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

The Directive on Consumer Credit (CCD) provides a solid framework for fair access to credit with sound provisions on consumer protection. The credit worthiness assessment requirements establish a set of rules ensuring not only consumer protection, but also that costs resulting from non-payment of loans be minimised.

We look with concern to supervisory and licensing practices with regards to unregulated creditors [1] and the consequences that this brings to the stability and well-functioning of the market. We would like to flag that for market stability and safety, all creditors should be supervised and required to respond to rules such as on consumer protection, Know Your Customer (KYC), Anti-money laundering (AML), and reporting requirements – in accordance also with national laws.

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

1. **Avoiding 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. This can be prevented, for example, by adding a provision strictly prohibiting gold-plating at national level for standardized rules provided for by the CCD (precontractual information, APRC, advertising).
2. The **timely implementation and enforcement** of existing rules to reduce regulatory fragmentation rather than providing additional requirements
3. the **supervision of all creditors** to ensure the same level of consumer protection and market well-functioning
4. the provision of a **future-proof and technology-neutral** text that enables the Directive to be effective despite fast technological developments

[1] Creditor/ lenders mean all businesses providing consumer credit (including platforms but not including credit intermediaries and dealers)

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More detailed views:

The EBF recommends that the review should target only the elements of the Directive where a clear benefit for both consumers and lenders can be achieved by the review. More specifically, the changes should aim at streamlining existing rules to address inefficiencies and integrate fast-moving technology to adapt a more technology-neutral approach.

Gold plating and fragmentation

As per our initial remarks, gold plating practices have the effect of distorting competition, fragmenting the internal market, and bring unlevel playing field among creditors. Against this background, we recommend uniform rules where a common interpretation would be beneficial. This applies in particular to:

- **Credit interest rates as a tool to reflect the borrower's credit risk**
  All Member States should respect the principle that interest rates in consumer credit should remain free and reflect the risk of the borrower and competition in the market.
  Setting a cap on consumer credit interest rates may have negative effects from the point of view of financial exclusion on consumers with higher credit risk, because creditors may not be able to provide them with credit and thus they would be forced to turn to lenders outside the CCD, without the protection that the Directive offers to consumers.

- **Calculation of APR**
  Today the APR is calculated following national practices and court interpretations on the elements that have to be included in the total cost of credit. For consumers this makes more difficult to compare credit offers, in particular in a cross-border context. The review of the Directive should promote a harmonized way to calculate the APR identifying clearly all kind of costs which have to be considered in the APR assessment

- **Common interpretation of Art.16.1**
  The CCD review can provide the opportunity to clarify the interpretation of the text related to early repayment and reimbursement of costs in a more balanced way that meets both consumers and lender's needs, considering that sometimes there are divergent views among Member States also due to different interpretation of ECJ decisions. Precontractual information can also be amended as to ensure that customers are aware of the costs that can be reimbursed and those that cannot. Such clarification could, for example, state that upfront components as well as third party costs should not be reimbursed[2].

[2] The first ones (upfront components) are one-off payments (such as the application of processing or contract administration fees, etc.) covering preparatory activities for the granting of the loan, which were fully incurred and exhausted before any early repayment; the second ones (third party costs) are costs that are not in the remit of the lender but come from third parties (brokerage cost or taxation) and were once more fully incurred and exhausted before any early repayment. Lenders should not be required to reimburse costs that are linked to third parties.

- **Right of withdrawal**

  Article 14 of the Consumer Credit Directive stipulates that the period for withdrawal from a consumer loan agreement does not start until all contractual terms and information have been received, or the contract has been signed. In some countries, this leads to a risk on the part of the lender that unintentional improper instructions stop the start of the period and thus create "perpetual" rights of withdrawal. Legal certainty should be created for consumer credit agreements by excluding unlimited revocability. Two rules in articles 9 and 10 of the 2011 directive on consumer rights (2011/83/EU) support this principle:
  The withdrawal right expires after 14 days from the day of the conclusion of the contract. In case of omission of information on the right of withdrawal, the withdrawal period shall expire 12 months from the end of the initial withdrawal period

A relevant scope of the Consumer Credit Directive

We acknowledge that the European Commission (EC) report[3] on the CCD raises questions on the possibility to enlarge the scope for credits below 200 EUR.

EBF members consider the current scope of the Directive relevant and respectful of the principle of proportionality, considering that the current threshold of 200 EUR effectively represents the amount by which a consumer needs a certain level of protection and information to be able to take a decision. Additional requirements for this market sector would not respect the principle of proportionality and would bring a negative cost-effectiveness assessment by providers. Ultimately limiting, if not impeding, the provision of such types of credit to consumers.

If the Commission is keen to amend the scope of the Directive, it could leave to member states the possibility to consider whether such extension of the scope is relevant/meaningful for their market to tackle national specificities – provided that this does not give grounds to gold-plating practices and that exemptions listed in art.2.2 are maintained and respected also by national legislation. We urge maintaining all the current exemptions and in particular those in article 2.2 (e.g. 2.2 *e*) ,2.2. *f, 2.2.* l)). Such exemptions ensure the respect of the proportionality principle and avoid that lengthy and burdensome procedures are applied for cases where this is not relevant or meaningful for consumers. We encourage the Commission to ensure that gold-plating practices are not pursued by Member States by defining in the legislation that national rules cannot apply the Directive to the categories exempted.

In order to address the concerns raised by the EC report related to the scope, we trust it would be more relevant to focus on the **definition of creditor**, rather than on the amount of the loan. The definition of creditor should be clarified and uniformly interpreted as to ensure that all lenders (including platform) are captured by the scope of the Directive and are equally supervised when they conduct the same activity. Not only to ensure uniform consumer protection across the Union, but also the well-functioning of the internal market.

[3] Report – COM (2020)963

Broad and principle-based definitions of "creditor and of "credit agreement" would guarantee that all creditors abide to the same rules regardless their business model, while also capturing future types of lenders. In this context recitals can also help to clarify that, for example, peer to peer or crowdfunding or other lending platforms are included in the scope of application.

Ensuring a wide scope poses obvious questions on supervision too. Within the merits of this Directive, we recommend adapting Article 20 as to ensure that the reference to 'financial institutions' is replaced with 'creditors' to account for the new types of market players. 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 EU consumers efficiently when accessing credit, regardless of the lender with which they take the credit.

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. 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.

The CCD should account for the technological developments that allow consumers to access credits and related information in a direct and user-friendly manner.

Against this background, the Directive should strike a balance that avoids overload of information and that allows the consumer to conclude the contract in a swift manner if it is in his/her interest to do so (e.g. to benefit from the interest rate). Evidence shows that consumers demand clear and simple information related to the basic features of the contract, such as the type of credit, duration of the agreement, the amount to be repaid with the frequency agreed, the APRC and the interest rate applicable. Therefore, only the key information should be provided. We recall that the contract remains the main source of information for the consumer.

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 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. Also, the requirements for information to be provided by "durable medium" should not be interpreted narrowly as requiring paper or written documentation, but in a way that also considers technological developments and digitalisation (e.g. cloud storage, electronic post-box and further simplification of digital identification/signature). This would facilitate the information provision process in good

time before the conclusion of the contract, ensuring a better consumer journey and a reduction in costs.

In this context the provision requiring to provide consumers with pre-contractual information "in good time before" the consumer is bound by any credit agreement or offer, should be maintained without introducing severe requirements in terms of number of days which would prevent consumers to freely access the credit when they need it. In this context the right for withdrawal provides full protection to the consumer if he/she decides to change his/her mind at a later stage.

More agile rules shall also be applied with regards to advertisement. Advertisement shall contain just the relevant information to allow consumer to understand and retain them. Further information can then be provided as an add-on. For example, for web advertisement this can be done by providing a link to a more detailed "landing page" where to find economic conditions, included the representative example.

Flexible Credit Worthiness Assessment to guarantee financial inclusion

As already expressed in previous occasions during the consultation process that led to the adoption of the EBA guidelines on loan origination and monitoring[4], we strongly discourage from adopting rigid standards for credit worthiness assessment in general, and more specifically in this legislation.

Flexibility in the credit worthiness assessment process is key and should be preserved. Rigid, detailed and standardised requirements for credit worthiness assessment risk preventing certain categories of consumers from accessing credit, thus causing financial exclusion. We discourage from adding any additional specific requirements in this Directive for the credit worthiness assessment.

This would on one hand make it impossible to adapt to evolving trends without a review of the Directive, and on the other it would enshrine in a Directive the content of a set of guidelines – thus reversing the decision-making process of EU legislation. We also note that some requirements of the guidelines are against the interpretation of GDPR rules in some MS and cannot be applicable.

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 at risks financial inclusion. This could also lead to situations where consumers might be pushed towards riskier and non-regulated alternatives. Furthermore, establishing rigid indicators would not allow credit providers to take into consideration the particularities of their clientele in their credit worthiness assessment. 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.

[4] We recall previous EBF positions regarding the guidelines. In particular that 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.

Use of alternative data for credit worthiness assessment

We recommend policy actions related to data usage and sharing are considered horizontally and in a harmonised manner as to avoid fragmentation of rules across several different policy initiatives such as the Digital Markets Act, the upcoming Data Act and future Open Finance proposals[5]. The goal should be an open Data Economy, which unlocks real benefits of cross-sectoral data sharing, while empowering individuals by putting them at the centre.

A number of reports[6] have concluded that a wider array of data, in particular including non-financial data, can help financial institutions improve creditworthiness assessment. One of the main positive effects is that it reduces "false negatives" and unjustified credit denial. It can also help to anticipate consumers' future needs and improve efficiency. Retail clients could therefore benefit through easier access to credit and more tailor-made lending offers (e.g. lower interest rate, fewer guarantees required, higher percentage of loan to value). For example, analysis shows there are important correlations with digital footprints[7], such as how the customer interacts with digital platforms and social networks, and the number of connections made to a webpage and the device(s) used. Access to this data can significantly help to assess the capacity to repay a short-term loan. The credit providers should remain free of using data that seem relevant, in compliance with GDPR and privacy requirements.

Many types of alternative data today are stored by bigtechs and large digital platforms, and unfortunately consumers do not have a standardised, secured and automated way to give access to those data to third parties with their consent. It is necessary that existing barriers are removed in order to help consumers take control over their data in the digital environment – empower them to decide which data to share, when and with whom within the frame of user data protection laws. It is important to help consumers provide this access in an informed, simple, and secure way, in line with relevant GDPR provisions.

In this regard, the obligation for gatekeepers to provide effective portability of data generated through the activity of a business user or end user and to provide tools for end users to facilitate the exercise of data portability (in line with the GDPR), is a welcome step forward.

Definition of vulnerable consumer

We also recommend not to include any reference to vulnerable consumers in the legislation. General and universal definition of vulnerability would be very difficult to establish, if not impossible[8]. Also enhanced protection can be interpreted differently among

[5] See EBF response to EC consultation on data strategy

[6] Research by the US National Bureau of Economic Research (NBER) on digital footprints: it concludes that adding just 10 variables of non-financial information (such as device type, Operating system, Channel, Time of day, Typing errors, lower cases, e-mail service provider, e-mail address chosen by the user - whether it includes his first/last name or a number-, tracking settings) increases model scoring accuracy (area under the curve , AUC) by 5% (from 68.3% to 73.6% in Germany).
Link: https://www.nber.org/system/files/working_papers/w24551/w24551.pdf

[7] ibidem

[8] As per the European Commission report of 2016

Member States when implementing the Directive, thus affecting the functioning of the common market – which is one of the stated objectives of the Directive.

All consumers are potentially vulnerable, and they all deserve the same level of protection. Furthermore, one consumer can be "more vulnerable" in some moments and not in others. Adapting the requirements continuously based on the evolving situation of the client would cause an administrative burden that would eventually limit the provision of credit in general. Establishing some EU-wide ex-ante categories of "vulnerable" consumer may also not reflect the actual market in a given member states (e.g. where a young professional in a self – employed position is considered more vulnerable than a fixed-income elderly person).

Whilst we appreciate the intention to ensure enhanced protection for some categories, we see a risk of granting different levels of protection to consumers based on their belonging to a certain ex ante category instead of their real situation. Therefore, we recommend ensuring that all consumers can enjoy the same level of protection based on the evaluation of their situation by the lender, and refrain from introducing any definition of "vulnerable" consumer.

Activity-based approach and technological-neutrality as cornerstones of financial services provision

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. In addition, since technology is moving faster than legislation, we recommend focusing on a technology-neutral wording rather than trying to catch up the movement with rather limited results.
In order to enforce and guarantee a high degree of protection to consumers, regulation should rely on an activity-based approach rather than provider-based approach.

Debt advice services and borrower support measures in consumer credit

Over-indebtedness is a complex multi-faced social phenomenon compounded by a combination of cultural, economic, social, institutional and individual factors.

There are multiple causes to over-indebtedness, and primary causes are linked to macroeconomic factors or accidents in life (e.g. job loss or divorce) which do not depend on the lender and which may limit the capability to fulfil all the contractual obligations of the borrower. From a creditor perspective, preventing over indebtedness is a shared interest. Over-indebtedness has negative impacts on consumers' life, on banks' balance sheets (also from the point of view of reducing NPLs) and on the broad economy too, as well as social implications, impacting the financing cycle.

From a regulatory perspective, firms are required to meet the standards set by many EU regulations which have progressively built on the original CCD framework (e.g. Product Governance and Oversight rules, information disclosure) which all have a direct impact on the area of personal credit. Extensive changes have also been introduced at national level in the context of the 'responsible lending' agenda, which includes requirements developed on the basis of the specificities of national markets. From a lender perspective, we acknowledge the benefits of implementing a responsible lending model, particularly to ensure that the costs of over indebtedness and any resulting non-payment of loans are minimised.
Among the actions undertaken by banks and other actors to address over-indebtedness, there is also debt advice. **Debt advice services are best addressed at national level given that lenders are in a position to understand better the specific and tailored needs of each consumer.**

Managing over-indebtedness should be seen in a broad framework: not only at the time of taking remedial action, but also at the time of preventing its emergence. Financial education should play a role, and this should primarily involve governments through education - even if banks are engaging on this to help consumers become capable of managing a budget and taking savvy financial decisions.

Since the outbreak of the COVID-19 crisis, banks have increased their communication with clients and their capacities to assist customers remotely (online and over the phone).

To assist those consumers more affected by the spread of the pandemic, private moratoria schemes have been adopted by the banking sector at national level aimed at providing payment holidays to those more in need. Consumers experiencing financial difficulties due to the outbreak of COVID-19 have been able 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 would have had very negative impacts on the customer's financial situation.

Credit institutions are currently working on best practices for managing the end of the moratoria period and the customers who may continue experiencing financial difficulties. Now regulatory stability is key to ensure a quick economic recovery after the crisis and we think that no additional measures should be taken at European level, as the framework already provides for a high level of consumer protection.

Furthermore, we recall that the Better Regulation principles are to be applied to all rules including those related to consumer lending. Such rules have relevance for consumer protection as well as from a prudential and financial stability perspective. Therefore, any policy action should be carefully balanced and its impacts analysed, as it was correctly the case for the CCD. Whereas we regret seeing that new proposals on borrower protection and forbearance measures are being discussed under the trilogues of the NPLs Secondary Market Directive proposal. These proposals have not undergone an impact assessment, nor a study and they introduce rules that amend consumer credit and mortgage credit from the backdoor. This fragments EU legislation, undermines the principle of due process and also defies the efforts done so far by the Commission in order to assess impacts, benefits and costs of changes in consumer credit rules.

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