



LEGAL ALERT

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New Directive on consumer credit

Directive (EU) 2023/2225 of the European Parliament and of the Council of 18 October 2023, on credit agreements for consumers (hereinafter, the "New Directive") was recently published on October 30, reinforcing consumer protection in consumer credit agreements and repealing Directive 2008/48/EC.

Directive (EU) 2023/2225 reinforces consumer protection in consumer credit agreements.

From the New Directive we highlight the following measures:

Scope of application

Considering that the credit offered to consumers has evolved and diversified significantly, and new credit products have emerged, the rules on contracting consumer credit now cover other contracts, including:

- ✓ Credit agreements involving a total amount of credit of less than EUR 200 and credit agreements involving a total amount of credit of more than EUR 100 000.
- ✓ Buy-now-pay-later schemes.
- ✓ Credit agreements involving credit granted free of interest and without any other charges.

Advertising of credit agreements and disclosing standardized information

The New Directive establishes, with regard to standardized information, that (i) this information must be provided in a clear, concise and visible manner by means of a representative example, and must be distinguished from any additional information relating to the credit agreement, (ii) temporary promotional conditions must be clearly identified as such, (iii) consumers should be able to see all the essential information immediately, even if they do so on the screen of a mobile telephone (iv) the total amount of credit and the duration of repayment chosen by the creditor in relation to such a representative example should correspond as far as possible to the characteristics of the credit agreement which the creditor is advertising.

Before consumers accept credit offers, they should be presented with all the standard information that must be included in advertising of credit agreements.

In addition, advertising of credit agreements should contain, in all cases, a clear and prominent warning to make consumers aware that borrowing money costs money.

Advertisements that encourage consumers to seek credit by suggesting that credit would improve the financial situation of those consumers or specifying that registered credit in databases have little or no influence on the assessment of a credit application or even

suggesting that credit is a substitute for savings or can increase a consumer's standard of living are prohibited.

Creditworthiness assessment

The New Directive reinforces creditworthiness assessment measures, requiring that the consumer's ability and propensity to repay the credit is assessed and verified before a credit agreement is concluded in order to prevent irresponsible lending practices and over-indebtedness.

If the creditworthiness assessment is carried out using artificial intelligence (AI) systems, involving automated processing, the consumer should have the right to obtain human intervention on the part of the creditor.

Consumers should have the right to obtain a meaningful, comprehensible explanation of the assessment made and of the functioning of the automated processing used, including the main variables, the logic and risks involved, as well as the right to express the consumer's point of view and to request a review of the assessment of the creditworthiness and a review of the decision on whether to grant credit. In addition, the consumer should have the right to be informed about those rights.

Pre-contractual information

In order to be able to make their decisions in full knowledge of the facts, consumers should receive adequate pre-contractual information.

Pre-contractual information should be provided through the Standard European Consumer Credit Information form set out in Annex I to the New Directive.

To help consumers understand and compare different offers, the key elements of the credit should be provided in a prominent way on the first page of that form, through which consumers should see all essential information at a glance, even on the screen of a mobile telephone, such as the total amount of the credit, the interest

rates, the annual percentage rate of charge and the costs applicable in the event of late payment.

Modernization and digitalisation

As a measure associated with strengthening the protection of European consumers applying for credit, and in order to adapt to the evolution associated with the digitalisation, it is established that information will have to be provided in a format suitable for the digital context, by means of clicking, scrolling or swiping, allowing consumers to immediately view all the essential information, on the screen of a cell phone, for example, whether vertically or horizontally.

Personalised offers based on automated processing

When consumers are presented with a personalised offer that is based on automated processing of personal data, they must be informed of this fact in a clear and comprehensible manner, so that they can take the potential risks into account in their purchasing decisions.

Right of withdrawal

The New Directive establishes that consumers should have a right of withdrawal without penalty and with no obligation to provide justification. However, to increase legal certainty, the withdrawal period should in any event expire 12 months and 14 days after the conclusion of the credit agreement if the consumer has not received the contractual terms and conditions and information in accordance with the New Directive. The withdrawal period should not expire if the consumer has not been informed about his or her right of withdrawal.

Non-discrimination

Cancer survivors are granted the right not to be discriminated against because of their illness when taking out financial and insurance products, namely life insurance, health insurance and credit insurance. For this purpose, insurance policies must not be based on personal data concerning consumers' diagnosis of oncological diseases

after a relevant period of time following the end of the medical treatment of those consumers. Such period of time should not exceed 15 years starting from the end of the medical treatment of the consumer.

Also, as a measure associated with ensuring non-discriminatory treatment of consumer loan applicants, it will not be possible to differentiate based on the consumer's nationality or place of residence. Nevertheless, objectively justified reasons for different credit conditions remain possible.

Unsolicited granting of credit

Unsolicited granting of credit, including non-requested pre-approved credit cards sent to consumers, the unilateral introduction of a new overdraft facility or overrunning or the unilateral increase in the limit of a consumer's overdraft, overrunning or credit card, is prohibited.

Debt advisory services

Given the significant consequences of enforcement proceedings for both creditors and consumers, the New Directive stipulates that debt advisory services must be made available. It is also established that creditors must, where appropriate, to exercise reasonable forbearance before enforcement proceedings are initiated, based on an assessment of various elements, such as the consumer's individual circumstances.

The New Directive recognises that a broad harmonisation of provisions in this area is necessary to ensure that all consumers in the European Union benefit from a high and equivalent level of protection and to create a smoothly functioning internal market. To this end, Member States should not be allowed to maintain or introduce national provisions diverging from those laid down in the New Directive on harmonized matters, unless otherwise provided for therein.

The New Directive repeals the current Directive 2008/48/EC, transposed by the Portuguese legislator through Decree-Law 133/2009 of June 2.

Member states are now given two years (until November 20, 2025) to enact and publish the necessary laws, regulations and administrative provisions to comply with the New Directive.

To access the full version of Directive (EU) 2023/2225 of the European Parliament and of the Council of 18 October 2023 on credit agreements for consumers, please click [here](#).

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