

## **Eurofinas response to the European Commission's public consultation on the New consumer agenda**

### **Introduction**

Eurofinas, the voice of European specialised consumer credit providers, welcomes the opportunity to contribute to the European Commission's public consultation in relation to the New consumer agenda, and especially its focus on the review of the Consumer Credit Directive (CCD).

We remain fully committed to the Commission's objectives in providing European consumers with the highest level of consumer protection, a wide choice of products suitable to their needs and the improved functioning and innovation of the retail financial services market.

Our comments should be read in conjunction with our response to the consultation's general questionnaire, to which we would like to elaborate further on in relation to a number of specific issues.

We remain at the Commission's disposal, should the need for further clarification or any form of assistance be required/desired.

**Eurofinas is entered into the European Transparency Register of Interest Representatives with ID n° 83211441580-56**

## **Scope & level playing field**

In our view, the directive's existing scope, covering loans between EUR 200 and EUR 75,000, and excluding certain specified products, remains broadly relevant to account for the current market reality and provides consumers with a high level of consumer protection.

The scope of the CCD covers the vast majority of products that the framework was designed to regulate in a proportionate manner. Extending the scope would risk the latter and fail to provide for an appropriate consideration between risks, benefits and costs, as well as jeopardising the provision of products relevant for, and appreciated by, European consumers.

The key focus should remain on the proper and full enforcement of the existing framework, and ensuring the adherence to the principle of the same activities, same risks, same rules, same supervision. This can be supported by potential adaptations and/or guidance to clarify the application of the framework to new products/providers, as well as ensuring that Member States address issues pertinent to their local jurisdictions but that lack an union-wide element.

It is therefore imperative that before any changes to the framework's scope are made, careful consideration is given to ensure that a proportionate approach is maintained in order to avoid an undue increase of the administrative burden and the overall complexity of the framework. Such a development would only serve to limit the provision of well-established and sought-after products supporting the European economy and its consumers.

## **Provision of information**

The CCD brought forward an important targeted harmonisation on how and what information consumers are to receive at the various stages of the customer journey. However, with the provision of large amount of information, the risk of information overload is substantial. This is further amplified by the duplication of information at the various stages, i.e. at the advertising, pre-contractual information and contractual stages.

The issues are further accentuated through the increased prevalence of digital distribution channels, not least the use of mobile devices. It has become increasingly difficult to ensure that the consumer is able to make an informed choice and, at the same time, to provide for a customer-focused, seamless journey. The consumer may often be overwhelmed by the onerous amount of information, which, while prescribed, is often viewed as complex and technical. The vast amount of information to be provided already at the advertising stage does not, in practice, help the consumer to compare products in a satisfactory manner, e.g. by allowing for a focus on key details (APRC and the monthly instalments, etc.).

The CCD, which was introduced in a paper-based-era where face-to-face contact with the customer was the norm, provides for a number of challenges throughout the customer's digital journey. When advertising via social media and other digital channels, lenders encounter substantial challenges in providing the required information in an accessible way due to space/time limitations. At the pre-contractual stage, the CCD sets out strict rules for the content and form of the Standard European Consumer Credit Information (SECCI) which jeopardises the possibility of an effective, fully digital process. When a customer utilises a smartphone or a tablet, it takes between 30 to 150 swipes to review the SECCI, preventing the customer from effectively processing and assessing the information without moving to a different platform or distribution channel.

The review of the CCD provides for the opportunity to better adapt the information requirements to the digital channels, to simplify and to streamline the information relevant to the different stages of the process as well as to the complexity and value of the loan. This would help consumers to make informed comparisons and decisions, and, at the same time, meet consumers' demand for a smooth and seamless experience. It would also allow for the effective application of tools, such as hyperlinking or other technical measures, e.g. allowing a customer simple and instant access to all potentially relevant information at any time in the process.

More information does not equate a better ability for consumers to make an informed choice, instead they tend to benefit from a focus on key aspects of the credit product, allowing them to more easily compare product offers and opt for the better offer.<sup>1</sup>

A further issue to consider is how to meet both the CCD's timing requirements ("in good time") and the consumers' expectations for a smooth, one-click experience. The timing for the provision of pre-contractual information was firmly assessed in the adoptions of both the Consumer Credit Directive and the Mortgage Credit Directive. In both cases, as a consequence of the variety of business models and national approaches, one specific future point in time applicable to all products for the delivery of the pre-contractual information, could not be identified without disproportionately interrupting established and well-functioning processes across the EU.

The provision of the pre-contractual information, together with the other Terms and Conditions, right before signing the contract, provides for the suitable approach for simple products, such as consumer credit, which are characterised by lower amounts and durations than mortgage credits. This is especially of relevance for the provision of credit at the point of sale, be in a physical or in an online/e-commerce setting. In both cases, consumers wanting to obtain financing for their purchases do not expect, and are not willing to endure, unnecessary delays.

When considering the credits in question, the existing right of withdrawal and the framework against unfair commercial practices mitigate the potential risks and challenges. The possibility of accessing comprehensive information online at any stage (in, and before, the transaction) must also be considered.

Limiting consumer access to these types of products at the point of sale, by effectively hindering the provision of the pre-contractual information and the purchase in a combined and reasonable time frame, would inhibit the distribution of consumer credit with (e-)commerce partners, thereby disenfranchising consumers and damaging an important segment of the real economy without providing any added benefit to consumers.

## **Responsible lending**

Responsible lending is a priority for consumer credit providers. The existing framework, with its principle-based approach, ensures the relevant rules on the subject-matter. Further standardisation of processes is likely to lead to consumer detriment by means of unjustified financial exclusion and the unwarranted disruption of well-functioning tools and markets.

With consumer loans typically being of short duration and relatively low value, they must be distinguished from other types of loans, e.g. mortgages which, due to the size and duration warrant a differing regime. The advent of new online consumer providers licensed in other EU Member States necessitates closer attention to the issue of ensuring a level playing field and the relevant enforcement of existing rules.

The obligation to properly assess an applicant borrower's creditworthiness forms part of the core activities of financial institutions, and the risk and credit-granting policies fundamentally influence the commercial policies of lending firms. The degree of flexibility provided in the CCD is not to be equated with lower standards. The flexibility is needed to properly take account of the characteristics of retail lending, the range of products covered as well as the differing operational realities at the national level.

Any measures taken need to ensure sufficient flexibility so that consumer finance providers can continue to serve trustworthy but atypical customer segments based on their expertise and customer knowledge, and do not unnecessarily stifle lenders' ability to innovate and promote the uptake of new technologies.

In this context, it is important to also recall complementary work and measures. The European Banking Authority's final guidelines on loan origination and monitoring was published in late Spring 2020, and are to be fully implemented in steps over the coming three years. The process of bringing these guidelines forward already showcased the difficulties in trying to include too many products and different markets with varying market characteristics into one instrument. Moreover, they will require important

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<sup>1</sup> Competitive markets and consumer welfare, <https://www.en.kfst.dk/media/h11nghbg/consumers-benefit-from-simplified-information-disclosure.pdf>, Danish Competition and Consumer Authority, 2020.

and extensive adaptations by lending institutions. As such, it would not be advisable to pursue any amendments on creditworthiness until the existing changes and their impact can be appropriately assessed.

Codes of good practice, providing guidance and general principles by which lending institutions must operate and establish the standards of behaviour which are expected from them, are commonly set out. The existence of these codes and the strict adherence thereto are a testament to the commitment of the consumer credit industry to sound lending practices and safe credit markets. Moreover, the consumer credit industry welcomes educational programmes undertaken by public authorities, consumer representatives and firms which aim to increase consumers' financial literacy. In this context, we believe public authorities have a leading role to play in coordinating existing actions.

By the same token, we support appropriate assistance to consumers facing payment issues, e.g. through debt advice services, but believe that such services are most suitably provided by public authorities. To provide the best level of support, the broadest possible approach is needed. In many cases, the inability to meet recurring expenses is unexpected and due to sudden and unforeseen changes in personal circumstances, e.g. unemployment, illness or divorce, etc. This explanation is particularly pertinent during the current pandemic. Imposing formal financial contractual obligations on lending institutions severely risks undermining efforts to assist individuals in need. As identified by Eurofound, debt problems in low-income groups often relate to non-payment of utility or telephone bills, rent, taxes or fines, debts with friends, or healthcare costs, rather than debts connected to consumer or mortgage loans.<sup>2</sup> Moreover, availability of appropriate solutions, is almost exclusively governed by a multitude of frameworks outside of the CCD, which often differs between the Member States.

#### **Access & content of credit databases**

In carrying out its obligations as to the assessment of an applicant borrower's creditworthiness it is vital that the lender is equipped with the right tools and the data required. It is important that the CCD framework does not prohibit the gathering of comprehensive data on the applicant borrower's situation and existing financial constraints. However, it is also necessary to consider the varying national legal situations and local market characteristics, where the relevant data needs and availability are not fully aligned. Moreover, with the current developments of open banking solutions, business models may not have to rely on access to traditional credit databases. It would therefore be unwise to further provide for a prescribed solution under the CCD rather than allowing for a technology-neutral and innovation-friendly approach, while at the same ensuring a level playing field between lenders, and further enabling cross-border access to existing databases, on a reciprocal basis.

#### **Responding to exceptional circumstances**

The crisis brought on by the COVID-19 pandemic remains and it will only be possible to assess its full impact over time. Lenders have been committed to support the economy since the outset, including maintaining, where possible business as usual, and to ensure the best possible outcome for borrowers and their long-term financial health. In this regard, we want to stress our commitment and contribution to the development of the European Commission's best practice recommendations to provide relief for consumers and businesses.

However, we fear that, at this stage, it is difficult to draw comprehensive conclusions, and question whether it is possible to find a relevant one-size-fits-all solution to future crises of this unimaginable magnitude. Moreover, the pandemic has struck the Member States in different ways and a wide range of different responses have been put in place.

To date, the flexibility provided for within the existing prudential framework has proven to be key, together with sufficient flexibility in the applicable framework to allow for tailored solutions where necessary. e.g. by allowing for the focus on relevant information provision and avoiding unnecessary administrative and stressful processes.

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<sup>2</sup> Addressing household over-indebtedness, [https://www.eurofound.europa.eu/sites/default/files/ef\\_publication/field\\_ef\\_document/ef19044en.pdf](https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef19044en.pdf), Eurofound, 2020.

While we anticipate further action at the European level, it is too early to assess the full impact of the crisis and that a broader instrument, involving not only credit providers, should be considered to support the recovery of the European economy and protect the long-term financial health of European citizens.