

Finland proposes better protection than the new Consumption Credit Directive to protect the consumer

The working group preparing the implementation of the Consumption Credit Directive 2008/48/EC proposes national regulations to supplement the directive. The aim is to ensure that the implementation of the directive will not lower the consumer protection standards in Finland. The Consumer Credit Directive is mainly completely harmonised, but there is room for manoeuvre nationally. Member states may freely keep or introduce national regulations in those cases where the Consumption Credit Directive does not include standardised regulations. In addition, some types of credits essential for consumers are left outside the scope of application, and we can freely implement national solutions for these. It is proposed in Finland that the directive's regulations are applied in a wider sense than the scope of application, and that the questions not addressed in the Directive are supplemented with national regulations. The most important proposals for consumers are regulations for responsible credit providers and their registration.

Same regulations regardless of the credit type or amount of credit

Consumer credit legislation containing widely applied regulations for all credit types on offer to protect consumers, apart from some minor exceptions, has been in force in Finland for decades. The solution has been clear for both consumers and credit providers and there has been no need to change the situation. We wanted to keep the same clear regulations nationally when implementing the Consumer Credit Directive. The Directive does not, for example, cover mortgages or loans which are guaranteed by property, nor small loans of 200 Euros or loans over 75,000 Euros. In Finland we are proposing that the national regulations would also include these types of credits. The mortgage usually has a significant implication to the consumer's finances so there is a special need for regulations protecting the consumer. On the other hand, small quick loans have caused many payment difficulties for consumers in recent years, so the need for regulations concerns them too. At the same time we propose that the term consumption credit is replaced with the term consumer credit, which better describes the scope of regulations. The defining factor for applying the credit regulations is that the credit recipient is the consumer.

The Directive does not regulate responsible credit lending

In the introductory part, the Directive states that member states must promote responsible practice in all stages of the credit relationship. The procedures mentioned include informing the consumer about the risks of non-payments and incurring too much debt, as well as the credit provider's responsibility to check the consumer's eligibility for credit. However, the Directive does not include an article about responsible credit lending. Instead, the Directive includes an article about the credit provider's responsibility to evaluate the consumer's eligibility for credit. However, evaluating the consumer's eligibility for credit is only one part of those procedures which are included in responsible credit lending. Responsible practices for credit lending cover the whole life-cycle of credit, from marketing to possible credit collection.

Responsible practices in credit provision supplement the detailed regulations in the Consumer Credit Directive with regulations based on legal principle. Responsible credit lending means that the credit provider will spontaneously take the consumer's position into account even when there are no detailed regulations about the issue. Everything which has not been specifically forbidden is not always in the interest of the consumer. Nor is everything which is determined as a minimum requirement for credit provision practices always sufficient to safeguard the consumer's interests. When providing credit, a responsible credit provider will not act in a way which endangers a consumer's financial safety.

Responsible credit lending, national regulations

The national proposal for regulations on good practice in credit lending includes a general clause which requires the credit provider to act responsibly when providing credit. Traditionally, the Consumer Protection Act regulates marketing and unreasonable contract terms through general clauses. General clauses are flexible norms based on legal principle with which we can take action in illegal events happening in the markets at any given time. It is not possible to determine the contents of the regulation specifically in advance because new types of credit and practices are being created in the markets. According to the justification draft in the clause, the proposed regulation will cover all inappropriate practices and supplement the marketing, contract terms and other regulations regarding consumer credits in the Consumer Protection Act.

Responsible marketing

Responsibility with credit marketing means respecting the considerations regarding the consumer's application for credit. Marketing must not include methods which clearly impair the consumer's ability to carefully consider applications for credit. These methods include, for example, predominant extra benefits, excessive emphasising of speed of credit and inappropriate use of points systems and regular customer systems. It is also forbidden to offer discounts or other benefits to the consumer when merchandise is being paid for if the same benefits are not offered for those paying by cash. It is also forbidden to provide discounts or benefits only to those applying for a credit agreement. In addition, credit must not dominate the marketing of other consumer products.

For the credit provider, responsible credit lending also includes a specific information obligation. The credit provider must provide the consumer with information other than only the information provided in advertising before the credit agreement is signed. Based on this information, the consumer must be able to estimate whether the credit is suitable for him/her and if he/she will be able to repay the credit appropriately. The obligation for information can often be fulfilled by providing the consumer with a Standard European Consumer Information form whose contents will be determined with a decree. The form is similar to the Consumer Credit Directive form II. If the credit in question is long-term and large, such as a mortgage, the credit provider must also explain the credit terms and conditions, and the consequences of non-payment. The credit provider must also help the consumer with explanations if asked by the consumer, or if there is a new and complicated credit type or a credit containing some conditions which the consumer finds surprising. Explanation can be oral or - when applying for credit on the Internet for example - be based on a program directing the consumer to a page containing detailed information.

The consumer is the one who must estimate whether or not the credit is appropriate for his/her needs. This estimation cannot be left to the credit provider, because the main aim of the credit provider is to sell credits. The credit provider is not an impartial advisory body for the consumer. It is important that credit sales and impartial financial advisory service are not confused with each other. Thus consumers will also stay healthily critical of commercial information.

Evaluating the consumer's credit worthiness

The consumer is the one to estimate his/her ability for repayments. However, the obligation to evaluate the consumer's ability to pay is a matter for the credit provider as well. With larger loans, the credit provider must ask the consumer for information on his/her assets, such as information on the consumer's income, property, expenditure, debts etc. The credit provider must always check whether or not the consumer has a bad credit record. If such a record exists, the credit provider must look into the record's background in more detail. Bad credit

record is not necessarily an obstacle to obtain credit. Whether credit can be provided depends, for example on the amount of records, the length of time since the record was made and on the reasons for the record, such as, for example: was the record due to a temporary inability to pay due to illness or unemployment.

Responsible procedures to ease the consumer's payment difficulties

We are living in a credit society, where applying for credit is a part of a consumer's normal financial management. Credit is needed to finance larger purchases and to balance income and expenditure. If a consumer's income suddenly drops due to, for instance, unemployment, divorce or a long-term illness, there won't be enough income to repay the loan in accordance with the original credit terms. Juridically, the consumer is in these situations guilty of breaching a contract and the credit provider is entitled to start collection proceedings. This practice does not often benefit either the consumer's or the credit provider's financial interests. The consumer incurs expenses from the collection procedure, thus reducing the amount of money available to pay back the debt, and a bad credit record can impede the consumer's chances of finding work. The credit provider may incur credit losses which could have been avoided by re-organising credit terms.

In Finland, a credit provider cannot profit from consumers' payment difficulties unlike in some other countries. In Finland, the regulations regarding, for example, collection charges, collection methods and interest in arrears already protect the consumer's position in payment difficulties. A credit provider's social responsibility includes seeking out methods to tackle payment difficulties, taking into account the consumer's interests. Previously responsible action was seen as part of the credit provider's voluntary operation. According to the proposal, responsible attitude towards tackling payment difficulties will be statutory. The credit provider must calculate if payment arrangements are reasonable in this case and aim at an amicable solution. Payment arrangements include, for example, postponing the payment date, extending the duration of the loan, reducing the instalments etc.

In addition, the credit provider must give the consumer information and advice on tackling payment difficulties, for instance included in the payment reminder. It is advisable to encourage consumers to contact the credit provider so that payment arrangements, for example, can be agreed. This is why the credit provider must urge the consumer to contact them when necessary. The credit provider must also explain about authorities, such as financial and debt advisors, who the consumer can contact to ask for help. The consumer does not often have enough information on the consequences of a delayed payment. Consumers should know how to go forward if the delay continues and payment arrangements have not been agreed. Therefore, the credit provider must explain about interest on arrears, collections, possible bad credit record and the possible maturing of the credit.

It is possible to pay off a mortgage or another consumer credit prematurely without incurring costs

In Finland, a consumer has had the right to pay back a mortgage prematurely without incurring costs. We also wished to keep this right in the overall reform of consumer credits

and we don't suggest any changes for regulations for this part. However, the regulation will specify that the right to pay back the credit before it matures will include a part of the loan as well as the capital. Premature payment will incur expenses only if the initial amount of credit is over 20,000 Euros and the credit interest is fixed or the determination period of the credit reference rate is at least three years. The charge can be no more than the interest margin between the repayable credit and the new corresponding credit for the fixed interest period and the determination period of the credit reference rate. Consumers have preferred shorter reference rates with their mortgages, so the possibility to pay in full prematurely without

charge is widely in use. This right is important for the consumers' financial security. It is reasonable that the consumer can reduce his/her financial risks by paying the credit back prematurely if he/she can afford to do so. The right to a charge-free premature payment also keeps up the competition between banks for consumer customers, because the consumer can change banks if he/she wants to. Extended mortgage loan periods would tie the consumer for the customer ship of a certain bank for decades, if the right to premature payments was limited or expenses were charged for this right. The possibility to change banks has also lately speeded up the changing of the reference rate according to the consumer's wishes, as well as agreeing to free instalments.

For credits other than mortgages we will implement the Consumer Credit Directive article 16, according to which the credit provider is basically entitled to a compensation for a premature payment, if the interest on the credit is fixed, i.e. the interest is not tied to the reference rate. In Finland, there are not many fixed interest rate consumption credits on offer. According to the proposal, Finland will use the right given to the member states to regulate a threshold value of no more than 10,000 Euros, which has to be exceeded before charges incur. Charges are payable, if a fixed interest consumer credit has been paid back prematurely by over 10,000 Euros during the last year.

Requirements for maturing a consumer credit

The Consumer Credit Directive does not regulate the requirements for maturing the credit. The Finnish Consumer Protection Act has included a regulation regarding the maturing for a long time. However, the overall reform deemed that keeping the regulation was necessary with certain changes. The regulation includes percentual threshold values. If these are exceeded, the credit provider can demand for the whole credit to be paid off. With a one-off credit, the delayed amount must be minimum 10 percent or, if more than one instalment is delayed, minimum 5 percent of the initial amount of the credit. With ongoing credit, the payment must be delayed for at least one month.

In connection with the reform, we propose that the requirements for maturing a one-off credit are changed so that the credit provider is entitled to mature the credit regardless of whether the threshold values have been exceeded, if the payment is at least 6 months late. The change is explained with the fact that, especially lately, the mortgage capital growth has led to the payments being delayed for a substantial period before maturing them became possible. In this context, we have a reason to emphasise the credit provider's duty to look at payment arrangements responsibly. Especially with those mortgages where the guarantee is the debtor's home, all possibilities for different payment arrangements must be first explained.

Regulating the realisation of a guaranteed home also effects the mortgage debtor's position. The interests of the mortgage owner, or generally the mortgage debtor, must be taken into account when realising the mortgage. We are proposing a specific decree to the trade span because of the importance of this issue. There will not, however, be a pertinent change to the current situation, because the mortgage owner's interests must already be taken into account. According to the grounds for the new regulation, the mortgage collector must aim for the best

possible sales result and not only arrange the settlement into his own account. The best sales method must be evaluated case-specifically.

Postponing the date of the sale to take the debtor's interests into account presumes that it is likely that the postponement means that the mortgage will incur a much better price. Maturing the credit can come into force at the earliest four weeks after sending the notice of maturity to the consumer. If the consumer has been notified earlier, maturing can come into force two weeks after the notice was sent. In this case, that part of the credit expenses which

relates to the unused credit period must be deducted. However, the credit provider can keep the start-up costs of the credit in their entirety as long as the costs were reasonable.

A social obstacle for payments must be taken into account in late payment situations. If payment difficulties are due to the consumer's illness, unemployment, divorce or another reason not attributable to the consumer, the credit can be matured only if another consequence would be excessive to the consumer. If, for example, it is known that the consumer will be able to work soon, it is justified to postpone the maturity.

Joint responsibility between the credit provider and the vendor or a service provider

The Consumer Credit Directive regulates the joint responsibility between the credit provider financing the transaction and the vendor or service provider only for so-called secondary credit agreements. A secondary credit agreement means a credit which is used for financing only a contract regarding certain merchandise and these contracts form a commercial entity. According to the Directive, the consumer is entitled to demand that the credit provider fulfils his/her rights if the merchandise is not delivered or does not comply with the contract. In the national legislation, the joint responsibility can also mean another credit provider financing the transaction than just a secondary credit provider.

Joint responsibility is an important principle for the consumer rights to materialise. We propose that the national regulation regarding the joint responsibility is kept as it is in the overall consumer credit reform. The consumer must be able to refuse to pay the credit provider financing the transaction if there is an error in the transaction, if the delivery is late, or if the product is not delivered at all. In the above mentioned situations, the consumer has a right to refuse to pay the vendor or the service provider. If the transaction is financed with credit, that right would lose its meaning because the credit provider should still be paid. The consumer also has a right to reclaim the money paid in advance from the credit provider, for instance if the vendor goes bankrupt. However, the credit provider must not repay the consumer more than he has received in instalments. The Supreme Court decision KKO:2007:6 deems that the joint responsibility regulation is also applied to credit cards. A general credit card was deemed to be a commodity-linked credit to which the joint responsibility with the vendor, as stipulated in the consumer rights legislation, also applies.

The credit provider's right to cancel the consumer's opportunity to use ongoing credit

According to the article 13, paragraph 2, if agreed in the credit agreement, the credit provider can, for an objectively justified reason, cancel the consumer's right to withdrawals based on the current credit agreement. According to the paragraph 33 in the introductory part of the Directive, objectively justified reason can be a substantially increased risk that the consumer is unable to fulfil his/her obligation to pay back the credit. In Finland, we propose to legislate the Consumer Protection Act chapter 7, section 32. According to the section, the basis must comply with good credit lending practice. According to this basis, the right to use credit can be cancelled, for example because of a bad credit record, if the entry can be deemed to show that there is a substantially increased risk that the instalments will not be paid. Here we mean

overall evaluation, which is influenced, for example, by the amount of entries and the background debt.

In practise, for instance, the consumer's right to use a credit card could be stopped based on the credit provider's estimate, made in advance, that it is unlikely that the consumer will be able to pay the credit back. The Consumer Agency does not think that the proposal is justifiable and left a statement for the working group's consideration. It is very difficult for the credit provider to reliably estimate a consumer's repayment abilities. Consumers are a heterogeneous group, inside which the ability to cope with a tight financial situation varies.

If the credit provider was given a right to cancel the consumer's ongoing credit in advance, we would have a situation where the consumer's ability to pay will decrease even further. The opportunity to use ongoing credit is intended to balance income and expenditure.

There is a special need for this opportunity when the ability to pay is already reduced. It is sufficient that the credit provider can stop the credit if the payment is at least one month late and remains unpaid.

The credit provider's right to cancel an ongoing credit based on a evaluation made in advance contradicts the aim of the Finnish legislation to prevent the consumers with paying difficulties from being discriminated against. Many essential services, such as communication services, for example, can be cancelled only due to a breach of contract in a specific contract relationship. For instance, according to the Communications Market Act, a telecommunications company's right to demand a guarantee on the grounds of a foreseeable bad credit record, applies only to the period prior to signing the contract. In addition the change in the Credit Information Act improves the opportunities for businesses to evaluate risks when agreeing the contract, when the information on the long-term foreclosure of periodical income can be recorded in the credit information register.

Changes in the credit interest and payments

The article 11 of the Directive relates to the information on loan interests. According to the article the consumer must be informed about any changes on interest rates and the amount to be paid after the change, as well as the possible changes in the amount of instalments and the periods between payments. We propose to supplement the Directive's regulations with a nationally valid legislative regulation, which targets the requirements for changes in interest rates. If agreed in the contract, the credit interest rate can change according to the change of the reference rate detailed in the contract. The reference rate must be based on factors independent of the credit provider's unilateral authority and it must be available in public. The interest rate is such an essential condition of a credit agreement that it wouldn't be reasonable to give the credit provider a right to unilaterally change the basis for determining the interest rate via notifications. Substantial changes can be made into the contract only if both parties actively agree to this. We also propose a new regulation where changes to the interest rate must be implemented equally without discriminating against consumers. Changes in interest rates must be implemented in the similar way both up and down.

Evaluating the overall effects of the reform

The overall reform of consumption credits does not, for the implementation of the directive, substantially change the Finnish consumer protection. Consumer protection standards will remain and partly even improve. For consumers, the significant practical change is the standard information form provided before the credit contract is signed, which makes it easier to compare credits. Another improvement is registering the good practise in credit provision in law. In connection with the overall reform, a national proposition about registering the credit providers and the requirements for registration was also prepared. In Finland, the credit provision has been hitherto totally unregulated in industrial legislation. The supply of quick

loans has brought out the need to set certain minimum requirements for the credit providers. Only reliable and professionally qualified credit providers would be included in the register.