

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 concerned stakeholders on the review of the Consumer Credit Directive (CCD).

As shown by the Commission's evaluation, the Directive has in many ways fulfilled its objectives of providing for a high level of consumer protection in retail financial services, and ensuring access to safe and simple credit solutions across the EU. Moreover, the framework has proven robust and able to respond to the current situation and the specific challenges brought on by the COVID-19 crisis.

In the field of retail financial services, the pandemic has had severe consequences, on customers, as well as providers' daily operations, impacting public life in a way not seen since war time. Throughout the pandemic, European consumer lenders have stood by their customers, ensuring both the continuation of activities under the challenging conditions brought on by the pandemic, supporting the functioning of the European economy and not least supporting the financial well-being of European citizens.

Summary overview

Having carefully evaluated the new Proposal for a Consumer Credit Directive, Eurofinas calls on the Institutions to address the following issues:

- The Commission has proposed a sweeping scope extension whilst at the same time failing to implement a proportionate application of the Directive's provisions
- The new provisions will almost certainly increase consumers' information overload
- The Proposal insufficiently takes into account the impact of digitalisation and fails to meet consumers' expectations in terms of customer journey and products/services offered
- The fragmented legal framework across Europe has not been adequately considered
- The Proposal fails to take into account the overall applicable legal framework within which lenders operate, which in various areas overlap and/or conflict with the proposed CCD provisions
- The Proposal jeopardises lenders' ability to support customers in need
- Eurofinas welcomes additional focus on the strengthening of financial inclusion, not least by means of improving financial literacy
- Eurofinas subscribes to the principle of same activity, same risk, same rules. As such, all entities engaged in offering professional consumer finance services should be subject to relevant and proportionate registration and supervisory arrangements

- **All in all, the current approach will lead to a removal of valued financial products/services from the market, increasing the likelihood of financial exclusion, whilst failing to adequately address consumer needs and the outlined objectives and identified shortcomings**

Specific concerns

Article 2 - Scope

- Eurofinas supports increased harmonisation of general principles with the aim of achieving greater convergence and a level playing field through the adherence to the principle of same activities, same risks, same rules.
- As such, Eurofinas supports that all types of service providers, such as pawn brokers and/or other players, when engaging in offering professional consumer finance services, should fall within the scope of the revised CCD.
- It is, however, crucial to avoid overly-prescriptive provisions and standardisation which will fail to encompass the important variations between different markets and products' key characteristics and distribution channels, etc.
- The proposed scope extension to Article 2, in particular by means of removal of the previously existing Article 2(f) extension, will result in a disproportionate administrative burden for well-established and simple products, without achieving genuine enhanced consumer protection. With regards to these products and services, Eurofinas proposes to strengthen the ability for:
 - a more appropriate and proportionate application of the legislative framework.
 - the introduction of a lighter touch regime for well-established products and/or targeting of specific products/issues where there is a clear evidence-based need at a European level.
- Moreover, the proposed scope extension should not include leasing services and products. There is a lack of evidence supporting the need for such measures and, moreover, the CCDs provisions are not designed to cover the specific characteristics of leasing products
- If not addressed, this will lead to the withdrawal of products/services and financial exclusion, affecting consumers most in need of such products as well as increased costs.

Article 3 - Definitions

- There is a need to re-define the Total Cost of Credit, specifically to ensure that expenses incurred for services fundamentally similar to those provided by a notary, are also excluded.
- The concept of *"provider of credit services of equity finance"* is missing from the definitions. It would be appropriate to clarify, as done in recital (17) of the Proposal, that (a) where such providers directly provide credit to consumers in the course of their professional activity, the provisions of this Directive relating to creditors shall apply to them; whereas (b) where they facilitate the granting of credit between creditors and consumers, they shall act as credit intermediaries.
- The existing definition of Linked Credit Agreement leaves too much room for interpretation, and in some jurisdictions leads to the understanding that referencing a general purpose like "car" means that a lender systematically shares liability with the supplier. In this context, however, the lender forms no commercial unit nor has a direct relationship with, and more importantly influence over the supplier. Eurofinas therefore proposes to amend said definition in order to adapt the clarification of a "commercial unit" by replacing the word "or" by "and" (Article 3(21)b), i.e. *"...where the creditor or provider use the services of the supplier (...) and where the specific goods or the provision of a specific service are explicitly specified in the credit agreement or in the crowdfunding credit services"*.

Article 5 - Provision of information free of charge

- Eurofinas welcomes the possibility for lenders, intermediaries and/or providers of crowdfunding services to charge fees for the communication of information that is additional to that required by the legislation, more frequent or for the transmission of information by means of communication other than those set out in the contract. This provided that such information is provided at the request of the consumer.

Article 6 - Non-discrimination

- The issue of non-discrimination based on place of residence raises a number of concerns with regards to the feasibility of meeting the provisions as set out in the Proposal, due to existing discrepancies in applicable legal frameworks, raising practical and legal challenges across the board (e.g. AML, KYC, forbearance legislation), and ultimately the ability to properly assess an applicant borrower's credit worthiness as well as

the ability to manage NPL risks. It is therefore extremely challenging for lenders to engage in cross-border activities.

- At the same time, the level of pure cross-border transactions, involving a lender in one Member State and a customer in another one, has not increased since the introduction of the CCD. This stems predominantly from low consumer demand due to language barriers and a general home bias, as well as having access to already strong and competitive local markets.
- Whilst enabling the digital journey may play a role in increasing these activities, many of the limiting factors still remain outside the remit of the CCD, including important differences in contract, taxation as well as recovery and insolvency legislation.
- This new provision will severely limit consumer finance providers' ability to assess and manage risks, possibly resulting in substantially increased costs for lenders and consumers, without achieving the intended goal of increased responsible cross-border finance. It also fundamentally undermines the freedom of contract principle as laid out in the Treaty on the Functioning of the European Union.
- As similar provisions exist in horizontal Directives and in order to avoid regulatory overlap, this article should be removed.

[Articles 7 – 13], [20 – 21] – Information requirements

- In relation to the information requirements proposed under the new Directive, the European Commission's Proposal on the whole fails to meet the outlined objectives, address established shortcomings and/or make the relevant adjustments to the new updated digital reality and the use of digital channels and handheld devices.
- The Commission's Proposal is instead increasing the risk of information over-load by introducing the new SECCO in addition to the existing SECCI, combined with further general information (Article 9) and new adequate explanations (Article 12) requirements. The interplay of these components is neither complementary in nature, nor adding additional value for consumers. Moreover, they will not address the established issue of information overload.
- The proposed framework will not achieve the goal of better-informed consumers, nor enabling better decision-making. In addition, the framework is not well adapted to digital channels nor able to take account of their specific characteristics and their ability to allow for tailored information.
- We therefore recommend a return to a single streamlined information document (SECCI) for the purposes of clarity and relevance.

Article 8 - Advertising

- The proposed set of rules regarding advertising only acknowledges limitations when applied to traditional media, i.e. radio advertising, and fails to address the information overload prevalent through digital channels where the amount of information becomes difficult to process for the average consumer. The possibility to also tailor the information in true digital situations, e.g. when banners and Google ads are utilised, must be clearly recognised and enabled.
- To improve the ability for consumers to assess and compare the information provided in the advertising stage, only key information should be included in marketing communications (e.g. APRC and monthly instalments), with more comprehensive information made accessible via a hyperlink or a scroll-down measure/function to be reviewed at leisure.

Articles 9 & 12 - General information and adequate explanations

- The Proposal introduces new obligations relating to general information (Article 9) and adequate explanations (Article 12). It remains, however, unclear what additional value the new information provision requirements provide when compared to what is already shared with consumers today, nor is it clear on what format this should be done. The new requirements fail to enable better decision-making and risk information overload.
- Questions remain as to how the additional information should be channelled to consumers, e.g. the format and medium used.
- It should be clarified that additional general information can be provided on a lender's website.

Article 10 & 11 - pre-contractual information

- Under the Commission's Proposal, the already existing SECCI would be supplemented with the additional SECCO. We are certain that this step will exacerbate the issue and only cause further confusion for consumers trying to understand and compare offers.
- In order for consumers to be able to take an informed decision, it will be necessary to decrease the amount and duplication of information between, as well within, the pre-contractual and contractual stages.
- Moreover, the Proposal introduces the obligation to provide information one day in advance before the conclusion of an agreement, or that a reminder should be provided one day after.
- Considering the existing right of withdrawal, this will not deliver any measurable consumer-benefit, and conversely add confusion for customers wanting consumer finance services at the Point of Sale or in an e-commerce setting.
- In light of the right of withdrawal which the Commission's evaluation of the Directive has found to be well-established and used by consumers, both the additional information required and the possible reminder will not provide for increased consumer benefits.
- Moreover, the proposed provision leaves divergent room for interpretation with regards to how the timeframe is to be calculated as well as how it would be fulfilled and measured when sent by non-instant mediums such as traditional postal services where lending institutions can not affect nor control delays, etc.
- From a practical point-of-view, it should be sufficient that the SECCI/SECCO is provided prior to signing of the contract. Furthermore, the customer should be reminded in a clear manner of the right of withdrawal, or, if a reminder is to be sent, it can be done by any means including a text message.

Article 13 - Personalised offers & automated processing

- Automated decision-making processes, as well as duties to inform where personal data is not derived from the data subject itself, are currently subject to regulation through the General Data Protection Regulation (GDPR). Moreover, new requirements will be put forward in the upcoming EU framework on Artificial Intelligence.
- We therefore see a strong need to avoid further regulatory overlap and the risk of inconsistencies between the CCD and other relevant frameworks, which can be addressed by deleting Article 13.

Article 14 - Tying & bundling

- The new Proposal stipulates that tying is prohibited unless it can be demonstrated that it would result in a clear benefit for consumers, taking due account of the availability and prices of the kinds of products in question.
- Without additional guidance it is difficult to assess what constitutes a clear benefit, as this definition cannot be defined objectively. Moreover, such a wide definition will lead to increased fragmentation across Member States, and should therefore be clarified further.

Article 16 - Advisory services

- We welcome the fact that advisory services remain a separate product/service. Due to the average amount, simplicity and duration of the majority of products/services covered by the CCD, advice is not generally needed when compared to more advanced and complex products.
- To ensure greater legal certainty, Article 16(5) needs to be amended in order to clarify that the specific obligation is only to be met when advice is offered in line with the general non-mandatory approach of the Article.

Article 17 - Unsolicited sales

- The Proposal does not make a clear distinction between general advertising and targeted sales offers for consumer credit services, thereby ruling out by default the ability to advertise much appreciated consumer credit products and services.
- Moreover, the Proposal's prohibition should not apply to those pre-authorized products where, in any case, the delivery of the corresponding pre-contractual and contractual information as well as obtaining consumer consent is a legal requirement. In this case, the requirements of transparency and information would be fulfilled.

Article 18 - Creditworthiness assessments

- Responsible lending is of shared interest to lenders, borrowers and society as a whole. The obligation to properly assess an applicant borrower's creditworthiness forms part of the core activities of financial institutions.
- Flexibility is needed to properly take account of the characteristics of retail lending, the range of products covered and the differing operational realities at national level, as well as the ability to cover consumer groups without an established credit history. The concrete assessment and required data naturally differ between lenders and different markets.
- Unless a lighter-touch regime is built into the framework, very small loans and loans with only very limited costs will become subject to the full framework as per the proposed scope extension. In this situation, the proposed frameworks will largely fail to provide for a proportionate application by not taking into account the characteristics of the loans, which may cause far-reaching consumer detriment.
- Further standardisation of processes, and the full application to smaller credits, will lead to consumer detriment by means of unjustified financial exclusion, the unwarranted disruption of well-functioning tools and markets, and the decreased range of products by their removal from the marketplace.
- Digitalisation has provided for a number of tools to improve and automate decision-making, making credit available to previously underserved consumers as well as responding to customers' changing expectations and preferred customer journeys. In relation to the utilization of new technologies, e.g. in the decision-making processes, it is important to recall that already today such use is generally governed by relevant rules in the GDPR, governing the use of data, transparency to consumers and automated processes with relevant restrictions and safeguards. Further measures in relation to the application of artificial intelligence are also forthcoming at European level, which will be fully applicable for consumer credit lending.
- Automated assessment processes are well-established, with a proven track-record, and can be used for the majority of loans issued. Not only do they provide for speed and economies of scale, but also allow for more objective decision-making than can be achieved with human processing. A very precise and individual assessment may only be warranted in the context of larger scale loans, and this should be more clearly recognized in Article 18.
- In light of this, the Commission's Proposal should be adapted in a number of ways to enable a proportionate application and ensure a creditworthiness assessment relevant vis-à-vis the amount, the nature and complexity of the credit offered.
- In order to ensure a relevant, adequate and proportionate application, the choice of data and tools used, and extent of verification of information must remain under the control of the lender, including when external sources, such as relevant databases, or statistical data as well as budget models can make part of the assessment.
- The ultimate decision to grant or refuse a credit must rest with the lender in line with its business model and risk policy, in adherence with relevant non-discrimination provisions. In light of this, the GDPR's right to correct erroneous information forms the primary means of disputing an assessment and have erroneous data corrected. An applicant borrower is to be sufficiently informed of the processing and criteria on the basis of which a decision was reached. However, unnecessarily extensive disclosure on processes may breach commercial confidentiality as well as increase the risk of fraudulent activities.
- In the context of information provided, the proposed framework fundamentally removes any responsibility from the applicant borrower to provide accurate information. Such an imbalance between lender and borrower will further support fraudulent criminal activity. Therefore, the responsibility to provide correct information should remain with the applicant borrower. In this context, the proposed obligation for the lender to assume responsibility and duty to verify the information provided through independently verifiable documentation not only leaves uncertainties as to when such an obligation is viewed as fulfilled, but also creates a disproportionate administrative burden in relation to smaller loans which will fundamentally risk to limit the availability of suitable products to consumers.
- Article 18(6) should be deleted in order to avoid further regulatory overlap and the risk of inconsistencies between the CCD and other relevant frameworks.

Article 26 – Right of withdrawal

- The right of withdrawal is well-established and regularly used by European consumers. It is not least a key tool to address arising challenges brought on by increased digitalisation and the speed at which consumers can make choices and transactions, ultimately providing for an effective redress vis-à-vis an overly hasty commitment. As clarified in the Commission's Proposal, this right is not to be used in bad faith.
- The right should be simple to utilise. A potentially indefinite application which extends beyond the duration of the credit agreement, however, creates legal uncertainty and fails to address in a relevant manner the situations for which it was designed.
- The relevant pre-contractual and contractual information should highlight the consumer's right to withdraw from the agreement to ensure the strongest possible awareness thereof. This should be done in a clear format that safeguards legal clarity regarding its application as well as an overall coherent approach with regards to the information in the material provided to consumers.
- The new proposed text does not include any concrete and definitive time limitation of the right of withdrawal, which fundamentally clashes with existing provisions in Articles 9(2) and 10 of the Consumer Rights Directive as well as Article 6(3) of the Timeshare Directive. Further clarification and alignment on these issues would ultimately increase overall coherence within the applicable EU consumer protection framework, enabling European consumers to benefit from equal protection whilst at the same time enhancing a level playing field for lenders and providing for much needed legal clarity. It will also help to address potential information overload resulting from cautious lenders taking an overly encompassing approach with regards to the extended nature of terms and conditions that need to be conveyed.
- As it stands right now, even immaterial errors relating to the information provided can have unforeseen and far-reaching consequences long after the contract duration has ended.

Article 29 - Early repayment

- The evaluation of the Directive found that the right of early repayment is well-recognised by European consumers. It is important to maintain its function and the proportional approach sought by the legislators in the CCD. Its application has been subject to further developments by the ruling of the European Court of Justice, i.e. the Lexitor case. Going forward, 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.
- As such, the Proposal has to be amended to ensure that fees, paid before any early repayment (whether in part or in full), which correspond to services effectively provided to the consumer or to costs effectively incurred by the lender, as well as third party costs do not need to be reimbursed.
- Furthermore, Paragraph 4 states that Member States may provide that the lender is only entitled to compensation of costs if the amount of the early repayment exceeds a threshold specified in national legislation. This threshold has to be removed as the cumulative impact thereof over time could be quite substantial on the lender.

Article 31 - Price restrictions/caps

- Any practical decisions on interest rate/APR caps should be left up to the Member States which are best equipped to consider the impact of such measures, taking into account the overall regulatory framework and the relevant market context.
- The ability to price risks to a certain extent remains of fundamental importance for financial inclusion, supporting a competitive level playing field and ensuring availability of regulated and supervised credit products to creditworthy borrowers.
- The specific issue of extreme High-Cost-Short-Term credits, subject to a variety of definitions taking account of the local market conditions, has been identified as problematic in some Member States, and is not representative for the overall consumer credit markets across Europe. As such, this has to be addressed through targeted measures and the assurance of strict adherence to the principle of same activity, same risk, same rules.

Article 35 - Forbearance measures

- Eurofinas would like to caution 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. Many lenders and Member States have worked extensively on the issue, and to implement further measures through a blanket approach at European level would not be appropriate.
- The framework has proven to be robust and responsive to the situation and the specific challenges brought on by the COVID-19 crisis. It has enabled lenders and other concerned stakeholders to act to ensure the financial stability and health of its customers. The overall set of public and private measures that were implemented by the industry have enabled timely and appropriate support to consumers facing difficulties, with the vast majority able to swiftly return their finances to a more normalised situation.
- In order to provide adequate support on a case-by-case basis, solutions must be sought at the local level allowing for tailor-made solutions that take into account the individual situation as well as the comprehensive, and often highly divergent, legal frameworks applicable. This is relevant with regards to e.g. the newly introduced provisions on non-discrimination which effectively amount to a general obligation to provide cross-border credit within the EU. They are unworkable as a result of the inability to appropriately assess the lender's creditworthiness and risk profile due to the above-mentioned reasons.
- Any measures taken must consider the applicability, relevance and impact on all forms of credits, whilst at the same time ensuring alignment with national and European prudential regulatory frameworks. To do otherwise would risk adverse and unintended consequences, e.g. requiring viable loans to be declared as defaulted. This would ultimately force lenders to restrict lending to consumers and lead to an avoidable rise in loans declared as non-performing.

Article 37 - Admission, registration and supervision of non-credit institutions

- Eurofinas subscribes to the principle that all entities engaged in offering professional consumer finance services that are not credit institutions are subject to relevant and proportionate registration and supervisory arrangements, in line with the principle of same activity, same risk same rules.

Article 48 – Transposition

- The transposition of the Directive is expected within 24 months from the time of adoption. The date of application is proposed to substantially differ between different market operators.
- Such a differentiated approach is highly counter intuitive when taking into account the Commission's stated aims of increased harmonisation and establishing a level playing field.

About us

[Eurofinas](#), the European Federation of Finance House Associations, is the voice of the specialised consumer credit providers in the EU. As a Federation, Eurofinas brings together associations throughout Europe that represent finance houses, specialised banks, captive finance companies of car, equipment, etc. manufacturers and universal banks. The scope of products covered by Eurofinas members includes all forms of consumer credit products such as personal loans, point of sale credit, credit cards and store cards.

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