

6 October 2020

EBF_042806

EBF annotated response to the European Commission consultation on the New Consumer Agenda

Summary

New Consumer Agenda

- **Importance of financial educational campaigns aimed at increasing consumers' awareness**
 - Financial education and financial literacy would provide consumers with a sounder understanding of financial services and product and put consumers in the driving sit by allowing them to be better equipped in navigating the financial world;
 - Within the scope of protecting consumers, it is important to increase measures taken to reduce frauds against consumers. In this regard, education of consumers and information campaigns are of great importance to increase the general knowledge of consumers on financial services and also reduce the risks of being affected on an individual level.
- **Need to boost digital skills**
 - The pandemic highlighted how important it is for consumers to acquire an adequate level of digital skills and to know how to use alternative channels for services and information fruition. To boost digital skills should be one of the main objectives of regulators at national and European level.

Consumer Credit Directive

- **Ensure the enforcement and adequate implementation of existing rules to reduce regulatory fragmentation**
 - We would encourage to focus on further clarifying and enforcing the existing rules in order to ensure that all lending businesses (including non-banking businesses) are captured by the scope of the Directive and equally

European Banking Federation aisbl

Brussels / Avenue des Arts 56, 1000 Brussels, Belgium / +32 2 508 3711 / info@ebf.eu
Frankfurt / Weißfrauenstraße 12-16, 60311 Frankfurt, Germany
EU Transparency Register / ID number: 4722660838-23


www.ebf.eu

supervised. Policy-makers must always apply the principle of “same activities, same rules and same supervision” in order to ensure consumer protection and market integrity.

➤ **Need for clear and simple information to be provided to consumers**

- Consumers receive the same information at different stages, which leads to a flood of information for them. We believe that an 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.

➤ **Flexible creditworthiness assessment that would ensure financial inclusion**

- We believe that flexibility is a key quality of a proper assessment of creditworthiness. Any standardisation of such a process would lead to serious risks of financial exclusion, due to the fact that consumers may be rejected by all consumer credit providers. Common standards for creditworthiness assessment would set an average which could exclude low income borrowers financed by more specialised institutions such as borrowers with atypical profiles in reason of irregular income.

Our response

The New Consumer Agenda

1. Have you been confronted to any of the issues below? If so, what are in your views the key issues that EU and national consumer policies should be better prepared to respond to?

- Online frauds and scams: the COVID-19 crisis showed how rogue traders can take advantage of consumers' fears and use digital means to advertise fake websites, sell products with false health claims, or use pressure selling to obtain excessive prices
- Breaches of product safety rules in online trading
- Increased consumers' financial vulnerability, e.g. need to compensate loss of income by new debt leading to over-indebtedness, inability to make scheduled payments related to rent or mortgages, consumer credit, loans from family or friends, or utility or telephone bills
- Lack of insufficient respect for civil liberties, privacy or EU data protection standards in Member States' measures dealing with the pandemic
- I never encountered such issues
- Others

The EBF has been actively engaged with the emergency plan which aims at mitigating the serious economic risks and shocks caused by the outbreak of COVID-19. During these difficult times, banks have stood with their clients and have taken many measures to help people stay safe and keep the economy running, while on the other hand preserving the safety and stability of the financial system.

During this period, banks have increased their communication towards their clients, together their capacities to assist customers remotely (online and over the phone). More specifically, with the aim to assist consumers' that have been particularly affected by the spread of the pandemic, private moratoria schemes have been adopted by the banking sector at the national level in order to provide payment holidays to those more in need. Such measures allow consumers that are experiencing financial difficulties due to the outbreak of COVID-19, to benefit from the postponement of payment schedules in line with the EBA guidelines on legislative and non-legislative moratoria on loan repayments.

In this context, a "one size fits all" approach on this issue would have had very negative impacts on the customer's financial situation given that it would not have taken into consideration the tailored needs of the consumers which depend on the specific financial and health situation, as well as on the product subject to moratoria programs.

The volume of the moratoria on repayment of loan has allowed to well manage the collection flows and the preliminary figures linked to the end of the moratoria period show a good level of payment. Credit institutions are currently working on best practices for

managing the end of the moratoria period and the customers who could continue to face financial difficulties.

We would also like to highlight that the need for regulatory stability is key to ensure a quick economic recovery after the crisis. Therefore, no additional requirement should be added as existing EU legislations already provide for a high level of consumer protection.

Finally, the pandemic highlighted how important it is for consumers to acquire an adequate level of digital skills and to know how to use alternative channels for services and information fruition. To boost digital skills should be one of the main objectives of regulators at national and European level.

At the same time, it is very important to foster greater consumer awareness of the measures taken to support them in addressing the consequences related to the COVID-19. Thanks to adequate information, European citizens will be able to know and identify the most suitable tools for their needs.

5. The New Consumer Agenda aims to put forward a common vision of consumer policy priorities for the Union and the Member States. Which should in your view be the main priorities in the coming years?

- Better supporting consumers to adapt to more sustainable and environmentally friendly consumption
- Better supporting consumers to benefit from the increasing digitalisation
- Protecting vulnerable consumers
- More effective enforcement of consumer rights
- Stronger, more rapid and affordable tools to ensure consumers obtain redress when needed
- Co-operation with non-EU countries
- Better alignment between EU consumer policy and Member States' priorities
- Other

Within the scope of protecting consumers, it is important to increase measures taken to reduce frauds against consumers. In this regard, education of consumers and information campaigns are of great importance to increase the general knowledge of consumers on financial services and also reduce the risks of being affected on an individual level.

The continuous efforts and heavy investments in the digital transformation of the banking sector, have allowed banks to fully deploy their potential in being able to include and assist all type of consumers with fast and easy access to financial information and products. The outbreak of COVID-19 has even more speed up and encouraged consumers' attitude towards digitalisation. In this context, we believe that a sound consumer protection would be ensured if the same regulatory conditions and supervision should apply to all actors (large digital players, financial institutions and start-ups) who seek to innovate and compete in the FinTech system. Policy makers must always apply the principle of "same activities, same rules and same supervision" in order to ensure consumer protection and market integrity.

7. In the digital environment traders can easily reach many consumers at once and with personalised offers. However, consumers are increasingly exposed to many challenges, such as unsafe products or unfair commercial practices online. How could one best ensure that consumers have the same protection online and offline?

- Clearer identification of sponsored content
- Information on how offers, prices and advertisements are personalised
- Improved information on consumer rights in European SMEs and industry
- Preventing the exploitation of consumer biases, especially with data-driven practices
- Giving consumers the choice whether or not to receive personalised marketing and sales content
- Giving consumers better control over the use of their data for marketing and sales purposes
- Establishing clear and effective rules across the supply chain related to the safety of products sold online
- Other

EU is a global reference of a cutting-edge and comprehensive framework on customer protection, especially as regards financial services, where specific legislation complements the already protective horizontal requirements. Therefore, no additional regulatory intervention appears to be necessary at this stage.

However, we are of the opinion that the European Commission should encourage the implementation of financial educational campaigns aimed at increasing consumers' awareness. Financial education and financial literacy would provide consumers with a sounder understanding of financial services and product and put consumers in the driving sit by allowing them to be better equipped in navigating the financial world. As such, consumers would have the instruments to, not only protect themselves, but also better answer to their specific and tailored financial needs. Such initiatives should be implemented for all European citizens in the different Member States.

We believe that consumers should be able to rely on effective consumer protection rules across the supply chain when products are sold online. In case on any problem with the safety of products, consumers should be protected regardless of the link in the supply chain that is liable for the problem. Rules should be clear and ensure effective redress for consumers.

8. Vulnerable consumers are particularly at risk to suffer from unfair practices. Which sources of vulnerability do you consider as particularly relevant?

- Low income or household purchasing power
- Age
- Place of living
- Social isolation
- Gender
- Personal health situation

- Poor IT literacy
- Poor financial literacy
- Limited Internet access
- Low education level
- Lack of practical knowledge or skills in understanding complex contract conditions and offers
- Other

As we have mentioned before, the outbreak of COVID-19 has led to the situation where consumers are experiencing financial difficulties and therefore struggling in keeping up with the payment schedules of loans and mortgages, among other types of credit.

National moratoria schemes aim to provide such consumers with payment holidays in order to be able to recover from the crises.

As the EBA mentioned in the Guidelines on moratoria published on 2 April, and reiterated in the EBA report on the of the implementation of selected COVID-19 policies, *“when assessing whether the individual payment relief measures can be considered similar, they should be assessed in the broader context rather than by focusing on stand-alone elements. First and foremost, such assessment must ascertain that the payment relief measures do not include borrower-specific criteria, in particular in relation to financial difficulties”*.

The creation of a sub-category of consumers, such as vulnerable consumers, would lead to legal uncertainty and to situations where not all the consumers would benefit from the same standards of consumer protection. We therefore would suggest careful consideration with the terminology of vulnerable consumers.

9. If you are sufficiently aware of public enforcement procedures in your country /sector, which are, in your opinion, the main barriers to an effective enforcement of consumer rights (including product safety rules)?

- Lack of high-tech tools to support investigation and enforcement
- Lack of sufficient financial and human resources for enforcement authorities
- Limited cooperation between competent authorities at national and EU level
- Limited cooperation between competent authorities in different sectors
- Limited cooperation between competent authorities and consumer organizations
- Lack of systematic screening of markets and consumers’ problems
- Lack of specific legal powers for competent authorities (in the case of product safety, lack of mystery shopping and power of blocking websites)
- Don't know
- Other

From our experience we do not see any specific barrier to an effective enforcement of consumer rights. However, there is a widespread shortage of skills and financial education that negatively affects consumer choices. Specific common and coordinated educational information activities could be organized in the various Member States in order to increase financial and digital skills. In this context it would also be important to verify the degree of effectiveness and the diffusion of the activities carried out to express an evaluation and

reorient new activities. The need for collaboration between public and private subjects for the realization of shared initiatives should be emphasised and further developed.

The European banking world has been committed for years, also through the national banking associations, to increase the diffusion of financial education. For this reason, collaborations with public and private subjects were envisaged to encourage the implementation of shared initiatives aimed at all population targets (young people, adults, elderly and weak groups). In this framework, innovation becomes part of financial education initiatives and programs.

10. How can the Commission help consumer organisations and other stakeholders be better involved in policy-making and implementation at the EU level?

- Capacity-building through targeted training on specific functions (e.g. qualified entities for collective redress bodies participating in external alerts in the framework of the Consumer Protection Cooperation (CPC) Regulation, etc.)
- Capacity-building through more EU funding in the form of action grants
- Capacity-building through better access to participatory e-tools (e.g. sharing information, good practices, etc.)
- Giving them more wide-spread and formal consultative role at the EU level
- Equip them with tools to engage more proactively with the other stakeholders
- Other

One of the initiatives that we would suggest is to encourage the collaboration of public and private subjects to adopt shared solutions for the benefit of consumers.

Consumer Credit Directive

1. Credits below EUR 200 and certain other credits (e.g. loans granted free of interest and with no other charges, some leasing agreements) are outside of the Directive's scope at present Should the scope be extended?

- Credits below EUR 200
- Credits above EUR 75 000 for purposes other than the renovation of a residential immovable property
- Loans obtained by individuals from other individuals, through online platforms (peer-to-peer lending)
- All currently exempted credits
- No scope extension needed
- Don't know
- Other

We believe that the scope of the Directive is still relevant and the framework set by the Consumer Credit Directive has allowed both consumers and banks to operate in a sound and solid framework on fair access to credit. In this regard, we would encourage to focus on further clarifying and enforcing the existing rules in order to ensure that all lending businesses (including non-banking 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 (including non-banking lenders) 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.

In this context it should also be mentioned that existing rules should be enforced in order to ensure that with no gold-plating practices are put in place by Member States and clients can benefit from a sound consumer protection.

2. The Consumer Credit Directive obliges lenders to provide consumers with standard information at pre-contractual stage. This should help the consumer understand the main features of a credit and make their decisions in full knowledge of the facts. How would you improve the information to consumers, particularly in the online environment, to ensure that they get the right information at the right time?

- a. In which format would it be most useful to obtain pre-contractual information?**
- b. At which moment of the transaction should pre-contractual information be provided?**

Generally speaking, we share the European Commission concerns on the fact 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. Under current

legislation, consumers receive exactly the same information at different stages, which leads to a flood of information for consumers. The same information always results from the contract and the general terms and conditions. Therefore, we believe that an 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.

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, the right of withdrawal 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 technology neutral interpretation of the directive is made by several Member States and national consumer protection authorities, and facilitates the information provision process, while ensuring a better consumer journey and a reduction in costs.

In this context, we would like to highlight that the revision of SECCI would be extremely costly for the industry. However, should the review of the Consumer Credit Directive be considered due, we would suggest considering an adaptation of SECCI to digital communication and aim at providing simplified information to consumers which should focus on key features of the financial offer.

c) What key features do you consider should be prominently displayed to the consumer at the pre-contractual stage?

We consider that among the key features that should be displayed to consumers at the pre-contractual stage are:

- The duration of the agreement;
- The interest rate applicable;
- The amount to be repaid with the frequency agreed;
- APR;
- Charges other than interest;
- The amount of credit /credit limit;
- Details of individual repayment amounts.

It is important to highlight however that the previously mentioned features in our view would not be relevant for overdrafts which should retain a lighter touch approach.

3. In order to enable consumers to understand and compare different offers, the Directive specifies information to be included in advertising which includes an interest rate, the total amount of credit, the annual percentage rate of charge and other information relating to the credit. How should the provision of such information at the advertising stage be improved on different channels?

We believe that advertising information should also be streamlined to reduce the amount of information that has to be provided. The focus at the advertising stage should be to provide consumers with clear and simple information related to the basic features of the contract, such as the duration of the agreement, the APRC and the amount to be repaid with the frequency agreed.

4. The Directive aims at encouraging responsible lending practices, for instance by obliging providers to assess whether the consumer is likely to be able to repay the credit (“creditworthiness assessment”) prior to concluding the credit agreement. This is key to avoid default and over-indebtedness. How could the present rules on responsible lending/borrowing be further improved?

- Introduce binding principles on responsible lending such as an obligation to take into account target consumers’ interests, objectives and characteristics when designing credit products
- Introduce measures to prevent excessive cost of credit through caps on interest rates
- Ban unsolicited credit offers
- Introduce further measures to protect consumers in case of unsolicited credit offers for instance by introducing a reminder of the existing right of withdrawal
- Prevent online credit purchasing without enough time for reflection (e.g. credit obtained “in one-click”)
- Harmonise the creditworthiness assessment process across Member States
- Prohibit the provision of credit in case of negative creditworthiness assessment
- Attach conditions to the provision of credit to consumers with negative creditworthiness assessment, e.g. obligation to provide debt advice or allow grace periods for late repayments
- Ban the mandatory purchase of additional products, such as payment protection insurance, as a precondition to a credit agreement conclusion (“tying”)
- Credit providers to promote financial education measures
- There is no need to introduce further measures
- Don't know
- Other

From a lender perspective, preventing indebtedness is a shared interest. Indeed, such a situation can have an impact on consumers’ life, as well as banks’ balance sheets (also in a perspective of reducing NPLs) and therefore in the broader economy too.

It should be taken into consideration that indebtedness is a complex and multi-faceted phenomenon that is subject to social and cultural habits. In this context, several measures have been taken at the national level (e.g. free legal services, awareness and information campaigns to consumer advisors, debt advisors) in order to support and resolve over-indebted consumers.

We therefore acknowledge the benefits of implementing a responsible lending model, particularly with the view of ensuring that the costs of over indebtedness and the resulting non-payment of loans are minimised.

A proper creditworthiness assessment is essential in evaluating the capability of a consumer to engage with a financial contract and be able to pay back their debt. In this framework, we believe that flexibility is a key quality of a proper assessment of

creditworthiness. Any standardisation of such a process would lead to serious risks of financial exclusion, due to the fact that consumers may be rejected by all consumer credit providers. Common standards for credit worthiness assessment would set an average which could exclude low income borrowers financed by more specialised institutions such as borrowers with atypical profiles in reason of irregular income (for example self-employed). Therefore, an effective creditworthiness assessment can't be based on mechanically applied criteria, but on the knowledge of the borrower and on the ability to take into account the national specificities as well as individual situations.

In this regard, the Guidelines on Loan Origination and Monitoring, published by the EBA on May 29th, have already imposed new requirements and given clarification on how to implement the provisions of both the CCD and the MCD on creditworthiness assessment. Such Guidelines are not yet in force. Therefore, it seems reasonable to wait that they can be assessed in light of their implementation, before adding new requirements.

5. The Directive obliges lenders to assess the ability of consumers to repay their credit (creditworthiness assessment), where necessary on the basis of data from credit database. The rules on creditworthiness assessment and on access to credit databases giving information on consumers' credit history vary across Member States. Should the EU introduce common standards to guarantee a high and even level of consumer protection, as well as to help providers accessing new opportunities in other Member States and alleviating regulatory burden for them?

- Yes, EU law should provide for common standards on data/methodology for creditworthiness assessments
- Yes, EU law should provide for common standards on the categories of data collected by credit databases for creditworthiness assessment purposes and on their exchange across Member States
- No, rules at EU level should not be changed neither for creditworthiness assessment nor for credit databases
- Don't know
- Other

As mentioned before, standardizing the creditworthiness check or the assessment of risk profiles would ultimately lead to the detriment of the consumer and would unduly restrict lending opportunities. Such standardisation would block the market and limit the ability to innovate without taking into account the specificities of individual Member States and market participants, such as social security systems, labor markets, salary structures, cost of living, cost of education for children, savings behavior, divorce rates, taxation, economic growth. Moreover, common standards for credit assessment would set an average that would exclude groups of people from access to credit such as low-income borrowers financed by specialized institutions or borrowers with atypical profiles due to irregular income.

Concerning the suggestion of introducing EU common standards to access credit databases, we believe that the debate should envisage a holistic approach. Indeed, we question if the evaluation of the Consumer Credit Directive is the right place to tackle the mentioned issue. In our opinion the access to credit databases is a horizontal matter that touches upon other EU legislations such as the Mortgage Credit Directive.

6. What measures could be considered to safeguard the interests of both lenders and borrowers in situations of exceptional and systemic economic disruption, such as the one caused by the Covid-19 epidemic?

- Provide specific rules allowing Member States to enact payment moratoria measures while establishing a minimum level of consumer protection for those cases
- Adoption by Member States of measures encouraging creditors to exercise reasonable forbearance (e.g. temporarily postpone capital and/or interest payments of a loan) when a borrower is experiencing or is likely to experience financial difficulty
- Use flexibility embedded in the prudential framework for banks to facilitate lending to support consumers and businesses in the crisis period
- Introduce new obligations for Member States to strengthen services to support (e.g. through debt advice) over-indebted consumers struggling to repay their debt in the crisis or at risk of poverty
- Introduce new obligations for creditors to provide education and awareness on debt management for consumers in financial difficulties
- No action at EU level is needed
- Other

The outbreak of the COVID-19 has led to the implementation to public and private moratoria schemes with the aim to mitigate the impact of the spread of COVID-19. Member States have adopted initiatives encouraging creditors to exercise reasonable support measures (e.g. temporarily postpone capital and/or interest payments of a loan) for collectives experiencing or likely to experience financial difficulty. We note that such programmes have complied with the EBA guidelines on legislative and non-legislative moratoria on loan repayments applied in the light of the COVID-19 crises, published on 2 April by EBA and updated on 18 June 2020.

With regards to the type of credits included in the national moratoria schemes, the majority of the European countries have included consumer credits. The postponement of this type of credits can be granted to borrowers who are experiencing financial difficulties as a result of the spread of the pandemic.

In order to ensure a certain continuity during these extraordinary times, banks in Europe have guaranteed that communication channels are available for those consumers that do not have access to digital technology. Moreover, it was ensured that all consumers' basic needs were, and are still met without risking the health of clients and banking employees. This includes safety measures at branches, personalized services and training of personnel, among others.

In the context of the outbreak of COVID-19 and the moratoria programmes adopted at the national level, we would like to highlight that any measure concerning the Consumer Credit Directive should be in line with the requirements of other existing legislation such as CRR.

