

III. CONCLUSION

The Presidency has explored various ways to find compromises acceptable to the different Member States and the Commission. The Presidency believes that before continuing negotiations an understanding should be reached on whether a harmonisation that represents added value to the consumer credit market can be achieved and which matters require detailed regulation at the Community level.
