EC Public Consultation on Review of Consumer Credit Directive

Final European Mortgage Federation-European Covered Bond Council (EMF-ECBC) Response
2 September 2021

Preliminary remark

The European Mortgage Federation-European Covered Bond Council (EMF-ECBC) welcomes the opportunity to comment on the European Commission's Proposal for a Revised Consumer Credit Directive (CCD) (hereafter "the Proposal") and is pleased to provide the following insights, which take account of the changing business environment in which lending institutions are operating and draw on the experience of our members in relation to the adoption and implementation of the Mortgage Credit Directive (MCD).

Digitalisation

Against a background where the revision of the CCD is, among other objectives, intended to address the fact that digitalisation has profoundly changed the decision-making process and the habits of consumers in general, we have concerns that the Proposal does not adequately achieve this objective. The Proposal does not take into account the significant digital evolution that has taken place in recent years and neither does it consider the increasing use of "digital devices". Indeed, pre-contractual and contractual documentation must in fact always be provided on "paper" or via a durable medium. And yet, in the current digital world the provision of information via a paper or even a durable medium is not always feasible or practical.

Furthermore, in relation to advertising, the Proposal claims to simplify the requirements and adapt them to digital use but no changes of note have been made which would achieve this. The existing rules, which have been in place for more than a decade, were conceived with "printed" advertisements (newspapers, billboards, flyers, etc.) in mind, requiring banks to include a significant amount of information in the advertisement itself, which makes it difficult to apply the rules to current digital formats (pop-up, mobile, etc.). Article 8 (new) leaves room to provide less information *"in specific and justified cases where the medium used to communicate the standard information referred to in the first subparagraph does not allow the information to be visually displayed",* however the explanatory note gives 'radio advertising' as the sole example of such a case. Furthermore it is questionable whether this exception actually reduces information overload and unnecessary burden, since it is still necessary to provide a significant amount of information as stipulated in Article 8(1)(a-d), including, if applicable, an explanation of the APRC. Against this background, we believe it would be most appropriate to identify a minimum, streamlined set of information on the loan to be included in advertisements, whether or not the advertisement contains information on the cost of the loan, e.g. in the case of advertising via social media, pop-ups/banners, a "drop down" link with a reference to a web page ("landing page") that contains more detailed examples for further study. We would also strongly recommend significantly limiting the amount of information to be provided in such cases.

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Information Requirements

While consumers have likely benefited from receiving pre-contractual information in a standardised format via the SECCI, they are often overloaded with information they do not read or do not understand, making it harder to compare products. The Proposal adds yet more information to the SECCI in the form of general information and of the Single European Consumer Credit Overview (SECCO), which risks generating information overload to the detriment of simplicity and challenging consumer cognitive capacity.

We propose to use the SECCO only for digital channels or in any case to provide it via digital channels also when the credit is provided and signed through physical channels. Finally, with reference to the obligation to send a reminder, we propose that this can be achieved through agile and simplified communication methods (eg. text messages, digital messages, emails) and that this information be reported in the SECCI itself.

Furthermore, and once again in order to take of account the new, "digital" needs of consumers and to make the online credit provision process more flexible and efficient, it is proposed to provide for ways of discharging the obligation to deliver the SECCI or to introduce the possibility of “viewing" information, which is compatible with the digital process.

Creditworthiness Assessment

By way of the proposed rules on creditworthiness assessment and the specific provisions on automated assessment systems, the customer is entitled to:

(i) request and obtain "human" intervention to review the decision on the assessment;
(ii) request a clear explanation of how the creditworthiness is assessed, including the underlying rationale and risks;
(iii) express the point of view and challenge the assessment risks.

It is our view that these rights:

a) will undermine creditor discretion in making such assessments, in contradiction with the objective of avoiding situations of over-indebtedness. Linked to this, it is not clear what is practically meant by the consumer’s right to “request and obtain human intervention…to review the decision…”. Furthermore, if the intention of the European Commission is that credit providers maintain a non-digital (human) flow in order to comply with this right (next to their online flow), we would like to highlight all potential risks (regulatory, fraud, operational, reputational) involved. Finally, we would like to underline that a right for the consumer to obtain a clear explanation of the assessment of the assessment of the creditworthiness assessment, including of the logic behind it, may be in contradiction with the credit provider’s interest to keep confidential and potentially competitor sensitive information secret. We would welcome a discussion on the added value and need for consumers to receive such information.
b) are, inter alia, more stringent and with a broader scope than those provided for by the GDPR. Moreover, it should be clarified how Article 18(6) CCD and Article 22 GDPR are related to each other.
c) Will increase potential disputes between bank and customer. Automatic assessment systems, particularly used in consumer credit, have favoured the correct assessment by banks, with a consequent general reduction in levels of insolvency and, at the same time, the growth of the personal loans market.

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Additionally, it must always be stressed that it is in the creditor's interest to assess with the utmost care the consumer's ability to fulfil contractual obligations by regularly repaying the credit. In fact, NPL management represents a significant cost item in banks' balance sheets.

Finally, there should never be a “right to credit” for a client. Lenders can decide whether to grant the loan even when a positive assessment is found and vice versa. We suggest including a similar concept to the one expressed in recital 57 of the MCD, where it is stated that “However, a positive creditworthiness assessment should not constitute an obligation for the creditor to provide credit”.

Interest Rate Cap

In general, free-market forces determine interest rates and the fee structure in the financial sector. It is an important competitive parameter to maintain in the EU.

The impact on the market of the proposed introduction of an interest rate cap, as set out in the Proposal is unclear and a harbinger of possible credit restrictions. We strongly believe that the CCD is not the right place to regulate this issue, without, among other things, taking into account the existence in various Member States of national regulations designed to combat usury.

It is crucial for the financial sector to be able to continue offering credit on market terms and that, for example, the Directive does not require the use of a reference rate.

Early Repayment

The proposed wording - in conjunction with recital 62 - is unclear and potentially misleading. It is proposed that, in the event of early repayment, upfront costs that have been adequately identified and declared should not be reimbursed (insofar as they are preliminary and preparatory activities for the granting of the loan, and are fully exhausted before any early repayment), and that only recurring costs should be reimbursed to the consumer for the portion not accrued, excluding in any case from the bank's ability to reimburse taxes and costs paid to third parties (e.g. brokerage costs).

Non-discrimination principle

While we support the principle set out by Article 6, it is important to highlight the presence of several obstacles associated with this principle which could risk being interpreted as credit providers not being allowed to refuse credit to consumers who are resident in another Member State than the credit provider. Considering that the meaning that the Commission intends to give cannot go in this sense, it should be clarified that this Article should not affect creditor discretion in assessing consumers’ creditworthiness and therefore his ability to decide to grant or not the loan. Indeed, some EU Member States or some of their regions could be statistically riskier and creditors should assess the creditworthiness of borrower in these territories more prudently.

Even though Article 19 (new) requires access for creditors to databases in order to assess creditworthiness in cross-border situations, it is questionable whether such a provision will work in practice given that no single European database exists; on the contrary databases are different (with different rules and codes) in each Member State. Furthermore, it remains to be seen how documents of proof (e.g. proof of income) can be verified by credit providers in a foreign language and based on different customs/rules.