

## The review of the Consumer Credit Directive 2021/0171 (COD)

Eurofinas, the voice of European specialised consumer credit providers, remains fully committed to engage with the European Institutions as well as other interested stakeholders on the review of the Consumer Credit Directive (CCD) which at present is being discussed in trilogue negotiations.

We welcome the co-legislators' work on the proposal for a new Consumer Credit Directive (CCD) to date. In light of the on-going trilogue discussions, we would like to take the opportunity to address a number of issues of concern for the specialised consumer credit industry.

We hope that the below will be useful for you in upcoming discussions, and remain at the co-legislators' disposal, should the need for further clarification or any form of assistance be required/desired.

### **Specific remarks:**

Scope: Deferred payments & leasing with the option to purchase

In order to enable a level playing field in the consumer credit market, Eurofinas firmly believe that it is vital to respect the principle of same activity, same risk, same regulation for all market participants.

In this context, we would like to raise our concerns as to the proposed exception for deferred payments (Art. 2.2). Under the co-legislator's respective positions, the exception would allow for deferred payments for a shorter period than 45 (Parliament) or 90 days (Council), respectively, with a further restriction under the latter prohibiting the involvement of a third party offering credit, to be left outside the scope of the updated framework. We appreciate the attempts to distinguish between genuine deferred payments and what, essentially, must be described as a competing credit solution with similar risk and impact for consumers. We are of the opinion that, building upon the Council's proposal, a stricter limitation of the exception should be sought, i.e. for a deferment of pay for up to a calendar month. The exception may otherwise be subject to misuse which stands in strong contrast to the notion of a level playing field between regulated and supervised market players, and the fair protection of consumers in corresponding situations and circumstances.

Under the Council's position leasing with the option to purchase (Art. 2.2) is brought under the scope of the new CCD. It is a common product, prevalent in several Member States, which is a transparent and well-regulated and also very much appreciated by consumers, not least allowing for flexibility and supporting the necessary steps in the green transition. It allows consumers, also those on a smaller budget, to pursue more energy efficient vehicles which tend to be notably more expensive and would otherwise be out of reach for them. We support the Parliament's position on this. Should, however, the decision be taken to include the product, we stress the need for an adapted regime, excluding the application of Articles 29-31 which are fundamentally unsuited and/or irrelevant for the product.

## Definitions: Linked Credit Agreements

The existing definition of Linked Credit Agreement (LCA) have been found to be subject to far-reaching interpretation and has in some jurisdictions led authorities to consider the sole mentioning of a general purpose definition like “car” to connect lenders and suppliers with the ensuing shared liability, through the identification of an LCA. This despite the fact that lender and supplier form no commercial unit nor have a direct relationship, and more importantly have influence over each other. We support the Council’s proposal but with the necessary amendment in order to adapt the clarification of “*commercial unit*” by deleting the words “*or where the specific goods or the provision of a specific service are explicitly specified in the credit agreement or in the crowdfunding credit services*”. (Art 3. (21) (b)). The Commission’s Green Deal places a great deal of emphasis on enabling consumers to accelerate the energy transition of their households, a transition that will require active support from consumer finance providers. Should this issue not adequately be addressed, the added liability and risks associated with this problem may force our members to take a more conservative than is desirable or strictly necessary.

## Non-discrimination

We welcome and support the European Commission's suggestion that consumers should not be discriminated against on account of their nationality and/or place of residence. However, the question of non-discrimination based on place of residence therefore raises a number of concerns as to practical feasibility of encouraging such a practice, with respect to responsible lending standards as well as the principle of freedom of contract as set out by the Treaty on the Functioning of the European Union. It would severely limit consumer finance providers' ability to assess and manage risk, possibly resulting in substantially increased costs for lenders and consumers without achieving the intended goal of increased responsible cross border finance. As similar provisions exist in horizontal directives and in order to avoid regulatory overlap, this article should be removed, and we, therefore, support the Council’s proposal to delete the provision.

## Advertising

The Parliament is introducing a number of proposals in relating to the provisions on advertising which we believe may not provide added-value for consumers but rather risk to distract from the ability to analyse essential information in a clear cut and easy to understand manner, i.e. pricing and the terms and conditions.

It is our view that the relevant rules should be focused on the minimum required informational elements in advertising, and want to caution against the introduction of templates and formats. This would undermine the existing flexibility required for different channels which is already subject to existing supervisory control. We therefore favour the Council's position, but believe that the Parliament's proposal for a general caution would provide added value. Moreover, Eurofinas want to highlight the Parliament's recognition of the use of technological tools, such as hyper-linking or scroll-down tools to allow for all the information to be provided in an adequate manner when the medium used to communicate the information does not allow for the information to be visually displayed in a clear manner (Art. 8(3a)).

## Pre-contractual information

We strongly support the notion that pre-contractual information needs to be provided prior to being bound by an agreement, however, the possibility should remain to provide the relevant information at the point of sale, either online or in person in line with consumers' expectations as to the customer journey. A requirement of one day before would cause unnecessary delay and burden the consumer, without providing for concrete benefits for consumers in light of the comprehensive framework, i.e. not least the right of withdrawal. Eurofinas supports the Council's position. Should the obligation to send a reminder be included, it should be clarified, in line with the digital journey increasingly sought by consumers, that it can be done by all means of electronic communication through channels provided for by the consumer. Moreover, in order to provide for legal clarity and to avoid any confusion and unintended consequences regarding reception and delivery for reasons beyond the control of the sending entity, the lender should be responsible to preserve the ability to show that the reminder was sent, i.e. not provided, to the consumer using the contact-details provided by the consumer for the relevant channels and means of communication (Art. 10(1)).

### Creditworthiness assessment

Eurofinas believes that the Council's general proposal for the rules on creditworthiness provides for the relevant rules in order to achieve the sought purposes and objectives. The assessment should be based on the information, including income and expenses of the consumer, which is necessary and proportionate to the nature, size, complexity and the risks of the credit for the consumer.

The Parliament's proposal can be interpreted as preventing the use of statistical models in the creditworthiness assessment, which would disregard or overlook well-established and proven approaches and systems providing for broader financial inclusion. In addition, it generally sets out too many restrictions and details hindering an effective process relevant to analyse the consumers' ability to repay the credit, and to prevent irresponsible lending practices and over-indebtedness. Moreover, risks a overly-limited focus on the proportionate application to only loans below 200€, fundamentally disengaging from the portal paragraph set out.

Moreover, it is crucial to avoid the risk of lending institutions being forced to disclose business sensitive and confidential information, in breach of business secrecy and would go far beyond the GDPR requirements. We therefore fully support the Council's proposal (Art. 18(6)(b)). It is also important to prevent the borrower contesting the creditworthiness assessment, which would create potential litigation between borrowers and lenders in contrast with the responsible lending principle. We therefore support the Parliament's proposal (Art. 18(6)(c)).

### Right of withdrawal

Eurofinas welcome the proposals of the co-legislators, with a preference for the Council's proposal, to limit the application of the right of withdrawal by establishing an adequate limitation of one year and 14 days when the consumer has been informed about the right. An indefinite application, potentially extending beyond the duration of the credit agreement, creates legal uncertainty and fails to address in a relevant manner the situations for which it was designed.

### Early repayment

We support the EP proposal on early repayment. It is important to ensure that lenders are compensated for legitimate upfront costs, i.e., mandatory and unavoidable costs, resulting from legislative and regulatory requirements and clearly defined costs directly relating to the establishment of a credit, distribution costs and costs relating to the added services requested by the consumer.

### Arrears & forbearance

Eurofinas would like to strongly advise against the introduction of any mandatory forbearance measures in the Directive, and stresses the importance of maintaining the relevant flexibility for lenders enabling the relevant support in the situation. We therefore support the Council's proposal in line with the provisions established through the NPL Directive.

### Authorisation & supervision

Eurofinas firmly support a strong adherence to the principle of same activity, same risk, same regulation for all market participants involved in relevant consumer credit activities. The Council proposing to exempt institutions from payment and electronic money from the procedure of Article 37, and furthermore allow Member States to exonerate providers of goods and services acting as credit intermediaries on an ancillary basis from admission and registration procedures would be at odds with this principle and risk a level playing field. We therefore favour the Parliament's proposal.

### Penalties

Fines amounting to at least 6% of the annual turnover would be fundamentally disproportionate and excessive. We favour the Council's position, proving for the obligation for the Member States to ensure relevant penalties for the market situation at hand on the national level