

Developments in consumer lending - Additional obligations for creditors 1/8/25



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Some time ago, we started to present the upcoming amendments to Directive 2023/2225 of the European Parliament and of the Council on credit agreements for consumers (hereinafter “the “Directive”) and the types of services it regulates. The purpose of the Directive is to promote responsible and prudent borrowing. Informative, open and fair advertising is an essential element in achieving this aim, but it is particularly important to ensure that consumers are fully informed before they enter into and sign an agreement.

Significant changes to be considered

Bundling practices are prohibited. Offering or selling a credit agreement together with various other financial products or services is prohibited if the credit agreement is not individually available to the consumer.

Previously, such a prohibition applied to mortgage-backed consumer credit agreements, although the new amendments extend the scope of the prohibition. An example of bundling practices is when a creditor offers to grant a consumer credit only if the consumer also obtains a credit card from the same creditor. In such a situation, it is not possible for the consumer to obtain only the chosen consumer credit without incurring additional obligations, so the consumer often incurs unplanned costs. In the case of consumer credit, the consumer is vulnerable. Therefore, practices that prevent choice must be abandoned.

Exceptions to the bundling practice ban. In some cases, mandatory bundling of certain services with consumer credit is allowed, but these are isolated exceptions subject to meeting some criteria:

Case 1: When transposing the Directive, Member States may allow creditors the right to require the consumer to open or maintain a current account or savings account if the sole purpose of such an account is to:

- (a) to accumulate capital for repayment of the credit;
- (b) to use the funds to cover the costs of related services of the loans granted;
- (c) combine funds to obtain credit;
- (d) to provide additional security to the creditor in the event of default.

Member States may implement such an exception in order to facilitate the situation of creditors and to ensure easier servicing of credit while maintaining a reasonable level of consumer protection by preventing consumer credit from becoming excessively unavailable.

Case 2: Member States may allow creditors to require the consumer to purchase an insurance policy linked to the credit agreement, in line with the principle of proportionality, which means that in all cases claiming such a policy would not be considered justified. Furthermore, the creditor must accept an insurance policy

from another offeror if it provides the same level of guarantees as the policy offered by the creditor without changing the credit terms. In order to allow consumers time to compare insurance offers, consumers should be given at least three calendar days during which the creditor's offer is not changed. Consumers may conclude an insurance policy before the expiry of that period if the consumer himself or the creditor expressly requests it.

Additional important aspect: Consumer data related to the diagnosis of oncological diseases must not be used for the purpose of a consumer credit agreement insurance policy if 15 years have elapsed since the end of the treatment of the disease. When transposing the Regulation, Member States may set a period of less than 15 years.

Bundling practices are permitted when a credit agreement is available separately, but not on the same terms as other products or services offered. For example, a creditor offers a consumer credit at a certain interest rate, but if you obtain a consumer credit and use loyalty programmes, the terms of the consumer credit agreement are more advantageous. It is important to distinguish such practices from bundling, i.e. the main difference is that you receive consumer credit without receiving ancillary services. It can be economically advantageous for creditors to offer services in different bundles, which can ultimately lead to an advantageous offer for the consumer as well. This practice is therefore not prohibited, but it should always be possible for the consumer to obtain only the chosen consumer credit and no other ancillary services.

Express consent. It is forbidden to grant credit that the consumer has not applied for himself and expressly given his consent to receive such credit. Express consent must also be obtained for the conclusion of a credit agreement or for the purchase of ancillary services. In particular, the creditor may not grant the consumer any additional services if consent has been obtained in the form of a pre-printed sign and the consumer has not previously opted out of this service. This means that consent that is not given through active and direct consent, but without actual renunciation, cannot be considered justified in order to provide the consumer with an additional service. Such an approach has long existed in the area of personal data protection, i.e. a person must make the decision to consent to the processing of data themselves when cooperation is initiated and not give up a decision already made in their place. The introduction of this approach will ensure a higher level of consumer protection. Situations in which the consumer enters into obligations about which he was not properly informed, was not aware of the scope of the obligations and was not aware of the consequences for him of using such additional services will be avoided.

Clear rules for the provision of advice

- The creditor and the credit intermediary are obliged to clearly inform the consumer whether advisory services are provided. Prior to the provision of advisory services or the conclusion of a contract for the provision of such services, the consumer must be informed whether the recommendation is based on the range of products offered itself or on the range of products available on the market, as well as on the fees or method of calculating the advisory services, if the fee cannot be determined immediately.
- During the provision of advisory services, the creditor and the credit intermediary shall obtain information on the financial situation, preferences and objectives of the consumer, assess the financial situation and needs of the consumer, consider a sufficiently large range of products and recommend suitable credit agreements, act in the interests of the consumer. This is an important aspect to be considered, that is to say, it cannot be claimed that advice is provided

where the main interests are the provision of the creditor's service, the making of a profit, the underlying objective must remain the interests of the consumer.

- Member States may prohibit the use of the terms “consultation” and “consultant”. Where the use of terms is not prohibited, the terms “independent consultation” or “independent consultant” may only be used if a sufficiently large number of credit agreements available on the market are considered and if credit intermediaries do not receive remuneration from creditors.
- The creditor and the credit intermediary must warn the consumer if the credit agreement may pose a particular risk due to the financial situation of the consumer. Advisory services may be provided only by creditors and credit intermediaries, except where services are provided in an episodic manner in the course of a professional activity, by insolvency practitioners, public or voluntary debt advisers or persons authorized and supervised by the competent authorities.

Creditors – how to proceed?

Although the requirements of the Directive are not applicable until 2026 and the Directive has not yet been transposed into the laws and regulations of the Republic of Latvia, creditors must prepare for changes in good time. Creditors must analyze their practices and offers to customers and determine whether any of the services included in the prohibited practices, such as tying, exist. If non-conformities are identified, it is advisable to eliminate them in a timely manner. It is important to assess the company's internal processes, i.e. how consumer consent is obtained, and consider whether situations can arise where the consumer must actively opt out of a particular service rather than request it. If such risks are identified, changes should be made to the consent process. All information provided to the consumer should be reviewed at each credit step to determine whether any additions are required as the requirements of the Directive are more stringent. Overall, the changes are not expected to be fundamentally different from the existing framework, but the requirements will be more detailed and complex, so some customization will be required to ensure consumer protection.