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***The Consumer Credit Directive:
Lost in the labyrinth of EU policy-making?***

Filipa Figueira

In May of last year, the EU institutions announced that an agreement had finally been reached on a new Consumer Credit Directive (CCD), putting an end to years of difficult negotiations. Last week, some may have been surprised to hear an announcement once again that agreement was found among the EU institutions on the CCD. Had it not already been reached in May? They will be even more surprised in a few months, when they will hear either (again) that agreement was reached on the CCD or – in what looks increasingly possible – that it was not found. The reason for this confusion is the procedure known as *co-decision*.

Co-decision rules the way in which the EU institutions interact to produce legislation together. This procedure ensures that the EU governments (represented in the Council) decide together with the European Parliament and the European Commission on the adoption and the content of new EU directives. Figure 1 shows the different stages of this procedure. The agreement reached in May 2007 corresponded to step 9 in the figure: the Council, that is the representatives of the EU governments, had agreed on a text (a ‘common position’) for the new CCD. However, that text still had to be approved by the Parliament in a ‘second reading’ (step 11). If the Parliament had approved the draft agreed by the Council without making any further amendments, the draft would have become law (step 12). But that was not the case, as the parliamentarians proposed a large number of amendments (step 16). So, on 16 January 2008, the Parliament indeed reached an agreement on a text for the CCD – but that text was very different from the one suggested by the Council.

The Council will now have three months in which to decide whether it accepts this text (step 18). In the meantime, the Commission will also issue an opinion on the text (step 17) – if the opinion is negative, the Council will need to approve the text by unanimity for it to become law. If it does not, the last-chance procedure of *conciliation* will begin (step 22). This procedure comes into play when a proposed directive is at risk of not being adopted, as it is reaching the end of the legislative process without an agreement having been found between the institutions. It consists of a period of very intense negotiations between the institutions, lasting a maximum of two months. If after that time an agreement is not reached, the directive is not adopted.

Figure 1. The co-decision procedure



Source: www.europa.eu.

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WHY IS THERE STILL NO AGREEMENT?

It has now been five and a half years since the Commission first proposed the new version of the CCD in September 2002 (the original version was adopted in 1987, and is now widely seen as outdated due to the changes in the market for consumer credit). This is an extraordinarily long time for an EU legislative procedure. Why is the new CCD still so controversial?

The underlying reason is that EU countries have very different traditions concerning the need for protection of consumers that acquire credit. Member states disagree on how much responsibility for ensuring that consumers only take out the credit that they can afford should be attributed to the companies that provide credit and how much should the consumers themselves be responsible for. Therefore it has proved very difficult to agree on crucial issues such as how much information the credit providers should be required to provide to consumers, whether the providers should be responsible for checking that the consumer can afford to take out credit, or whether there is a need for a free withdrawal period.

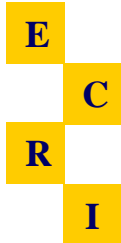
During the past five years of negotiations, steps in the direction of a compromise have been made gradually. The initial proposal by the Commission, issued in September 2002, was very ambitious in terms of the level of integration in legislation that it proposed. Faced with widespread criticism from all sides, the Commission later decided to replace it with a version that is narrower in scope and stripped of its most controversial elements. However, even this new version has remained widely controversial.

In particular, this is due to the fact that the Commission is still pressing for a full harmonisation approach, whereby national legislations are required to incorporate the EU directive fully into national law, without the possibility to add other clauses. Many have argued that partial harmonisation would be more appropriate, so that national governments are able to keep the legislation in this area in accordance with national traditions. Particularly since the markets for consumer credit are essentially national and are likely to remain so to a large extent, due to different attitudes towards credit in the different countries, as well as natural barriers such as language and distance to service providers.

COULD THERE BE NO CONSUMER CREDIT DIRECTIVE?

Despite the disagreements, it had eventually proved possible to reach a consensus among the member states in May of last year. However, the compromises reached on many aspects of the directive are very fragile, as they relied on finding a middle ground among the countries' positions, so that they would all accept the clauses, even though none of them was entirely satisfied with them. The amendments from the Parliament could easily have disturbed this fragile equilibrium. In particular, the issue of early repayment – whether a consumer should be allowed to pay back his/her loan earlier than determined by the contract, and whether in such cases credit providers should be allowed to claim compensation for the loss in interest – remains controversial.

It now remains to be seen whether the member states' representatives in the Council will accept the amendments proposed by the Parliament. According to official reports by the EU institutions, this new text has the backing of the Council and therefore will most likely be accepted. In reality, however this is not certain. It is well possible that the Commission will issue a negative opinion on the text, given that high-ranking officers have voiced their disagreement with some of the amendments proposed by the Parliament. And if that is the case, it will be difficult for the Council to reach the unanimous vote required, given that some countries also dislike the new amendments. So, despite the repeated announcements that there has been an agreement on the CCD in the end there could still not be any agreement at all.



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The Author

Filipa Figueira is Research Assistant at the European Credit Research Institute of the Centre for European Policy Studies in Brussels. Ms Figueira holds a Masters degree in European Economic Studies from the College of Europe (Bruges) and a Bachelors degree in economics from the London School of Economics. She has previously worked as a consultant in the financial services department of an EU public affairs agency. She is currently a PhD candidate at the Utrecht School of Economics of the University of Utrecht.



**European Credit
Research Institute (ECRI)**
Place du Congrès 1
B-1000 Brussels, Belgium
Tel.: +32-2-2293911
Fax: +32-2-2194151
Email: info@ecri.be
Web: www.ecri.eu

