

## Linked credit

In accordance with article 3, §21 of the Directive, for a credit agreement to be linked, two conditions must be fulfilled. These conditions are **cumulative**:

*(a) the credit or the services in question are used exclusively to finance a contract for the supply of specific goods or the provision of a specific service; and*  
*(b) from an objective standpoint, these two contracts constitute a single commercial unit; a commercial unit is deemed to exist when the supplier or service-provider himself finances the consumer's credit or, in the case of financing by a third party, when the lender or participating credit service-provider has recourse to the services of the supplier or service-provider for the conclusion or preparation of the credit agreement **or of the participating agreement for the provision of credit services when specific goods or the supply of a specific service are specifically referred to in the credit agreement or in the participating credit services;***

*A commercial unit: is deemed to exist in three circumstances:*

- When the vendor himself finances the credit for the consumer;
- When the lender calls upon the services of the vendor to conclude or prepare the credit agreement ;
- When specific goods are specifically referred to in the credit agreement.

As in the current text of the Directive, and that of 2008, this third circumstance creates real difficulties of interpretation in practice. This circumstance in no way illustrates the idea of a commercial unit (in the economic meaning of the term) and is redundant, given the first cumulative condition referred to in point a).

Furthermore, this circumstance leads to the consequences of linked credit being attached to any loan referring to the financing of goods. This gives rise to systematic joint liability and a share in liability between the lender and the vendor, the thrust of which is to make the lender *de facto* guarantor of every purchase financed by credit. In economic terms, this cannot be the aim pursued.

This would mean that when a credit agreement is concluded with a lender or a bank, and where the agreement specifies that the loan is intended for the purchase of a car, the lender or the bank would systematically share liability with the supplier with whom it had no connection. In the event of a dispute, the lender would have to suspend or, in the worst case, cancel the credit without any recourse against the vendor.

In Belgium, penalties associated with requalification have serious consequences (notwithstanding any criminal penalties associated with the absence of the required declarations in the agreement under article VII.78 of the CDE): in some cases pending before the courts, in addition to cancellation of the agreement, reimbursement of the sums already paid by the borrowers to the lender has been ordered, whilst benefiting preservation of the property.

This case law, and the consequences caused by the 3<sup>rd</sup> circumstance referred to in b) will necessarily constitute a brake on cross-border credit, although this is precisely one of the aims pursued by the said directive.

Furthermore, on reading recital 14, the latter leaves an option open to member states: *"Furthermore, member states could also apply this directive to linked credit that does not fall within the definition of linked credit as it appears in this directive. Consequently, the provisions of this directive concerning*

*linked credit agreements could be applied to credit agreements used only partially to finance a contract relative to the supply of goods or services.”*

Consequently, exercise of this option by member states and the problems raised by the 3<sup>rd</sup> circumstance set out in point b) could lead to the sector no longer financing certain more risky purchases such as PV panels and second-hand vehicles. The definition of linked credit is here also extended to loans permitting both the purchase of goods and services and the granting to the consumer of a cash reserve. Which cannot be accepted from an economic standpoint and impairs access to cross-border credit.

Proposal : Delete the 3<sup>rd</sup> circumstance in point b) insofar as this circumstance constitutes a simple legislative referral to the first condition in point a).

Delete the option open to member states concerning extension of the definition of linked credit to so-called “mixed” credit (opening a line of credit to enable financing of minor goods and services for the purpose of cash flow).