



Public Consultation to evaluate the Consumer Credit Directive

2008/48/EC

The AK's position in detail

The CCD raised the overall level of consumer credit protection because key areas such as contract information were specifically covered by law for the first time. However, in order to place more importance on the effectiveness of consumer protection in practice, its provisions must be tightened up in some areas or additional rules introduced, for example regarding its scope and credit advertising.

Scope

From the viewpoint of the consumer the **scope should be as broad as possible** for all consumer credits and there **should be no more caps on the sums involved**. Even low credit sums are relevant, in particular for consumers with low incomes. This group requires special protection, such as trainees who overdraw their account, or in the case of deferred payments.

Leasing contracts

All types of finance leasing contracts containing a financing element should be included in the scope of the CCD. Only "pure" user contracts are currently excepted.

Contracts where the consumer him/herself has the option to purchase and/or to bear the residual value risks should also be included in the scope of application. This is necessary in order to avoid circumvention practices. The BAK advocates making all types of leasing contracts obligatory in the scope of the CCD since they often have the character of financing using outside capital (credit). In Austria leasing plays a very important role in vehicle financing. According to figures provided by the Association of Austrian Leasing Companies in March 2019, 40% of all newly registered private cars are financed through leasing. Some leasing companies offer operating leases not only to commercial customers, but also to consumers. **This means that there should be a legal minimum requirement on the information to be provided for purely operating leases and for contract hire.** With regard to operating leases, one-off costs and costs

calculated on an ongoing basis, statutory contract fees and the agreed borrowing rate should be standardised in cases where the leased object is purchased at the end of the contract. Mandatory information on the effective percentage rate of charge is necessary in view of the (apparent) practice: Even the Association of Austrian Leasing Companies itself defines operating leasing as a variant of leasing where the permitted use is predominant, but where "in practice he (note: the lessee) or a third party is often given a purchase option at the end of the contract."¹ In this case operating leasing is a variant of finance leasing or should be placed on an equal footing with a loan from the economic and practical perspective of the consumer."

Special provisions for contracts requiring pledges as security

Currently, contracts requiring pledges as security are excepted from the CCD under Article 2(2)k. From the viewpoint of the consumer more cost transparency for these types of credit contracts appears to be necessary. In addition to interest rates, in practice there are numerous additional fees that are only mentioned in the contracts of some money-lending institutions as fees per half-month. This makes it very difficult for the consumer to understand the overall costs. The spectrum of percentage rates of charge established by the Vienna Chamber of Labour lies between 37% and 140%. It is impossible in practical terms to compare prices due to the manner in which prices are quoted to consumers. **Therefore, it should be made mandatory to state the annual percentage rate of charge and the overall sum to be paid.**

Special provisions for repayment of consumer credits

Consumer and debt counselling agencies often see cases where, due to problems with payment instalments and repayment of a credit, problems occur time and again regarding debt execution – either by a court or out of court – due to the lack of transparency and information.

One aspect of this problem is that the debtors have agreed a repayment agreement with the creditors (bank), the object of which is the repayment of the loan capital with interest and costs.

These repayment agreements do not have a fixed and known repayment period – as is usual for a loan. These repayment agreements are normally based on the feasibility of monthly instalments or distrainable income; this results in debtors often being left in the dark as to how long the repayment obligation will actually last. In extreme cases this can result in debtors who are only able to pay low instalments or who do not have distrainable assets being unable to cover even the annual interest rate. This is not surprising, considering that annual percentage rates of charge set by the courts can be as high as 21%. Debtors are scarcely aware of the situation that the monthly instalment cannot cover servicing the debt, meaning that their liability grows successively, instead of diminishing, because no checks are made in advance on whether the debt can actually be repaid at the specific level of instalments within an appropriate period or whether the consumer would do better to consult a debt counselling agency and apply for personal bankruptcy. Often the rate of interest or enforcement fees are not negotiated.

Apart from this significant shortcoming there is a lack of information as a result of the practice of the enforcing banks or their legal representatives (lawyers) not providing debtors with credit repayment documentation in the form of annual account statements or repayment plans. Therefore, consumers who find themselves in financial difficulties should also have the right to receive an annual statement of account stating the outstanding balance, the interest burden of a period (year) and the repayment percentage of the credit amount.

Therefore, the BAK calls for consumers to be given sufficient documentation to ensure the necessary transparency regarding interest rates, expenses, repayments and outstanding balances. Repayment agreements are required which explain to consumers the basic points of a binding repayment plan based on the proposed instalments and interest rates (or other fees of debt collection agencies).

Therefore, from the viewpoint of consumers it is essential that a requirement to provide information is introduced or **minimum contents of repayment agreements following debt execution are determined. In the opinion of the BAK not only the instalment amount but also the default interest rate, the duration and other costs should be stated clearly.**

Consumers should **also be given a statement of account once a year** for the duration of such agreements – the best time would be in the first quarter of a calendar year with the effective date the 31st of December of the previous year – which contains a chronological statement of all entries for monies received, interest and fees and the current outstanding balance.

Currently **credit agreements which are the result of a settlement before a court of another legally empowered agency** are excepted from the scope of the CCD (Article 2(2j)). These credit agreements should also be subject to the special provisions as described above.

Overdrawing, overrunning

The BAK calls for regular mandatory information to be provided on the amount of the borrowing interest rate and the overdraft interest rate for all forms of overdraft and above all when overrunning a credit limit. This information should be stated automatically on all bank statements and additionally in the list of transactions in online banking.

Advertising

The CCD must include a clause on consumer credit advertising based on figures, whereby advertising using figures must focus on the annual percentage rate of charge and not on repayment instalments, which can be very misleading. The effective annual rate of charge and overall costs are the most important figures when assessing the actual costs of a credit. Furthermore, **minimum font sizes could be stipulated for figures presented in advertisements.** Analyses of advertisements carried out by the Chamber of Labour on posters, TV and newspaper advertising in print media have shown that the footnotes containing figures are not clear, concise or noticeable. **Therefore, the CCD should include a prohibition on barely legible small print footnotes in advertisements. It should be mandatory for a representative example to show the individual components in separate blocks.** In practical terms, most cases of advertisements use continuous text for the small print; this makes these technical credit details difficult to make out and very difficult to read. This contradicts the objective of the directive, which is “pre-contractual transparency”.

Furthermore, it has been noted that figure-based credit advertisements often use instalments or borrowing interest rates (and not the percentage rate of charge). Leasing advertisements only ever show an advantageous (low) leasing instalment; this can be totally

misleading insofar as the attractive (low) instalment can be easily and “creatively” achieved by long contract terms (60 months), high personal contributions (prepayment of instalments, payment of deposits) and high residual values. In extreme cases the calculation of a very low leasing instalment (“from 149 euros!”) can be based on a high borrowing rate if personal contributions, residual value and duration are set as high or long as possible. This information on interest rates, personal contributions, residual value, etc. was contained in the small print in footnotes in all cases of leasing advertisements studied.

Comprehensive insurance is obligatory in many cases of vehicle leasing offers. It happens time and again that leasing companies do not include mandatory comprehensive insurance in their calculation of the annual percentage rate of charge, contrary to requirements. An analysis of leasing advertisements conducted by the Vienna Chamber of Labour in the spring of 2019 revealed that not all advertisements stated whether or not comprehensive insurance was obligatory to enter into a leasing agreement. **Therefore, the BAK calls for a mandatory statement in advertisements regarding whether comprehensive insurance is required to enter into a contract**, because experience has shown that this is a significant determinant of the price.

Another practice found in leasing advertisements, which is disadvantageous for consumers, is to display an “all-inclusive instalment” per month in a prominent manner and show not only the leasing instalment itself, but also insurances (premium for third party liability, comprehensive cover) and possible other pricing components as a “flat-rate service fee”.

The individual pricing components are not itemised further, making it impossible for anyone to actually determine the effective interest rate. In view of this practice it is not possible to identify the amount of the premium for insurance; this means it is not possible to make comparisons with other insurance companies. If the figure for leasing and the figure for insurance are not itemised for an all-in instalment, it is not possible to compare prices with other leasing providers (leasing companies, insurance companies).

A key demand of the BAK regarding credit and leasing advertising must be that advertisements must use **the percentage rate of charge in future, and not a low monthly credit or leasing instalment**. Furthermore, advertising based on figures should not be placed in footnotes that can scarcely be discerned, as small print in continuous text over several lines, but shown in a clearly visible and structured manner which enables the main determinants of pricing to be displayed in a readily understandable manner.

Furthermore, the **annual percentage rate of charge for the representative example should be given a standard definition in the CCD**. Best practice examples (such as Germany and the United Kingdom) should be used as a basis. The BAK advocates that only percentage rates of charge should be used in advertising where the bank can assume that, at the time of the advertisement, a predominant majority (at least two thirds) of credits actually granted are not granted at a higher rate of interest.

Pre-contractual information

A core objective of the CCD is the pre-contractual comparison of products from several credit offers; the obligation to provide pre-contractual information is intended to make this possible. However, in practice, consumer advice agencies regularly find that standard European consumer credit information is often handed out too late. In many cases it appears to be that this information is handed out together with the credit contract, and hence is directly linked to entering into the contract. **In order to achieve the objective of the CCD, the provisions of Article 5(1) must be formulated more strictly, or it is necessary to define what is meant by “...in good time before the consumer is bound by any credit agreement or offer...”**. BAK suggests that **the standard European consumer credit information must be provided in the first meeting (or first contact for telesales)**. Discussions between BAK and credit institutes have revealed that banks prefer in practice to hand out pre-contractual information when all the necessary details and documentation have been submitted in writing. It is often not enough for consumers to state their income; several current salary records are required. It is unrealistic to assume that consumers will have all the documentation with them needed to sign a contract when they are still shopping around. A comment could be added to the form stating that the information was generated on the basis of details provided verbally, in order to avoid misunderstandings or as legal security for credit institutes.

Standard European Consumer Credit Information

The Standard European Consumer Credit Information contains an abundance of itemised information. It is a good thing that there is a standard form with a specific order of items. **In order to improve the quality of information and clarity, the effective annual percentage rate of charge as a key parameter for comparison at the pre-contractual stage should be given greater prominence**, for example, by using a larger font and/or by visually accentuating this line in the form.

Advice

In connection with inadequate advice, BAK can refer to a comprehensive poll of consumers from 2014. The CCD states the need of the creditor (bank) to give consumers “adequate explanations”. Apparently in practice there are some shortcomings – as the investigation revealed – where regulation may be needed. In face-to-face interviews (n=1000) bank customers were asked about their experience with their private bank and their expectations of a “dream bank”². The most important results relating to credit:

- The primary expectation of a credit product (“very important” and “important”) was that it should be a simple credit with low interest rates and additional charges (4 out of 5 said this). Almost every second person placed great importance on the recommendation of the advisor during the advisory meeting.
- Bank customers want to have “simple” credits: from this we can deduce that credits should not involve, for example, complicated interest rate adjustment modalities, incomprehensible clauses and additional packages (e.g. interest rate hedging, additional insurance cover).
- The interviewees wanted more cost transparency of **credits**: The survey revealed a gap between the expectations of a “dream bank” and consumers’ experience with their private bank (actual situation) in identifying the **cost transparency** of credits which had been classed as very important. Every fifth person saw the need for improvement in that all costs of a credit should be clearly itemised during the sales talk. Therefore, the legislator must ensure that the costs are listed clearly and understandably in provisions on pre-contractual information or offers handed to the customer.
- The study identified a clear wish for better explanations of disadvantages and possible problem areas of consumer credits. The wish for a **statement of risk related to a credit** shows a clear gap between expectations and the actual quality of service experienced in the consumer’s own bank. Almost all those surveyed expected possible issues (e.g. rise in interest rates) to be addressed when discussing a credit.

From this we can deduce that advisory and sales talks are not neutral regarding advantages and possible disadvantages, i.e. a comprehensive explanation. From this derives the demand of the BAK to ensure that interest rate scenarios are explained comprehensively. If market and prime

rates are currently low, advisors must be required to inform potential customers that the rate could rise (significantly) during the credit period. These “warnings” should be an integral part of the advisory meeting. Instalments should also be calculated for customers on the basis of the rate of interest rising significantly. A comprehensive explanation of risk also means that a basic explanation of default charges (interest on late payments, dunning fees, costs of amending contracts, etc.) should be given (e.g. clearly expressed and presented in the written pre-contractual information).

- Interviewees wanted more support from **ombudsman agencies** in banks which could help with specific problems (e.g. difficulties in repaying credits). 4 out of 5 interviewees would like this type of support, but only one third considered this requirement to have been implemented. Although many banks have established ombudsman agencies, the conclusion must be drawn that too few customers are aware of them.

For most people it was important that there was no pressure to sign and no additional products were offered during the advisory meeting. This means that additional products should be offered only at the request of the customer. We can also deduce from this wish that credits **should not be linked inseparably to insurances** because consumers do not want complex types of credits.

Right of withdrawal

From the point of view of consumers they should not only have the **right of withdrawal** from the credit agreement, but also from the **brokerage agreement**. The practice exists where financial intermediaries of consumer credits apply high cancellation fees or penalties when a credit brokerage agreement is cancelled – even after one or two days. Such contracts are often signed spontaneously on first contact with the financial intermediary and the consumer is not aware that high cancellation fees can apply. In order to counter such surprises for consumers who are under severe financial pressure, the right to withdraw from a brokerage agreement would make sense.

The BAK also advocates that – independent of the right of withdrawal of the borrower – **persons who assume liability for another’s debt (guarantor, pledgor and surety) should also be given the right of withdrawal** from such contracts. They should not be put in a worse situation than borrowers because they warrant more protection than borrowers themselves. When consumers assume liability for third-party

debts, we find repeated cases of over-hasty actions which have far-reaching consequences for those involved. Here, too, it should be possible to cancel a liability taken on without due consideration through the right of withdrawal or a cooling-off phase.

Evaluation of creditworthiness and data privacy

The General Data Protection Regulation (GDPR) contains general principles on data privacy. Therefore, additional specific data privacy provisions are needed to protect consumers. These should be enshrined in laws governing individual areas related to data privacy. The granting of consumer credits decidedly belongs to these types of contract where detailed data privacy rules are required since data on the assets and income of people are sensitive data and banks and service providers collaborating with banks often calculate people's credit history using automated individual decisions.

A study undertaken by the Vienna Chamber of Labour on scoring methods used by Austrian banks revealed that it was difficult (for the authors of the study) to procure specific information on the mechanisms, algorithms and data used. While information was available on scoring for companies, the area of scoring for private persons and consumers proved to be impenetrable. Credit enquiry agencies, insurance companies and credit institutes did not reveal the variables used, nor the defined risk categories. Hence consumers often were not able to find out their own credit score, not even from their own bank. An important conclusion to be drawn from this study was that the specific scoring algorithm appears to be treated as a company secret and that this lack of transparency is disadvantageous for consumers.

Therefore, a suitable legal provision on consumer credit scores should ensure transparency for the person concerned. Furthermore, more detailed limits to the application of such procedures should be considered – in order to avoid misuse – and of the data used in these procedures. **The BAK advocates that not only credit scoring procedures, but also the possibilities of using them in certain sectors and the legal rights of consumers should be regulated by law.**

Since the GDPR has imposed limits on national legislators, the corresponding regulation of consumer credits at the EU level is required.

Contractual information

In an **ongoing credit agreement, there is a need for annual statements of account containing all entries, which must be listed chronologically and contain the current outstanding balance.** This should be sent proactively by credit institutes to borrowers in the first quarter of a calendar year with the effective date the 31st of December of the previous year. The CCD should include the obligation to provide such information.

Footnotes

- 01** Source: www.leasingverband.at under Leasing ABC: <https://www.leasingverband.at/leasing/leasing-abc/>, accessed on 28th March 2019.
- 02** https://www.arbeiterkammer.at/infopool/wien/Wunschbank_aus_Sicht_der_VerbraucherInnen.pdf from 2014 in relation to credit products (P. 24 and 25)



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About us

The Austrian Federal Chamber of Labour is by law representing the interests of about 3.7 million employees and consumers in Austria. It acts for the interests of its members in fields of social-, educational-, economical-, and consumer issues both on the national and on the EU-level in Brussels. Furthermore the Austrian Federal Chamber of Labour is a part of the Austrian social partnership. The Austrian Federal Chamber of Labour is registered at the EU Transparency Register under the number 23869471911-54.

The main objectives of the 1991 established AK EUROPA Office in Brussels are the representation of the BAK vis-à-vis the European Institutions and interest groups, the monitoring of EU policies and to transfer relevant information from Brussels to Austria, as well as to lobby the in Austria developed expertise and positions of the Austrian Federal Chamber of Labour in Brussels.