

Finans og Leasing

Interesseorganisation for danske finansieringsselskaber

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Til

Folketingets Retsudvalg

Lovforslag L 91 om ændring af kreditaftaleloven – begrebet ”kassekredit”

Finans og Leasing retter hermed henvendelse til Folketingets Retsudvalg om ovennævnte lovforslag, idet det er vores opfattelse, at der er sket en ikke helt korrekt fortolkning af begrebet ”kassekredit” jf. lovens definition i § 4, stk. 1, nr. 4 i lovforslagets bemærkninger hertil.

Det fremgår bl.a. af de specielle bemærkninger, at begrebet vil ”*have en bredere betydning end det traditionelle danske begreb, idet eksempelvis også visse former for kontokort vil kunne falde ind under definitionen*”.

Det bemærkes for god ordens skyld, at Finans og Leasing i det bagvedliggende betækningsarbejde selv har været med til at støtte den nævnte fortolkning ud fra den forståelse vi på det tidspunkt havde af den danske oversættelse.

Via vores europæiske brancheforening - Eurofinas (paraplyorganisation for nationale interesseorganisationer for finansieringsselskaber og banker, der er specialiseret i forbrugsfinansiering) – er vi imidlertid g.d. blevet bekendt med, at den danske fortolkning af direktivet ikke er korrekt.

I den engelske udgave af direktivet lyder definitionen således:

“overdraft facility” means an explicit credit agreement whereby a creditor makes available to a consumer funds which exceed the current balance in the consumer's current account;”

Der findes ingen definition i direktivet af de centrale ord ”current account”, men i andre lande er man af den opfattelse, at begrebet ”overdraft facility” alene angår overtræksmulighed knyttet til forbrugerens lønkonto, da begrebet ”the consumers current account” er udtryk for forbrugerens lønkonto i en bank (da alene banker kan modtage indlån i form af løn) til modsætning fra kontokort- eller kreditkortordninger, idet omfang de ikke er knyttet direkte til forbrugerens lønkonto.

Endvidere fremgår det af Kommissionens egen undersøgelse af APRC (ÅOP) – hvorledes ÅOP udregnes på basis af direktivet, at man her sonder skarpt mellem ”current account-produkter” og andre produkter herunder fx ”creditcards”. Der kan herom henvises til rapporten “**EUROPEAN COMMISSION, DIRECTORATE GENERAL HEALTH AND**

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CONSUMER PROTECTION - STUDY ON THE CALCULATION OF THE ANNUAL PERCENTAGE RATE OF CHARGE FOR CONSUMER CREDIT AGREEMENTS, Final Report 2009, Prepared by Dr. Gloria M. Soto (Universidad de Murcia, Spain)". Der henvises særligt til side 186-187 (**vedhæftet**), hvor der sondres mellem "overdraft" som defineres på samme måde som definition på "overdraft facility" i forbrugerkreditdirektivet og "credit card".

Endvidere kan henvises til **vedhæftede** uddrag af "European Commission's consultation on the study on tying and other potentially unfair commercial practices in the retail financial service sector", hvor der også sondres skarpt mellem "current account" og "credit card".

Det er på denne baggrund Finans og Leasings opfattelse, at "current account" i direktivets kontekst skal forstås som en kredit, der er knyttet - ikke til enhver konto - men specifikt til forbrugerens lønkonto i et pengeinstitut (det er alene pengeinstitutter, der må modtage indlån i form af løn). Dermed stemmer den danske oversættelse med ordet "kassekredit" også med den normale danske opfattelse af indholdet af dette ord.

Det afgørende for Finans og Leasing er, at kreditter, der knytter sig til kontokort eller kreditkort, og som ikke samtidig er knyttet til forbrugerens lønkonto i et pengeinstitut, dermed ikke er omfattet af direktivets definition på en kassekredit. Dette bør efter Finans og Leasing opfattelse præciseres i forbindelse med lovarbejdet, således at den danske fortolkning bliver i overensstemmelse med direktivet.

Med venlig hilsen

Christian Brandt

Direktør for Finans og Leasing

depending on usage was reported for what concerns fund transfers: in all these cases, no fee is applied beyond a given threshold, which qualifies this practice as a conditional rebate.

Table 51 – Results of the empirical analysis for Portugal

PORTUGAL	Combined product																
Hook Product	Bank deposits	Business/commercial insurance	Credit card	Current account	Debt card	Fire insurance	Fund transfers	Health/disability insurance	Home insurance	Insurance on payment tools	Life insurance	Means of payment, excluding debit/credit cards	Motor insurance	Other non-life insurance	Payment protection insurance	Pension product	Grand Total
Consumer loan				2				1			2		1	2	1		9
Corporate banking loan			1	2													3
Credit card								1		1	2			1			5
Current account	2		1		2		1				1	2				1	10
Fire insurance								1	1					1			3
Health/disability insurance				1													1
Mortgage loan				3		1		1	2		3			1	2		13
Motor insurance						1		2						1			4
Total Count of Hook Product	2	1	1	6	2	2	1	6	3	1	8	2	1	6	3	1	48

5.7.1.2.4 Denmark

In Denmark, tying and pure bundling are prohibited only as regards payment instruments. No provisions prohibit mixed bundling, preferential or exclusive agreements, conditional rebates, or forms of conditional sale. The results from the questionnaires answered by 4 respondents reveal that tying and bundling are practiced (20 instances reported), and current accounts are the most common gateway product.

One tying practice was reported in Denmark – between mortgage loan and current accounts, involving two sellers from the same financial group and located in the same country.

As regards other cross-selling practices, several instances of mixed bundling (with no financial advantage for customers) were reported, involving current accounts (with credit lines, home insurance, pension products and savings accounts); mortgage loans (with current accounts, home insurance, and consumer loans; pension products (with current account and savings account); and savings accounts (with reception and transmission of orders and with investment advice).

Multi-product rebates are also quite common in Denmark, with several instances reported, involving mostly current accounts (with mortgage loans and home insurance), home insurance (with motor insurance) and investment advice and portfolio management (with bank deposits).

Finally, only one case of conditioning practice was reported for Denmark, involving the obligation to have the salary paid into the current account.

Table 52 – Results of the empirical analysis for Denmark

DENMARK	Combined product													Grand Total	
	Bank deposits	Consumer loan	Credit card	Credit line / overdraft	Current account	Dealing on own account	Home insurance	Investment advice	Mortgage loan	Motor insurance	Pension product	Reception and transmission of orders	Savings account		
Current account				1	1				2		1		1	1	7
Home insurance											1				1
Investment advice	1														1
Mortgage loan			1			2		1							4
Motor insurance								1							1
Pension product					1										1
Portfolio management	1														1
Savings account								1		1				1	3
Total Count of Hook Product	2	1	1	1	3	1	4	1	1	1	1	1	1	2	20
Total Count of Combined product 1	2	1	1	1	3	1	4	1	1	1	1	1	1	2	20

5.7.1.3 Countries that rely on “soft-law” or self-regulatory schemes coupled with narrower legal prohibitions

5.7.1.3.1 Hungary

After the largest Hungarian bank was under investigation for abuse of dominance in providing particular combinations of services, the Hungarian financial supervisory authority issued recommendations in which it discourages financial institutions to practice tying and bundling. The text of the recommendations especially mentions loans but it aims at broader set of financial services combinations. Loyalty schemes must be deemed as justified commercial behaviour. As a result, in Hungary, tying and pure bundling are discouraged through soft law, unless justified with fair and rational market reasons. Mixed bundling with a financial advantage to the client is indeed allowed. Preferential and exclusive agreements are possible (if they provide a benefit or discount), provided that the customer has wilfully selected those offers. Rebates and promotions are allowed, subject to the provisions on misleading advertising and deception of consumers existing in the Competition Act.

Our 4 respondents revealed that financial services were tied or bundled in 11 cases, with current accounts being the most common gateway product (4 instances). The low number of instances where combinations of services were reported (11 cases) suggests that the recommendations had an impact on market practices. In any event, tying was observed in 8 cases, with mortgage loans being the most common gateway product: the most widespread tying practice involving mortgage loans entailed the tying with current accounts (more than 80% of the respondent’s customers were subject to this practice); however, mortgage loans are also tied with PPI and life insurance.

As regards mixed bundling practices, these involved mostly current accounts and life insurance products. Multi-product rebates were also observed, mostly in the insurance sector, and in particular involving motor insurance.

Uddrag af "EUROPEAN COMMISSION, DIRECTORATE GENERAL HEALTH AND CONSUMER PROTECTION - STUDY ON THE CALCULATION OF THE ANNUAL PERCENTAGE RATE OF CHARGE FOR CONSUMER CREDIT AGREEMENTS, Final Report 2009" – s. 186-187.

CREDIT PRODUCTS

- Instalment credit [ES: Crédito Pagadero en Cuotas]: provides the borrower with fixed amount to be repaid over a given period by a fixed number of payments called instalments. Instalments are usually constant over time, but they may be also increasing, decreasing or variable in amount. Examples of instalment credits are loans and hire-purchase agreements.
- Revolving Credit (or Line of Credit or Running Account Credit) [ES: Crédito Revolviente o Rotativo]: permanent reserve of credit whose limit is authorized by the creditor; the consumer repays the sum used according to the allowances stated in the credit contract and the reserve reconstitutes itself with the progression of the repayments. For example, if you have a credit limit of €1,000, spend €300 and then repay €100, you have €800 available to borrow. Examples of revolving credit are credit cards, revolving credit accounts, and overdraft facilities.
- Overdraft [ES: Descubierta (en cuenta)]: explicit credit agreement whereby a creditor makes funds available to a consumer which exceed the current balance in the consumer's current account.
- Overrunning [ES: Excedido (en cuenta)]: not arranged, but tacitly accepted overdraft.
- Linked Credit Agreement [ES: Contrato de Crédito Vinculado (a una compra)]: credit agreement where (i) the credit in question serves exclusively to finance an agreement for the supply of specific goods or the provision of a specific service, and (ii) those two agreements form, from an objective point of view, a commercial unit; a commercial unit shall be deemed to exist where the supplier or service provider himself finances the credit for the consumer or, if it is financed by a third party, where the creditor uses the services of the supplier or service provider in connection with the conclusion or preparation of the credit agreement, or where the specific goods or the provision of a specific service are explicitly specified in the credit agreement.
- Open-End Credit Agreement [ES: Contrato de Crédito de Duración Indefinida]: credit agreement with an unlimited period of validity.

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- Point of Sale (POS) Financing [ES: Financiación en el Punto de Venta]: credit facility linked to specific purchases (car, consumer durables, etc.) offered by the vendor.

CARDS

Types of cards:

- Prepaid card [ES: Tarjeta de Prepago]: a card that allows spending money which has been previously stored in the card.
- Debit card [ES: Tarjeta de Débito]: a card used to withdraw funds directly from a current account.
- Charge card [ES: Tarjeta de Cargo]: a payment card where the balance has to be paid off without interest charges at the end of an agreed period, usually one month.

- Credit card [ES: Tarjeta de Crédito]: a card account that allows borrowing of money up to a specified limit.

Mechanisms of drawdown in cards:

- Purchases [ES: Compras]: paying for items using the card.
- Cash Advance [ES: Anticipo de Dinero]: obtaining cash on the spot by using the card at a bank or an ATM. Usually, cards charge cash advance fees for this service.
- Balance Transfer [ES: Transferencia de Balance]: moving an outstanding balance or loan from one account or card to another. Usually, cards charge a balance transfer fee for this service.
- Money Transfer [ES: Transferencia de Dinero]: transferring money from one account or card to another.