INTERVENTION D'ALENA LUDROVSKA - CETELEM

Member of the executive committee,
Director of the central european zone

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Answers to questions posed by Mr Kurt Lechner

Question 1: Regarding the "targeted harmonisation" approach: What is the margin of manœuvre for the Member States? Is the legal frame for the Member State clearly determined?

When they transposed the Consumer Credit Directive of December 1986, which was a minimum harmonisation directive, the European Union Member States mostly adopted more restrictive regulations varying from one country to another.
In order to promote integration, it is necessary to implement a "full targeted harmonisation", which prevents Member States to set national regulations different from the harmonized rules (full harmonization) and requires harmonisation only on the points considered as essential (targeted harmonization).

The current proposition about the consumer credit Directive, which is a full targeted harmonisation, must both allow to rationalize the business of the lenders at the european level, and to strengthen consumers' understanding and the confidence when they do cross-border operations.
The codecision procedure applied for the adoption of the directive shows how difficult it is to have Member States abandon certain national provisions. In order to facilitate an agreement, the European Commission, and then the successive presidencies, introduced some flexibility into the conditions for the application of certain articles.

➔ *The risk is that once the directive is transposed, and then applied, the targeted harmonisation approach and the development of a single consumer credit market will be weakened.*

This issue arises in several Articles of the political agreement[1], for example:

Q1.2: Do the provisions on credit agreements with overdraft facilities in Art.2 (3) and on standard information for advertising in Art.4 establish a full or a minimum harmonisation level, in other words, do these provisions allow Member States any flexibility when implementing these provisions?

- **Article 2(3) –** *Scope / Overdraft facilities*

This article, which applies to overdraft facilities, does not concern Cetelem, which is a specialised institution.

[1] Referring to the text of the Council dated 5 July 2007.

- **Article 4 –** *Standard information for advertising*

- Article 4(1) sets forth that the obligation to include standard information for advertising *"does not apply to cases where national legislation requires the indication of the annual per percentage rate of charge for advertising concerning credit agreements which does not indicate an interest rate or any figures relating to the cost of credit to the consumer".*

➔ *On one hand, the wording of this article lacks clarity and creates a risk of legal uncertainty for lenders and consumers.*
On the other hand, this article introduces an exemption reducing the scope of full harmonisation.

- Also, the obligations laid down under article 4(2) have been strengthened. They appear excessive and particularly inappropriate in respect of TV, radio or Internet advertisements in considering the limited duration of these advertisements and of the significant additional costs incurred.
In addition, the representative example provided in this article will not enable a consumer to better compare offers because the example will not be based on his/her specific and particular needs.

➔ *The standard information should be limited to clearly stating the annual percentage rate of charge, the agreed duration of the credit, the number and the amount of payments to be made, and the total cost of the credit as proposed by the European Parliament in the first reading (the* infobox *system).*

Q1.2 Does Art.5 (pre-contractual information) give some flexibility to the Member States in relation to the implementation and application of this provision? What does "in good time" mean in Art.5 (2)? What are the legal consequences of Art.5 (5), first sentence? Do the Member States have any flexibility when transposing Art.5 (5), second sentence and are there any contradictions with Recital 20? Does Art.5 (5) constitute an obstacle for the internal market?

- **Article 5(2) –** *Pre-contractual information / Standardised information sheet*

Subject discussed under question 2, page 4

- **Article 5(5) –** *Pre-contractual information / Explanations provided to the consumer*

- This article raises the problem of evidence of "*adequate explanations"* that the creditor must provide *"in order to put the consumer in a position to assess whether the proposed credit agreement is adapted to his needs and to his financial situation….* ". The subjective nature of assessing the notion *"adequate"* can only lead to disputes.
The article raises *in fine* the problem of storing such evidence.
➔ *It would therefore be appropriate to delete the word "adequate".*

- In addition, the second part of article 5(5) weakens the harmonisation as it allows Member States to over-regulate a provision expressed with sufficient clarity.
➔ *It would therefore be appropriate to delete this paragraph which is contrary to the harmonisation objective, having regard, in particular, to recital 9.*

Q1.3 : What do the terms "where appropriate" and "where necessary" mean in Art.7a (1) (responsible lending)? Can these terms cause legal uncertainty? Does Art.7a (1) constitute an obligation according to civil/ contractual law or to public law? What is therefore the legal consequence of this provision? Do the Member States have any flexibility as far as the transposition is concerned? Does this provision constitute an obstacle for the internal market?

- **Article 7a (1)** – *Obligation to assess the creditworthiness of the consumer*

This article requires credit institutions to assess the creditworthiness of the applicant based on information disclosed by the latter and where appropriate, by consulting the relevant database.

➔ *Creditworthiness assessments are the key rule in the lending business, a lender having no interest whatsoever in lending to clients that are unable to repay. Lenders already use risk management because only a good risk management system ensures business profitability.*
➔ *Moreover, this practice is already regulated by the European prudential directives which organise control over lenders and require them to comply with very strict risk management criteria. Instead of formalising this practice, including a reference to these directives within the body of article 7 a (1) would be sufficient.*
➔ *When dealing with consumers sometimes not so scrupulous, the inclusion of this obligation in the Directive raises the problem:*

- *of proving the information provided by the consumer and of the consultation of database by the lender,*
- *and of the related costs.*

Q1.4 : Do the provisions on the right of withdrawal in Art.13 and on overrunning in Art.17 establish a full or a minimum harmonisation level?

- **Article 13** - *Right of withdrawal*

- This article, by imposing a right of withdrawal of 14 days for the sake of harmonisation, lacks flexibility.
Such a period is not suitable for face-to-face transactions because it slows down the sale of goods, which will have an impact on the consumers as well as on the merchants throughout the European Union.
➔ *It would be appropriate to:*

- *reduce this period to 7 days, as is the case today in several Member States,*
- *and to provide the consumer with a possibility of waiving the withdrawal period at the consumer's express request in all Member States.*

- Conversely, by allowing national divergences between the conditions of implementation of the right of withdrawal, this article weakens harmonisation. These divergences may result in competition distortions and be a source of confusion for the consumer.
➔ *In order to achieve full harmonisation, it would therefore be appropriate to delete paragraph 7 of this article.*

- **Article 17 -** *Overrunning*

This article, which mostly affects banking institutions, does not concern Cetelem, a specialised financial institution.

Another point that does not comply with the objectives of harmonising the consumer protection rules and developing the Internal market

- **Article 14(2) –** *Linked credit agreements*

- This article provides that in the event the goods supplied are not in conformity, where these goods are covered by a linked credit agreement, the consumer shall have the right to pursue remedies against the lender.
Since the Council version deleted the conditions under which these remedies are exercisable against the lender, as these had been voted upon by the Parliament in first reading, financial institutions find themselves in a situation where they offer, for linked transactions – the definition of which is very extensive, a sort of free insurance. Obviously it does have a cost. Moreover it creates a distortion between consumers who buy on credit and who benefit from this warranty and those who pay cash and do not benefit from it.
➔ *It would therefore be appropriate to reinsert the exercisability conditions that had been voted upon in first reading.*

- Moreover this article gives each Member State extensive leeway since the provision refers also to national law.
➔ *The freedom to determine under which conditions these remedies shall be exercisable by the Member States is likely to weaken full harmonisation. It would be appropriate to remove it.*

Question 2: How can banks and consumers deal with the pre-contractual and contractual information and consultation requirements? Do they cause any problems or obstacles from a practical point of view? Is the standard form described in Art 5(2) a practical instrument for banks and consumers?

- **Article 5(2) –** *Pre-contractual information / Standardised information sheet*

This article aims at strengthening consumer confidence, which is incontestably an essential condition for market development. However, the means used will not only fail to fulfil the full harmonisation objective but in addition they will confuse consumers and unable them to compare offers:

- The standardised information sheet is very long (several pages, about fifty sections), very complex and hard to understand for a consumer.
Its effects may be contrary to those expected: information for the consumer burdened with excessive technical and useless information.
- The interpretation of the information to be provided to consumers will vary among Member States. Moreover, the translation will be influenced by the law and local customs.
Information provided to a consumer concerning a given section by foreign lenders may not correspond to that provided by national lenders. In fact, consumers will be unable to compare the different offers.
- Finally, these information sheets have a cost, which is even more difficult to justify as in many countries the information is already contained in the contractual offer of credit.
Nearly ¾ of the banking associations consulted via the Civic Consulting questionnaire consider that this provision will have a very negative impact on the cost of credit.

➔ *Pre-contractual information should be precise and should focus on the most relevant topics in order to help the consumer to make a choice*, especially because consumers do not have the same level of knowledge in the economic and financial fields among the European countries
It would be preferable to simply provide the consumer with a copy of the agreement as pre-contractual information.

CONCLUSION

Too many recitals and provisions leave a substantial margin of manœuvre to Member States which considerably reduces the extent and effect of these provisions.
➔ *The objective of targeted full harmonisation is therefore not achieved.*