Consumer Credit Directive Consultation

Department of Finance

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Introduction

We note that this is an initial consultation that focuses primarily on the areas of discretion that the directive allows Member States in terms of transposition and asks how, if at all, these areas where flexibility is permitted should be exercised.

The consultation also welcomes observations on any other aspect of the directive's transposition. We would suggest that the transposition should involve a serious examination of the impact of the so called 'maximum harmonisation' approach in the new directive on the existing Consumer Credit Act 1995 (CCA), itself a creature of 'minimum harmonisation' under the old directive. Thus, for example, the existing consumer credit legislation In Ireland liberally mixes provisions that are required to be transposed under the old directive with measures that were the creation of the houses of the Oireachtas at the time and were not necessitated by the directive. Will transposition of the new directive, as largely a maximum harmonisation measure, allow this approach to continue?

As an example, it looks to us that the revised directive will not regulate Hire Purchase (HP) agreements as we know them in Ireland. Article Two (d) of the directive excludes *'hiring or leasing agreements where an obligation to purchase the agreement is not laid down in the agreement itself or by any separate agreement; such an obligation shall be deemed to exist if it is so decided unilaterally by the creditor'.* Existing hire purchase provisions allow the Hirer to bring a HP agreement to an end at his/her election at any time or indeed to acquire ownership of the goods if the terms of the agreement, i.e. principally payment of all instalments, are complied with.[1] Thus, there is no obligation to purchase the goods imposed on a unilateral basis by the creditor. What therefore will happen to all the existing HP provisions in the CCA? Will they be removed and replaced elsewhere or will they continue in whatever form to be part of the same piece of legislation that transposes the new directive?

It is also clear that the existing CCA is considerably out of date in some areas that are not covered by the new directive. For example, Section 46, dealing with communication by creditors/owners with consumers, is badly in need of updating. Not only does it not take into account the use of methods and forms of communication not envisaged to any great degree in 1996 when the legislation was passed, such as mobile phone calls, text messages and e-mail; it is also arguably behind developments in the area of privacy law and the law in relation to harassment. It is also our view that regulation is needed in areas that are not currently regulated at all. For example, a matter of much concern recently is the failure of the State to regulate the debt collection industry at a time when many consumers are being pressurised into unsustainable arrangements by vigorous debt collection tactics. A second example is

[1] Section 63, Consumer Credit Act 1995

the need for regulation in the area of payment protection insurance, where many consumers have been 'hard sold' expensive insurance in recent years when availing of credit, in some cases borrowing at the same interest rate to pay for that insurance. The lack of transparent information and documentation at the point of sale and the inappropriateness of the product for the consumer's needs and means are areas of considerable concern. Again, however, the same question as above occurs. Where would any revised measures and new provisions find a home?

In summary, before going on to specifically comment on the questions posed in relation to the limited areas of discretion set out in the consultation, we would like to make the general point that there are many other questions to be asked and teased out in relation to how this transposition will be approached. How this will affect the existing CCA and the modernisation of rules in the CCA that require amendment regardless of the new directive seem to us to be critical issues from the consumer standpoint. Thus, we would certainly anticipate that this will not be the only submission that FLAC is likely to make on the transposition of the directive and the review of the existing consumer credit legislation that will be necessitated by it. It would be our intention to further comment in the future as the methodology for transposition of the directive is revealed.

There may be little extension of credit in Irish society right now, principally due to the excesses cause by an era of unbridled and in many cases reckless credit provision and unwise use of that credit by some. However, the credit crunch is unlikely to continue forever. The rules that are put in place in the course of this transposition and review of the consumer credit legislation generally are likely to last for many years. It is therefore vital in our opinion that the protection of consumers is at the forefront of the State's thinking in terms of new legislation, albeit within the confines of what the new directive will allow in the areas that it specifically provides for.

Since the above introduction was written, it has come to our attention that the State intends to transpose this directive by way of statutory instrument. We would have to strongly take issue with this approach. Because of the nature of the new directive, substantial swathes of the existing CCA will have to be amended in the transposition whereas other provisions will be unaffected. Fundamentally amending primary legislation with secondary legislation even if it is necessitated by the need to transpose a directive may be constitutionally dubious. More pertinently from our perspective, it is arguably anti-consumer and not in the interests of transparency, quite apart from being technically difficult. The CCA is already a difficult piece of legislation for consumers to access and understand. Amending it in this fashion will make it less accessible, even if a consolidated version is made available.

What is the rationale for transposition by statutory instrument? Presumably, one reason is to meet the transposition deadline. A second may be that there is no great appetite to fundamentally review the consumer credit legislation at a time when credit is not widespread. However, consumer borrowings are still taking place and the existing legislation, as we have pointed out in some examples above, is considerably out of date in many areas. It is also our view that in order to ensure a properly regulated and balanced consumer credit market, the CCA will have to be overhauled sooner rather than later and it is better to tackle this in one unified review than in a piece meal fashion.

Areas of discretion in the directive

Discretion 1 – Application of the Directive to organisations with a social character (Article 2.5)

To Credit Unions

It would appear that the principal matter to be considered here is the application of the directive to credit unions who on the face of it satisfy the criteria set out in (a) to (e) of article 2.5. Two potential exemptions apply here:

Partial exemption from some of the provisions of the directive, for example, Article 5 on the obligation to provide pre-contractual information to a consumer in advance of a loan being agreed

Total exemption from the directive, where the sum total of credit offered by credit unions in Ireland is less than 1% of the total amount of credit agreements entered into (by consumers) in Ireland.

On the latter point first, it is for the Department, presumably through the Registrar of Credit Unions and the Financial Regulator, to ascertain whether credit unions as a whole exceed this 1% threshold. We would be very surprised if they did not, so the question of total exemption would then become academic, although how this percentage might be measured might give rise to difficulties. In any case, should credit unions as a whole come under this threshold by any chance, we would be opposed to their total exemption from the directive.

Many credit unions provide substantial loans to consumers at interest rates that are in some cases above market rates (despite the 1% per month interest rate cap on loans[2]). It would be anti-consumer protection as well as presumably anti-competitive not to impose, on credit unions as on any other credit institution, the same documentary standards, rights to cancel agreements, terminate agreements early and sundry other protections provided by the directive on what are essentially commercial as opposed to social loans.

The question of partial exemption is more problematic in our view. Credit Unions in Ireland are certainly far from being homogenous entities. A number of so called 'breakaway' credit unions are not affiliated to the Irish League of Credit Unions (ILCU). In addition, many credit unions are substantial outfits more akin to banks. Others remain small with social lending as their primary purpose and to impose substantial documentary and other requirements upon them under the directive may be both too onerous and may push up the cost of that credit. Thus, it might be suggested that it would be fair to partially exempt credit unions from the directive in terms of social loans for relatively small amounts as opposed to personal loans on the scale offered by the mainstream banks.

It is also important to consider to which provisions of the directive credit unions may be partially exempted. It seems to us that in particular, **Article 5** – the necessity to provide pre-contractual

[2] See Section 38, Credit Union Act 1997

information, **Article 8** - the obligation to assess a consumer's creditworthiness and **Article 14** – the consumer's right of withdrawal from a credit agreement, are very relevant. Each of these confers/imposes potentially important rights/obligations. In relation to Article Five, it seems to us that a consumer taking out an average size personal loan from a credit union on a par with those offered by a bank should be entitled to the same pre-contractual information on the essential terms of the proposed credit agreement, in order to compare comparable offers of credit. On Article Eight, we feel that a credit union should be just as obliged to assess the creditworthiness of the potential borrower and check his/her capacity to make repayments where the loan is of any significant amount. Many credit unions are not subscribers to the Irish Credit Bureau and so do not have a ready source of information to rely upon. Equally, it is clear that a person can have the common bond in a number of different credit unions simultaneously – for example former area of residence, current area of residence and current place of work - and therefore potentially may take out a number of loans from credit unions simultaneously, with all the dangers of default that this may involve. Finally, in connection with Article 14, there is no reason why a borrower from a credit union should not have the right to withdraw from a hastily arranged credit agreement in the same manner as any other consumer who has rethought, for example, his/her capacity to honour his/her commitments.

In summary, therefore, we believe that there may be a case for partially exempting small value loans offered by credit unions with a social purpose from the rigours of the directive but not personal lending by credit unions of the type and amount also routinely offered by banks and other financial institutions.

To bodies that fall under the remit of the Registrar of Friendly Societies

The second part of this area of discretion asks whether bodies under the remit of the Registrar of Friendly Societies such as industrial and provident societies and co-operatives should be totally exempt from the directive. We are not sufficiently familiar with the activities of these bodies in terms of the extension of credit to make informed comment on this issue. However, some of the points made above would seem to us to still apply. If the loans are for any substantial amount and if the rates of interest are at or above market interest rates, it would seem to us that the consumer/borrower is entitled to the same protection provided by the directive as any other borrower. If loans are for small amounts at less than market interest rates, there may be a case for limiting the application of the directive. However, it would be our view, for example, that all borrowers should be entitled to a copy of the credit agreement containing the basic essential terms, regardless.

Discretion 2 - Application of the Directive to credit agreements where the consumer in certain cases is already in default of the initial credit agreement (Article 2.6)

The consultation asks whether there is a need to exempt certain provisions of the directive from proposed rescheduled credit agreements where a default by the consumer has taken place if:

Such arrangements are likely to avert the possibility of legal proceedings concerning such default, and

The consumer would not thereby be subject to terms and conditions less favourable than those laid down in the initial credit agreement.

In principle, it would be welcome if the exemption of certain provisions of the directive were to encourage creditors to reschedule agreements rather than bring legal proceedings against consumers, as long as it did not diminish the consumer's understanding of what the rescheduling committed him/her to. It would appear that the articles to be exempted are the same as outlined in relation to credit unions outlined above and given that this is a rescheduled as opposed to a new agreement, it would not appear on the face of it that a consumer would be unduly prejudiced. However, we would be concerned that there is no inbuilt mechanism for guaranteeing that the pre-conditions triggering the application of the exemption are verified. For example, how would it be ensured that the consumer would not, as a result of the rescheduling, be subject to less favourable terms than under the original agreement? Perhaps, in return for allowing the relevant provisions to be exempted, a specific right of the consumer to refer the fairness of the rescheduled agreement to a third party – for example, the Ombudsman for Financial Services – might be inserted.

Discretion 3 - Exemption of overdraft facilities from certain provisions relating to advertising, pre-contractual information and information in credit agreements (Article 4.2(c), 6.2 and 10.5(f))

These provisions of the directive allow Member States to provide that the Annual Percentage Rate of Charge (APRC) need not be quoted in adverts or documentation connected with the credit agreement in the case of the provision of overdraft facilities. The consultation asks whether this discretion should be exercised in Ireland's case.

The consultation also asks how this requirement might impact upon current requirements under Section 21 of the CCA 1995. The answer to this appears to be not at all, in that s.21 as it stands does not oblige a creditor to quote the APR (as it is currently named under the existing directive) in an advertisement for credit. It does however specify that where a rate of interest is mentioned in an advertisement for credit, it must be in the form of a clear and prominent statement of the APR.

In any case, it appears to us that the essential question to be answered here is to what extent (if any) consumers might be prejudiced by the omission of the APRC in any of the three media set out above. Given that advertisements, pre-contractual information documents and written credit agreements concerning overdraft agreements must provide details of the borrowing rate under the directive – the annual rate of interest whether fixed or variable – and this is likely to more easily understood by borrowers, it is questionable whether including a notional APRC for overdrafts is more likely to confuse rather than clarify matters for consumers.

Discretion 4 - Pre- contractual information (Article 5.6)

Article Five (1) imposes a general obligation on creditors, before the consumer is bound by any credit agreement or offer, to provide information on paper or another durable medium of the salient terms and conditions of the proposed credit. A Standard European Consumer Credit Information Form is set out in Annex II for this purpose. This is expressly intended, according to the wording of the article to *'provide the consumer with the information needed to compare different offers of credit in order to take an informed decision on whether to conclude a credit agreement'.*

It is clear from this wording that this article is conceived as a vital consumer information exercise to enable a considered decision to be made before the credit is availed of. The question follows; to what extent will potential borrowers examine this detail before making a decision. For example, it is welcome that the information includes not just the amount to be borrowed, duration of agreement, number of instalments, borrowing rate and APRC but also a warning regarding the consequences of missing payments, the interest rate applicable in the case of late payments and, where applicable, any charges payable for default. This is very important information.

It seems to us that Article 5 (6), obliging Member States to ensure in turn that adequate explanations are provided to consumers by creditors and where applicable credit intermediaries of the key features of the credit agreement on offer, is intended to reinforce the written information provided in the Standard Information Form. However, this sub-article allows Member States to adapt the manner by which and the extent to which such assistance is provided.

There is a danger here that the clear intention of this article might be undermined by diluting these obligations. In the credit boom of the past decade, it is evident from our experience that eagerness to sign on the dotted line and obtain the money, car or card as the case may be, combined with a lack of obligation on the part of creditors to explain the product on offer, has led to the creation of many unsustainable credit agreements. The growing over-indebtedness and, in turn economic and social turmoil that this has caused in Irish society is plain to see.

Thus, we would urge that this provision is interpreted as a potential debt prevention measure. This could entail imposing a specific obligation on creditors to take the potential customer through the Standard Information Form explaining the key terms of the agreement and their import, having already (in the manner of the Financial Regulator's existing Consumer Protection Code) ascertained that the product is suitable for the consumer's needs and within his/her budget. A consumer sign off provision could be included but this would have to be without prejudice to the right of the consumer to argue that the information was not explained but instead an immediate signature was sought by the creditor.

There are likely to be those, particularly in the credit industry, who would regard this as over-prescriptive and there will be many who will argue that such processes will push up the cost of credit. However, unfettered provision of and access to consumer credit is one of the reasons for the economic plight in which we now find ourselves. What we should be encouraging, if and when the dust eventually settles on our current crisis, is a balanced and fair market where sensible decisions to avail of consumer credit are made by consumers on the basis of transparent information furnished by responsible credit providers.

Discretion 5 - Right of withdrawal (Article 14.2)

As the consultation paper points out, Ireland does not have any existing provisions providing for a specific right of withdrawal from a linked credit agreement. Thus, there is no need to consider whether a lesser period than the 14 days specified in the new directive should apply. However, the paper nonetheless asks whether this discretion has any implication for the transposition of the directive in Ireland.

The CCA currently provides for a right of withdrawal from agreements (not including housing loans, credit card agreements or overdraft facilities) within 10 days, the so called 'cooling off' period.[3] However, the usefulness of this provision from a consumer perspective has by and large been fatally compromised since its inception by the provision of a waiver of the right to withdraw[4]. In our experience, consumers are routinely asked to sign this waiver and faced with the prospect of not getting the goods, cash or services until the cooling off period elapses, sign there and then and the right to withdraw is at an end.

Article 14 of the new directive again provides for a right of withdrawal, this time of 14 days. However, to judge by the wording of Article 22 (2) which provides that '*Member States shall ensure that consumers may not waive the rights conferred on them by the provisions of national law implementing or corresponding to this Directive',* there will be no provision for a waiver in any revised domestic legislation. This at least will provide for a real right of withdrawal, albeit at some potential cost to the consumer under the terms of Article 14, if it is exercised. However, it also appears that Member States may have discretion to allow creditors to postpone the drawdown of funds or the provision of goods under agreements as subsection(7) provides the article '*shall be without prejudice to any rule of national law establishing a period of time during which the performance of the contract may not begin'.* On the face of it, this could amount to the full 14 day period spanning the right of withdrawal. However, it is not clear whether this must be an existing law prior to the transposition or a provision that may be introduced as part of it.

It is also not entirely clear to us how the provisions in relation to linked credit agreements are to be interpreted. Firstly, a linked credit agreement is defined at Article 3 (n) as an agreement where the credit serves to exclusively finance the supply of goods (or services) and where the two agreements (the supply of the goods and the provision of the credit) form, from an objective point of view, a commercial unit. In turn, a commercial unit is deemed to exist where the supplier of the goods (or services) also supplies the credit (for example, a moneylender or utility offering credit sales) or where the creditor uses the services of the supplier in connection with the conclusion or preparation of the credit agreement or where the specific goods are explicitly specified in the credit agreement.

Two specific questions follow from this definition from our perspective as follows:

[3] Section 50 (1)
[4] Subsections (2) and (3)

Does this definition include personal loans issued by credit institutions (or utilities) to facilitate the purchase of motor cars (or other goods or services where applicable)?

If hire purchase agreements as we know them in Ireland are not covered by the directive, will the right of withdrawal not apply to them? If so, should domestic legislation nonetheless ensure that it does, given their prevalence in Ireland?

Personal loans

In relation to the first question, it is clear from the definition that where the supplier of the credit and the supplier of the goods are two separate entities, the credit agreement is only linked where the creditor uses the services of the supplier in connection with the conclusion or preparation of the credit agreement or where the specific goods are explicitly specified in the credit agreement.

A standard application for a personal loan from a bank in Ireland for the purpose of purchasing a motor car will generally state what the purpose of the loan is but will generally not involve any liaison between the bank and the garage where the car is purchased. Neither will the goods generally be explicitly specified in the credit agreement (make of car, registration etc) as they may not even be known at the time and are not security for the agreement. On the face of it then, this does not look to be a linked credit agreement. The borrower will go on to purchase the goods and as we understand it, will not have a right to withdraw from that contract. Thus, any right to withdraw from the personal loan that essentially financed the purchase of the vehicle looks to be compromised as the funds have been dissipated. This is less than satisfactory from a consumer protection perspective.

Hire Purchase

In relation to the second question, as we have already stated[5], it does not look like the new directive regulates Hire Purchase agreements as we know them in Ireland. Nonetheless, the typical HP agreement agreed in Ireland in the area of car finance is the epitome of a linked credit agreement. A potential customer visits a garage to look at cars, expresses an interest in a model and the sales person (who is inevitably on a commission to arrange the deal) asks if the customer is interested in finance. The garage is generally an authorised credit intermediary under the consumer credit legislation and has a letter of recognition from the finance house or each of the finance houses it acts for[6]. In terms of the definition of a linked credit agreement outlined above, the creditor is clearly using the services of the supplier in connection with the conclusion or preparation of the credit agreement.

Hire Purchase is expensive credit. In addition, due to the lacuna in the consumer credit legislation that in effect determines that HP is not a credit agreement as such because it is only a rental until the final

[5] See Page One
[6] Section 144

payment is made, there has been (and still is) no obligation to quote the APR rate of charge in a HP agreement. Thus, people are unable to compare the difference between the cost of it and the cost of a personal loan that will generally be far cheaper. Default interest rates in HP agreement are generally of the order of 1.5% to 2% per month so that a Hirer who gets into arrears finds their situation can deteriorate fast. The owner also has a right to seize the vehicle where one-third of the HP price has not been paid and the hirer has been notified that s/he is in default and has not remedied that default. Agreements are often for a five year period so that the vehicle the subject of the agreement may have little value by the time the right to purchase it is acquired. Indeed as a result of this phenomenon, rolled over HP agreements (where one agreement for a vehicle is prematurely brought to an end and a second agreement for an updated vehicle succeeds it) have become quite common in recent years, a practice not currently regulated by the CCA. In addition, where one HP agreement succeeds another, how the account is made up in terms of deposit and instalments paid and the right to an interest rebate is far from transparent in many cases and leaves the consumer open to exploitation.

In summary, therefore, given the frequency of HP agreements in the Irish credit market and the high costs of such agreements, we believe that a right of withdrawal should exist along the lines set out in the directive, notwithstanding that the directive would not seem to apply to HP. A waiver should not be permitted. Clearly, however, a garage and finance house should be entitled to delay the provision of goods and credit until the withdrawal period has elapsed, along the lines that seem to be envisaged by the existing Article 14 (7). The key question that arises here is whether the maximum harmonisation approach adopted by the directive (apart from the areas of discretion allowed for) will allow this to happen.

Finally, we might add that the area of Hire Purchase law and the rights of consumers therein should be reviewed in its entirety as soon as possible. We would also like to mention that in the course of the transposition of the first directive, all existing HP legislation that hitherto protected both consumer and commercial hirers to our knowledge, was consolidated into the consumer credit legislation. Thus, it is our understanding that it only applied to consumers from then, leaving the likes of sole traders with less protection including, for example, the right to terminate the agreement early. [7]

Discretion 6 - Right of withdrawal (Article 14.6)

No. If credit agreements concluded through the services of a notary ever become an occurrence in Ireland, the issue can presumably be revisited at that stage.

Discretion 7- Early Repayment (Article 16.4)

The history of Ireland's compliance with the first directive under the heading of the right to an interest rebate leaves a huge amount to be desired. Despite Article 8 of the 1987 directive and Sections 52 and 53 of the CCA 1995 providing for the right to a rebate and enabling the Central Bank to introduce a

[7] Hire Purchase Acts of 1946 and 1964 and Part Three of the Sale of Goods and Supply of Services Act 1980

formula or formulae for different classes of credit agreement, no such formula/formulae have ever been introduced. This is nothing short of a dereliction of a statutory duty and has led to situations where consumers have been denied an interest rebate in the event of early repayment of a loan that arguably they were legally entitled to (by virtue of the doctrine of direct effect).

In practice, a number of finance houses in the area of car finance hire purchase in Ireland have informally used a formula called the Rule of 78 to calculate this rebate. However, in 1997 the Office of Fair Trading in the UK declared this method of applying the rebate to be unsuitable to loans offered by non-status lenders and ordered it to be discontinued '*as it tends to produce a settlement figure which is excessive relative to the amount borrowed and repayments made and relative to the costs incurred by the lender. Lenders should discontinue its use at the earliest opportunity, and should not apply it rigidly to existing loan agreements without some form of cap to ensure that payments on early redemption are not excessive'.*[8]

Thankfully, Article 16 of the new directive is far more prescriptive and leaves far less room for manoeuvre than its predecessor. We welcome the fact that the creditor's right to claim compensation for early repayment will not apply to variable rate loans. Where interest is charged on a reducing balance as is the case with many personal loans, the rebate question is not hugely relevant as we understand it. However, where for example, a loan is offered on the basis of equal instalments over the lifetime of the loan – credit sales, hire purchase, moneylending – the question of the rebate becomes critical.

We would not have enough financial expertise to say whether there should be a specific threshold below which no compensation should be payable for early repayment as the consultation requests. However, we welcome the principle that creditor compensation must be fair and objectively justifiable and linked only to possible costs (rather than loss of future profits) that might occur for the creditor in the event of early repayment. In our view, therefore, a creditor seeking compensation should have to justify any such claim. We would also suggest that any restrictions adopted by the State should reflect the fact that consumers are already paying a premium rate to avail of many loan products and the creditor will in most instances have made a handsome profit at the point of early repayment of the loan.
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Finally, under this heading, we would again be concerned that these rights for the consumer to terminate agreements early and to have to pay only a limited amount of future interest (if any) should also apply in the case of Hire Purchase agreements where they are particularly needed, despite the fact that the directive may not apply to HP agreements generally.

Other issues for consideration in the transposition

Issue 1 – Linked credit agreements (Article 15.2)

[8] Non Status lending – Guidelines for Lenders and Brokers, Revised November 1997 OFT 192 –Pages 18 -19

We have always been curious in FLAC about the inter-relationship between Section 45 of the CCA and another provision not mentioned in the consultation that we believe is also of relevance on these questions. This provision is Section 14 of the Sale of Goods and Supply of Services Act 1980 which to our knowledge was not repealed or amended by the CCA. It reads as follows:

'where goods are sold to a buyer dealing as consumer and in relation to the sale an agreement is entered into by the buyer with another person acting in the course of an agreement (in this section referred to as a finance house) for the repayment to the finance house of money paid by the finance house to the seller in respect of the price of the goods, the finance house shall be deemed to be a party to the sale and the finance house and the seller shall, jointly and severally, be answerable to the buyer for breach of the contract of sale and for any misrepresentations made by the seller with respect to the goods'.

In our view, s.14 of the 1980 Act envisages a linked credit agreement in the form of, for example, a credit sale. Although it does not explicitly mention credit in the section, it is clearly designed to apply to a situation where a retailer acting as an intermediary facilitates the purchase of goods by a customer by arranging for credit to be provided to that customer. The finance house pays the retailer for the goods. In turn, the customer repays the finance house in instalments with interest. This section goes on to deem both the finance house and retailer to be parties to the sale and to be jointly and severally liable for any breach of contract. A parallel section (Section 80) exists in the CCA in relation to hire purchase, whereby the person 'by whom any antecedent negotiations are conducted' (for example a garage) is also deemed to be a party to the Hire Purchase agreement and therefore jointly and severally liable.

The essential point is that these provisions appear to be stronger than the existing s.42 in the CCA. They do not impose any pre-condition on the consumer to legally pursue the supplier if goods are faulty before turning his/her attention to the creditor, since the creditor (i.e. finance house) is already a party to the sale and therefore already jointly and severally liable. Finally, it is also worth noting that as far as can be seen the term 'finance house' is not defined in the 1980 Act and could therefore conceivably cover any institution or lender acting in the manner envisaged by the section.

Issue Two – Durable medium

Articles Five, Six and Ten each allow the information in question to be provided on paper or another durable medium. Durable medium in turn is defined as meaning 'any instrument which enables the consumer to store information addressed personally to him in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored'. We assume that the principal medium envisaged by this definition is the hard drive of a computer. For example, that the pre-contractual information required by Article Five or Six and/or the credit agreement required by Article Ten could be e-mailed to the consumer in word form and saved by him or her and stored for future reference.

As the consultation anticipates, the use of the durable medium option may have implications for existing provisions in the CCA, in particular the necessity for the creditor to furnish the borrower with a copy of a credit or hire purchase agreement signed by the borrower/s and on behalf of the lender at the time the agreement is made or within 10 days of its making. We would not be in favour of an approach that diluted this right to a signed agreement. Similarly, the consumer is entitled to request a copy of the agreement under Section 43 of the CCA at any time during its currency and the creditor or owner must comply with such a request. We would also be in favour of maintaining this provision. Agreements are often mislaid by consumers and it is common for legal professionals or money advisors to require verification of debts for negotiation purposes.

The question arises as to whether the State has the discretion in the transposition of the directive to insist on the production of a hard copy of the signed agreement. If this is the case, we would be in favour of providing for this in the transposition. In the alternative, it should be possible for the borrower to have the right to choose whether s/he receives a hard copy or details in a durable medium where s/he has access to the appropriate hardware.

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