

## EC Public Consultation on New Consumer Agenda

### EMF-ECBC Response

6<sup>th</sup> October 2020

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#### **Preliminary remark:**

The evaluation of the Consumer Credit Directive (CCD) is being conducted at the same time as the review of the Mortgage Credit Directive (MCD). The Consumer and Mortgage Credit Industries are mindful of the similarities between the two products by virtue of the fact that they are both loan products and therefore the parallels between the two Directives. However, it should be borne in mind that despite the basic similarities, there are nevertheless significant differences which should be taken into consideration in the respective analyses of the functioning of the Directives, and that automatic read-across between the two should be approached with caution.

With these considerations in mind, the EMF-ECBC is closely following the evaluation of the CCD, at the same time as the review of the MCD. Furthermore, the more recent experience of the adoption of the MCD, and the decisions taken at that time, potentially provides useful insight which can guide follow-up to the CCD evaluation. As such, the EMF-ECBC is responding only to those questions we consider also relevant for the MCD and where we can therefore add value in our insights.

**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 [6]. Should the scope be extended to:**

- 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 [7]
- No scope extension needed
- Don't know
- Other

Please specify 150 character(s) maximum

**2. The Consumer Credit Directive obliges lenders to provide consumers with standard information at pre-contractual stage [8]. 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?

at most 2 choice(s)

- Provide information in a standardised format ("Standard European Consumer Credit Information")

- Provide simplified information focusing only on key features of the offer
- Present credit offers by way of a comparison table
- Information provided online should be adapted to the size of the screen

We strongly believe that standardised information on consumer credit should be provided by way of the SECCI, which should contain only simplified information on key features. There should be no duplication of information nor of documents.

It should be noted here that any changes to the SECCI could be very costly and therefore any modifications should be carefully weighed up and aim only to provide simplified information focusing on key features of the offer. In any case an adequate cost/benefit analysis should always be conducted in order to ensure that banks – which have already invested heavily in implementing the SECCI – are not unnecessarily burdened with further revisions.

Remark: Please note that for overdraft facilities it is not mandatory to provide precontractual information in the format of the SECCI (article 6 CCD).

b) At which moment of the transaction should pre-contractual information be provided?

*at most 2 choice(s)*

- At least five days before contract signature
- At least one day before contract signature
- At least one hour before the contract signature
- Together with the other Terms and Conditions, right before signing the contract

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c) What key features do you consider should be prominently displayed to the consumer at the pre-contractual stage? 200 character(s) maximum

The information should focus on the key and most relevant characteristics of the product, that is limited to the essentials (such as the amount of the credit, the term, the interest rate, the costs and the amount to be paid periodically).

**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 [9] and other information relating to the credit. How should the provision of such information at the advertising stage be improved on different channels?**

Select most relevant choice(s)

|             | The amount of information should be reduced (e.g. focus on annual percentage rate of charge) | The information should be given particular prominence (e.g. engaging, salient and upfront display) | The information should be accompanied by warning messages on the implications of the credit decision (e.g. "borrowing money also costs money") |
|-------------|----------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------|
| Print media |                                                                                              |                                                                                                    |                                                                                                                                                |
| Online      |                                                                                              |                                                                                                    |                                                                                                                                                |
| Radio       |                                                                                              |                                                                                                    |                                                                                                                                                |

A clear distinction needs to be made between the advertising and the pre-contractual information stages in terms of coverage and content of disclosure requirements. This distinction is not always clearly made and results in imposing disclosure at the advertising stage of information which is only available and relevant at the pre-contractual information stage. A clear distinction between both would reduce the amount of information presented in advertisement and at the same time facilitate consumer understanding of the relevant information.

As they stand, the requirements on information render the use of television and radio advertising burdensome due to the overload of information that the advertisement is legally obliged to incorporate. We suggest the use of fewer more focused elements in such advertisements would minimise any confusion caused by such an overload of information and help consumers to make informed decisions.

**4. The Directive aims at encouraging responsible lending practices [10], 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? *at most 3 choice(s)***

- 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

Please specify 150 character(s) maximum

We believe that there is no need to introduce further measures to encourage responsible lending. The principles-based approach to creditworthiness assessment in the Directive remains the most effective way of avoiding default and over-indebtedness.

In our view, many of the options suggested here, such as the introduction of binding principles on responsible lending and the full harmonisation of creditworthiness processes would disrupt otherwise well-functioning markets and constrain the provision of consumer credit:

1. The proposal to introduce binding principles on responsible lending is unclear. It appears to suggest that credit products are currently not designed with consumers’ interests, objectives and characteristics in

mind. On the contrary, lending institutions invest significant resources in product design based on extensive and continuous market research. Having said this, it is clear that it is not possible to design products which are tailored to all consumer profiles. What is key in this respect is that consumers receive appropriate information and explanations about the products available to them so that they can take an informed decision about which product best suits their needs and profile.

2. The provisions on creditworthiness assessment should remain principles-based as this approach allows for the specificities of national markets to be accommodated, whereas prescriptive legal obligations would not only constrain existing national practices, but also result in legal uncertainty and potentially in increased litigation. In this respect, it is important to bear in mind that a legal obligation to assess borrowers' creditworthiness already exists also at banking supervisory level. It is the Industry's view that the principles-based approach currently taken by the Commission is the best way of ensuring that lenders' can take account of all of the relevant elements in the credit analysis for a given loan application as indicated above, rather than reducing the assessment to a "tick-box exercise", which prescriptive rules would essentially create.

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?** *at most 2 choice(s)*

- 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

Please specify which standards/methodology should be used - 150 character(s) maximum

As per our response to question 4 we do not believe that it is appropriate to introduce common standards on data/methodology for creditworthiness assessments. The current rules remain proportionate and appropriate.

Furthermore, we do not believe that the CCD is the right place to tackle access to credit databases for information on consumer's credit history, as this is an horizontal issue and not exclusively linked to the CCD.

Please specify which data should be used - 150 character(s) maximum

Does not apply.

Please specify - 150 character(s) maximum

**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?** *at most 2 choice(s)*

- 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

Please specify 150 character(s) maximum

In light of the support measures introduced by banks and government intervention, we do not believe it is necessary to adopt additional measures in this respect.

Against the background of the COVID-19 pandemic and concerns about a potential overall increase in over-indebtedness, unprecedented support measures have been introduced by banks through moratoria for borrowers with a view to mitigating the socio-economic effects of the crisis on Europe's citizens. Combined with government intervention in the form of furlough schemes for employees, these actions have kept the level of COVID related NPLs low across a majority of countries.

In parallel and under the aegis of the European Commission, the financial sector, consumer and business organisations agreed a list of 'best practices' in July 2020, reflecting the measures already taken by the financial sector, to help further mitigate the impact of the coronavirus pandemic. The Best Practices set out concretely how different market participants can support citizens and businesses throughout the crisis through for example:

- Payment moratoria for consumer and business loans, and for insurance contributions: these measures can help those facing financial difficulties by deferring payments;
- Ensuring loans aimed at mitigating the impact of coronavirus are provided swiftly, and that the fees and interest rates incurred are fair.

With these considerations in mind, we do not believe it is necessary to adopt additional measures in this respect.

Looking at the recovery however, we do see the potential for flexibility in the prudential framework to be exercised in order for banks to continue lending to support consumers and businesses. This will be extremely important for the post pandemic recovery. To date, the extraordinary measures introduced by the European Commission in the form of the 'Quick Fix' banking package have not provided relief in relation to loan portfolios.