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EBF's views on the evaluation of the Consumer Credit Directive

The European Banking Federation is the voice of the European banking sector, uniting 32 national banking associations in Europe that together represent some 3,500 banks – large and small, wholesale and retail, local and international – employing about two million people.

In light of the crucial role that banks play in financing both the economy and consumers' investment projects through the provision of credit, the EBF would like to take this opportunity to express its views and provide its insights on the European Commission evaluation of the Directive. In this context, the need to review this directive should be examined in the broader context of economic priorities following the COVID-19.

General remarks

We believe that the Directive on consumer credit provides a sound and solid framework on fair access to credit, together with clear provisions on consumer protection. The credit worthiness assessment requirements, for example, establish a set of rules ensuring, not only consumer protection, but also that costs of over indebtedness and any resulting non-payment of loans be minimised.

For the above-mentioned reasons, we suggest that any effective evaluation of the Directive should focus on:

1. the enforcement and adequate implementation of existing rules to reduce regulatory fragmentation rather than on additional requirements;
2. the supervision of all market participants to ensure the same level of consumer protection;
3. the provision of a future-proof and technology-neutral text that enables the Directive to be effective despite the fast technological developments;
4. such adequate implementation assessment should also focus on gold-plating practices from Member States, since the provisions of the Directive should be consistently applied throughout the EU, without creating fragmentation that has a detrimental effect to the creation of an EU level playing field, and can lead to unfair competition among Member States.

More detailed view

The EBF strongly suggests that, if nevertheless a review should be pursued by the European Commission, it should target only the elements of the Directive where a clear benefit for both consumers and lenders can be achieved. More specifically, the changes should aim at streamlining the existing rules in order to address the inefficiencies brought by standardised provision of information and integrate the context of fast-moving technology to adapt a more technology-neutral approach.

➤ *A relevant scope of the Consumer Credit Directive*

Generally speaking, the current scope of the CCD, as provided by Article 2, is still relevant. More specifically, the EBF believes that the application of the Consumer Credit Directive to credit agreements between EUR 200 and EUR 75 000 is relevant for the EU credit market as it provides clear and efficient rules on the provision of credit.

In this regard, we believe that the focus should be on further clarifying and enforcing the existing rules in order to ensure that all lending businesses are captured by the scope of the Directive and equally supervised. More specifically, we believe that better consumer protection would be ensured if all the credit providers would apply the same transparency obligation, conduct of business rules, solvency requirements, complaints handling rules etc. Therefore, we suggest not focusing the attention on the amount of the credit lent to consumers, but rather on setting the same rules for all consumer credit lenders.

➤ *A flexible and future-proof text to ensure tailored and understandable provision of information*

With regards to information provided to consumers before, during and after the conclusion of the credit agreement, we support the objective of the Directive in providing adequate information to consumers. However, we notice that the requirements laid down by the Directive often overload consumers with information that can potentially be detrimental for them as the essential aspects of the financial products can be overlooked because of decision fatigue or an ambiguity aversion. Therefore, effective pre-contractual and contractual information should contain the relevant parameters of the credit contract, but also be simple and concise enough to ensure that consumers are not overwhelmed with the information provided and can read it on digital devices.

In this regard, we recommend that the European Commission refrain from introducing additional requirements but consider whether existing rules could be streamlined in order to be more effective and to fit in an ever-changing digital world.

We believe that, in order for the Directive to be more effective, it should ensure a certain degree of flexibility to allow consumers to benefit from tailored and specific information on financial products that can be easily processed and understood. A certain degree of flexibility would, for example, allow information to be delivered and processed through different channels such as personal computers, mobile devices or tablets.

Experience shows that consumers demand clear and simple information related to the basic features of the contract, such as the duration of the agreement, the amount to be repaid with the frequency agreed and the interest rate applicable.

For this reason, we believe that, for example, the requirements for information to be provided by "durable medium" should not be interpreted narrowly as requiring paper documentation but in a way that also considers technology developments and digitalisation (e.g. cloud storage, electronic post-box and further simplification of digital identification/signature). This would facilitate the information provision process, while ensuring a better consumer journey and a reduction in costs.

➤ *Flexible Credit Worthiness Assessment to guarantee financial inclusion*

Flexibility in the credit worthiness assessment process should be preserved. In this respect, we strongly recommend the European Commission to refrain from rigid, detailed and standardisation requirements of the credit worthiness assessment as this risks preventing certain categories of consumers from accessing credit and thus causing financial exclusion.

More specifically, by setting common standards for credit worthiness assessment, many consumers may be rejected by all regulated consumer credit providers within the EU, posing in this way risks to financial inclusion. This could also lead to situations where consumers might be pushed, in some EU jurisdictions, towards riskier alternatives, such as pay day lending. Adaptation of the criteria to national market peculiarities is indeed necessary and possible by allowing flexibility in the data and the scoring process.

Establishing rigid indicators would not allow services providers to take into consideration the particularities of their clientele in their credit worthiness. Same indicators have different implications in some Member States because of saving habits, different taxation models, risk appetite, cost of education for children and social/health assistance, among others. Mechanically applied criteria also risk excluding low income borrowers or borrowers with atypical profiles (such as self-employed) from accessing credit within the European Union.

Therefore, we strongly recommend refraining from any rigid and standardised requirement related to credit worthiness assessment but to allow the process to be based on the knowledge of national particularities and the expertise of the lender.

➤ *Activity-based approach and technological-neutrality as cornerstones of the digitalisation of the financial market*

The EBF believes that the digitalisation of the banking industry is a fundamental tool that can support consumers in accessing credit within the Member State and on a cross-border level.

We have nevertheless noticed that gold-plating practices undertaken by Member States have prevented customers from fully achieving the benefits brought about by digitalisation, amongst many others. Some national practice leads to major obstacles to digitalisation on the one hand and competition on the other hand – by naturally reducing the demand for cross-border selling activities. Therefore, we suggest ensuring that existing rules are enforced, with no gold-plating practices such as handwritten signatures. In addition, since technology is moving faster than regulations (which tend to lag behind), we recommend focusing on a technology-neutral wording rather than trying to catch up the movement with rather limited results.

The spectrum of the credit institutions and of the digital channels within the EU financial market has greatly increased thanks to the technological development of the market. We recognise that the scope of the CCD is to ensure a strong and harmonised consumer protection framework, regardless of the service provider. In order to enforce and guarantee a high degree of protection to consumers, we believe that regulation should be based on an activity-based approach rather than provider-based approach. In this respect, we witness significant loopholes regarding consumer protection rules. For examples, when credit is provided by lenders which do not fall within the scope of the Consumer Credit Directive and therefore do not need to comply with its requirements. In order to enhance harmonisation further in the EU credit market, and hence in consumer protection, all the players should apply the same rules on responsible lending, transparency and compliance. For this purpose, it is essential to guarantee the respect of the principle: “same business, same rules, same supervision” to protect all the EU consumers efficiently, when accessing credit, regardless of the credit institution they rely on.

➤ *EBA Draft Guidelines on Loan Origination and Monitoring*

The EBF has closely followed the EBA work on the Draft Guidelines on loan origination and monitoring. We would like to take this opportunity to highlight that the guidelines are meant to support harmonised interpretation and application of EU level 1 legislation, and not to bring any change or to add new requirements to the current or future text of the Directive. We believe that the Draft Guidelines go beyond the above mandate. Any changes to the existing EU legislation should be subject to the co-decision process between the European Parliament and the Council, not be an EBA initiative. It is also worth mentioning that the EBA's mandate does not include pre-empting or steering future legislation, which is a prerogative power of the European Commission.

The Consumer Credit Directive is currently part of the 2020 Refit initiatives of the European Commission. The application of the very prescriptive EBA Draft guidelines followed by the review of the Directive – changes that are subject to the co-decision process, and therefore unknown for the time being – would cause adaptations to banks IT systems and process. It would imply an excessive cost of compliance in a very short amount of time. For all the reasons mentioned above, we suggest considering carefully the benefit of such costs for the financial market.

The current wording of the guidelines does not duly take into consideration the principle of proportionality. Indeed, the guidelines list the requirements which creditors should perform “at least” or “as a minimum”. While the use of “should” infers flexibility, the requirements are more prescriptive than that. We believe that the current text of the guidelines introduces de facto standardised loan monitoring and origination practices regardless of the particularities of the credit in question. These practices will also significantly affect the financing of SMEs, which represent the back bone of the EU economy and reduce the lenders flexibility and capacity to prevent credit defaults or liquidity constraints originated by unpredicted economic turmoil such as we are experiencing now.

Furthermore, we believe that the current text does not match the current practices and developments that have taken place in recent years, such as learning machine models or automated property valuation at the point of origination.

We therefore recommend considering forward-looking, principle-based yet prudent guidelines to meet the transition challenge.

For more information:

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About the EBF

The European Banking Federation is the voice of the European banking sector, bringing together 32 national banking associations in Europe that together represent a significant majority of all banking assets in Europe, with 3,500 banks - large and small, wholesale and retail, local and international - while employing approximately two million people. EBF members represent banks that make available loans to the European economy in excess of €20 trillion and that reliably handle more than 400 million payment transactions per day. Launched in 1960, the EBF is committed to a single market for financial services in the European Union and to supporting policies that foster economic growth.

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