

Revision of Directive 2008/48/EC on credit agreements for consumers

This briefing is one in a series of 'implementation appraisals', produced by the European Parliamentary Research Service (EPRS), on the operation of existing EU legislation in practice. Each briefing focuses on a specific EU law, which is likely to be amended or reviewed, as envisaged in the European Commission's annual work programme. 'Implementation appraisals' aim to provide a succinct overview of publicly available material on the implementation, application and effectiveness to date of an EU law, drawing on input from EU institutions and bodies, as well as external organisations. They are provided by the EPRS Ex-Post Evaluation Unit, to assist parliamentary committees in their consideration of new European Commission proposals, once tabled.

SUMMARY

[Directive 2008/48/EC on credit agreement for consumers](#) (the CCD) is part of the legal framework tackling consumer protection and the development of the internal market. Despite improvements in enforcing consumer protection policy, there are shortcomings in particular regarding the scope of application of the directive and the uneven regulatory choices made in the 27 EU Member States for implementing it. Moreover, there are new challenges – such as digitalisation and data collection, use and processing – that require immediate attention.

This implementation appraisal looks at the practical implementation of the CCD in light of the expected Commission proposal for its revision. According to the [Commission work programme 2021](#), the proposal will be submitted in the second quarter of 2021, after having been initially part of the 2020 refit programme (see [Legislative Train Schedule](#), EPRS).

Background

The development of the regulatory framework on consumer credit began with the adoption in 1987 of [Directive 87/102/EEC concerning consumer credit](#) that laid down minimum standards for consumer protection. The directive was not sufficiently effective in harmonising the rules and fostering the creation of an internal market for consumer credit; moreover, consumer protection continued to be uneven across the EU.

To cope with an increasing demand for credit and the emergence of new types of credit and risks, the proposal to revise the directive came with the double objective of harmonising the protection rules for consumers and enabling the functioning of an EU internal credit market.

Despite at times uneven progress of inter-institutional negotiations on consumer protection standards, a new [Directive 2008/48 on credit agreements for consumers](#) (hereinafter CCD) entered into force in June 2018. The directive introduced a new framework laying down obligations for credit providers towards consumers with a view to preventing indebtedness and fostering responsible lending; furthermore, it vested consumers with specific rights. Another aim of the directive was to facilitate cross-border access to credit. Member States had until 11 June 2010 to transpose it. All Member States transposed it.

In 2014, a first [report](#) on the implementation of the CCD concluded that creditors often did not respect their obligation to inform consumers, and that consumers encountered difficulties in exercising their rights. The Commission concluded that there was a need to further monitor the enforcement of the CCD in the Member States, starting with an assessment of their supervisory practices.¹ Over the years, the consumer credit market – especially since 2014² – continued to change, especially as a result of major technological/digital advances that opened new possibilities for the development of an internal market and cross-border credit practices. Digitalisation and the multiplication of the use of data also introduced new challenges and risks.

In 2017, a [REFIT Platform opinion](#) on the CCD recommended assessing the relevance, effectiveness and efficiency of the standard information to be included in the advertising as per Article 4 of the CCD, in the context of the implementation report of the CCD, at the time scheduled for 2019. Again in 2017, the Commission adopted its [Consumer financial services action plan: Better products, more choice](#). The Commission planned therein specifically to i) explore ways of facilitating access to loans across borders whilst ensuring a high level of consumer protection (Action 7); ii) to introduce common creditworthiness assessment (hereinafter CWA) standards and principles for lending to consumers; and iii) work to develop a minimum set of data for exchanges between credit registers in cross-border CWAs (Action 9).

Against this background, as a result of the REFIT Platform opinion, the Commission decided to launch a full-fledged evaluation in line with its Better Regulation Principles. The Commission found that the CCD had not fully achieved its main objectives and that it would not do so in view of the rapidly changing needs, new credit practices and widespread digitalisation. Consequently, the initiative to review the CCD was included in the REFIT annex of [the adjusted Commission work programme 2020](#), among those revisions that would be finalised beyond 2020.

Presumably, the new directive will feed into the new European consumer agenda, which will look at the future consumer policy as envisaged in the [roadmap](#). Some of the new challenges that will be presented in the new agenda are cross-cutting issues (for instance, gaps in the effective enforcement of consumer rights and disparities among national consumer policies).

Legal framework

The CCD has two main objectives. On the one hand it aims to improve consumer protection and boost consumer confidence, and on the other hand it aims to foster the emergence of a well-functioning internal market where free movement of credit takes place under optimum conditions for those who offer credit and those who require it.

Article 2 defines the scope of the CCD; it applies to credit agreements involving a minimum amount of €200 and a maximum amount of €75 000, such as loans granted for domestic consumption of goods including cars, household goods, travel, as well as credit cards and overdraft facilities. Linked credit and credit with ancillary services fall under its scope as well.³

By contrast, the CCD excludes certain types of credit agreements that could be classified in three categories. First, it does not cover mortgage credit agreements or credit agreements for the acquisition of land or real estate. Second, the CCD does not cover credit agreements that must be repaid in a very short term or carry insignificant charges; those include: overdraft facilities to be repaid within one month; interest-free credit; credit to be repaid within three months and involving insignificant charges; and hiring or leasing agreements without an obligation to purchase. Third, the CCD excludes a very specific type of credit agreements: those granted by an employer to their employees under certain conditions; those concluded with investment firms or credit institutions; those concluded as an outcome of an official settlement or related to the deferred payment, free of charge, of an existing debt; those involving the deposit of an item as security in the creditor's safe-keeping; and those related to loans granted to a restricted public under a statutory provision.

The CCD governs relations between creditors and consumers. To enable consumers to take an informed decision, creditors must provide them with standard information in the advertising (Article 4) and in the pre-contractual stage (Articles 5, 6 and 7) by means of the Standard European Consumer Credit Information form (SECCI). This standardised form is designed to show key details, such as the type and conditions of credit, the total amount including costs, the annual percentage rate (APR),⁴ the number and frequency of payments, and other important legal aspects, such as the consumers' right to withdraw from a credit agreement and to an early repayment of their credit. Before the conclusion of a credit agreement, the creditor must assess the consumer's creditworthiness (Article 8). This obligation is aimed at fostering responsible lending. Afterwards, the contract needs to specify some key information concerning the execution of the credit (Article 10). The consumer can withdraw from the credit agreement within 14 days of concluding it, without giving any reason (Article 14(1)).⁵ Consumers are entitled at any time to repay their credit partially or fully, and in such cases, they are entitled to a reduction in the total cost of the credit (Article 16(1)). Creditors are entitled to fair and objectively justified compensation under certain conditions (Article 16(2)).

The improved protection that strikes a new balance in the creditor-consumer relationship is expected to foster the establishment of a trans-border credit market. The CCD foresees full harmonisation,⁶ with the exception of nine optional provisions where the directive allows Member States to exercise a discretionary power to make use of particular regulatory choices.⁷ Likewise, Member States may decide to apply some provisions of the directive to areas that are not covered by the definitions it gives.

In terms of enforcement, the CCD requires the Member States to lay down rules on penalties applicable to infringements of the national provisions transposing the directive, and take all measures necessary to ensure that they are implemented (Article 23). The penalties must be effective, proportionate and dissuasive.

Some other pieces of EU legislation focus on aspects covered by the CCD and are potentially relevant to the provision of consumer credit. They are listed in the table below.

Table 1 – Other consumer credit-related EU legislation

Credit Mortgage Directive (CMD)	The CMD does not overlap but some similar concepts (APR, CWA) are differently implemented in both so more consistency would improve coherence of the legal frame
Distance Marketing of Financial Services Directive (DMFSD)	The DMFSD covers some contracts for which some of the CCD provisions are directly applicable (noticeably the SECCI)
Unfair Commercial Practices Directive (UCPD)	The UCPD protects all consumers against unfair, misleading or aggressive advertising practices. The CCD, which has the character of <i>lex specialis</i> , takes precedence over the UCPD, which is deemed to be <i>lex generalis</i>
Unfair Contract Term Directive (UCTD)	The UCTD complements the CCD, which does not contains rules for unfair contract terms
Benchmark Regulation	The regulation introduced rules to ensure the accuracy and integrity of indices used as benchmarks in financial instruments and financial contracts, including credit agreements
Insurance Distribution Directive (IDD)	The IDD applies to credit providers acting as insurance distributors when selling insurance policies ancillary to consumer credit
General Data Protection Regulation (GDPR)	The GDPR applies to data collected, shared and processed for conducting the CWA. It concerns noticeably the use of credit databases.

Data source: Author's compilation based on [EC Evaluation 2020](#).

European Commission reports and consultation activities

European Commission ex-post evaluation of the CCD (5 November 2020)

When the Commission published the ex-post evaluation [staff working document \(SWD\)](#) in November 2020, there was no legislative proposal for reviewing the CCD, which Article 27(2) leaves as a possibility rather than an obligation. According to the [2021 Commission work programme](#) and its accompanying [inception impact assessment](#), the legislative proposal will be submitted in the second quarter of 2021.

The Commission evaluation is supported by an [external study](#) and by the findings of different sources, identified in the [roadmap](#) drawn up for the purposes of the proposal. The evaluation considers data and recommendations submitted by the [expert group on the implementation of the directive](#) and the [Financial Services User Group \(FSUG\)](#). Additionally, it takes into account the lessons learned from the work carried out under actions 7 and 9 of the Commission's consumer finance action plan and its 2014 implementation report. A mystery shopping exercise and an extensive literature review⁸ were also undertaken as part of the evaluation.

In line with the Commission's Better Regulation Guidelines, the SWD presented findings on the implementation of the CCD against the following evaluation criteria: effectiveness, efficiency, coherence, relevance, and EU added value. The evaluation considered the implementation of the directive from its entry into force in 2008 to September 2009.

Under the **effectiveness** criterion, the Commission analysed if both CCD objectives had been achieved. As regards the implementation of a higher level of consumer protection, the Commission concluded that the directive had partially achieved its objective. The Commission assessed positively the development of a specific legal framework, stating that it had provided legal clarity on key aspects of consumer protection. This concerns in particular pre-contractual information and standard information in advertising, the calculation of the APR, and rights of consumers to withdraw and to an early repayment. The directive triggered substantial reforms in most Member States. However, the Commission pointed to legal shortcomings. First, it noted the limited scope of application, including the minimum €200 threshold that has been widely questioned by stakeholders. Then, the Commission pointed to the large number of exemption some of them encompassing credits mostly used by vulnerable consumers such as zero-interest loans⁹ and short-term high cost loans (STHC).¹⁰ Because they are vulnerable, those are consumers who need the most warnings against the risks associated with such credits. The same remark applies to some types of credit cards,¹¹ revolving credit,¹² and overdraft facilities.¹³ In addition, the open public consultation and stakeholder surveys showed that the requirements and implementation of CWAs are considered insufficient to prevent over-indebtedness.¹⁴

Some stakeholders also expressed serious concern about the potential negative impact of digitalisation on CWAs, mentioning an uncontrolled use of databases and algorithms. Altogether, the legal shortcomings, the difficulties in adequately implementing the CWAs, and new challenges posed by digitalisation limit the achievements as regards fostering responsible lending to consumers. Another obstacle to the achievement of the objective is the lack of harmonisation, which resulted in a fragmented regulatory landscape. On the one hand, this is due to the discretion left to Member States; the Commission noted that most of them had gone beyond the requirements of the directive, thereby suggesting that there was insufficient protection for consumers. On the other hand, the enforcement practices and remedies vary considerably. This conjunction of factors resulted in an uneven level of consumer protection across the EU.

As regards the fostering of a well-functioning internal market and a level playing field among creditors, the Commission concluded that the directive did not fully achieve its objective for two types of reasons. One is in the directive itself; the CCD did not contain clear rules for achieving this

objective; to the contrary, by limiting its scope of application, and by giving some discretion to the Member States, it hampered the emergence of a comprehensive and harmonised legal framework. Even when there was legal clarity, this was insufficient to counter fragmented practices; moreover, provisions that were specifically targeting cross-border credit proved too loose.¹⁵ The other reason lies outside of the remit of the directive itself. The EU credit market remained fragmented at the national level as well. The consultations and analyses confirmed that consumer behaviour did not change much between 2008 and 2018, with consumers tending to look for a credit at the local level, where the market was considered sufficient.¹⁶ Even consumers who are aware of the possibility to access cross-border credit, seem to fear the potentially more complex procedures, language barriers and cultural differences. As for creditors, they do not make any efforts to reach out to cross-border consumers, and geographical restrictions are often used.

As regards **efficiency**, the Commission concluded that the benefits of applying the directive, regarding reduction of consumer detriment outweigh the costs. There are not data that could help assess with certainty what is directly attributable to the directive and what is the result of other factors such as the development of the credit sector itself, more stringent legislation in some Member States, or increasing awareness of consumers. The assessment is based on expert judgement and reasoning of other factors. Similarly, as regards cross-border detriment, there are no comprehensive data on how many consumers could not obtain a loan, so the evaluation provides estimates, according to which the number of consumers affected would be substantial. Regarding costs, creditors claim that they are the ones who are bearing the costs of the transposition of the directive. However, the evaluation shows that those costs often arise instead from national legislation going beyond the directive. Overall, the evaluation concluded that the provisions are largely cost-effective, even though the lack of comprehensive data does call for caution. In particular, the provisions on the right of withdrawal, on the right of early repayment, on pre-contractual information, and on the APR and the CWA are deemed cost-effective. There is more caution when it comes to advertising obligations that seem cost-ineffective for some specific media such as TV or radio. Although the evaluation indicates the possibility of reducing some of the regulatory burden, it notes that this could impair the effectiveness of the directive.

The directive and its implementation at Member State level shows a fair degree of internal **coherence**, especially regarding the consumer protection provisions. However, the number of exemptions from the directive's scope weaken its internal coherence. There is also a degree of incoherence regarding the provisions aimed at fostering the EU internal market, since the directive cannot achieve such an objective by itself. Whenever it includes provisions in that sense, they are insufficient (see above) and too disparate. As regards coherence between the directive and relevant EU-wide policies and legislation, most of the transposition measures are largely coherent, despite the fragmentation of rules. The Commission concluded that the CCD is generally coherent and complementary with other EU instruments that focus on consumer policy and credits (see Table 1 above). Some discrepancies were found with the MCD, more particularly with regard to pre-contractual information and the CWA conditions, but they appear to be of minor importance. Several stakeholders support full alignment of provisions on the CWA between the two directives. More questionable is the level of coherence between the CCD and the GDPR. There are no inconsistencies as such but there are concerns about the lack of clarity in the CCD regarding the amount and nature of data used for the CWA, and the lack of rules on automated decision processes, all with a potential detrimental effect. For the Commission, alignment with the MCD together with a reference to the data minimisation principle would improve legal certainty.

The Commission is positive about the **relevance** of the objective to strengthen consumers' protection, although it is not entirely adapted to current consumer behaviour. There are also shortcomings as regards the aim of fostering responsible lending, and creditors' obligations are insufficient to prevent over-indebtedness. The Commission is also positive about the relevance of the CCD in supporting an internal market for consumer credit, while pointing at the need for modernisation. On the other hand, the directive lacks the capacity to address new challenges

stemming from digitalisation or to address market and consumer behavioural changes, despite their increasing pull effect on cross-border demand. Digitalisation has fostered the emergence of new consumption practices that do not fall under the current remit of the directive. Those concerns add to the already identified shortcomings of the CCD.¹⁷ The need to extend the directive's scope of application applies not only to certain types of credit (and credit with a lower threshold) but also to new players, whose emergence has been favoured by digitalisation.¹⁸

The **EU added value** is widely recognised by all relevant stakeholders who agreed that consumer credit must remain regulated at the EU level. The CCD contributed to the harmonisation of key provisions relevant to setting consumer protection standards and creating a level playing field. The vast majority of stakeholders concluded that credit agreements have become more transparent and fair. However, the EU added value might be less significant for the emergence of an internal market which was mainly hampered by external factors such as consumer behaviour and the fragmentation of the credit market as mentioned above. The Commission concluded that the directive is not entirely adapted to market changes that are likely to intensify because of digitalisation. In its current form, the directive runs the risk of diminishing in value. For the Commission, there is an undisputable need for change.

Stakeholder consultations

Stakeholders were first invited to comment on the Commission roadmap, and then throughout 2019 as part of the data collection programme underpinning the ex-post evaluation itself. The 2019 programme included a consultation of the public and all the relevant stakeholders – consumers and creditors but also all those indirectly or potentially affected by or involved in the functioning of the directive (Member States, enforcement authorities, consumer associations, creditors, businesses). The consultation comprised online surveys for consumers and creditors, a stakeholder event and several ad hoc meetings throughout 2019. The various consultation activities, the relevant methodological aspects and some content-related results are presented in a [summary report](#) and in Annex II to the Commission's [SWD](#). In its latest meeting, in December 2020, the [expert group](#) reiterated its support for a revision and ambitious changes as proposed by the Commission.

In the context of the revision of the [new consumer agenda](#), the Commission carried out a broad consultation on the CCD review with the stakeholders between 30 June and 6 October 2020. A factual [summary report](#) presents the results. In comparison to the previous consultation, this one takes into account the impact of the coronavirus pandemic on the credit market and on consumers, including the vulnerable ones.

European Parliament position / MEPs' questions / citizens' enquiries and petitions

Resolutions of the European Parliament

In the previous legislative term (2014-2019) the European Parliament addressed the topic of credit agreements for consumers in the context of a 2016 [resolution](#) on the **green paper on retail financial services** covering all types of financial services for citizens interested in cross-border services. To strike the balance between data protection concerns with improved cross-border access to better-coordinated credit databases, the Parliament called on the Commission to analyse what data are necessary to enable lenders to assess the credit-worthiness of their customers and then introduce proposals for regulating this process and take action if necessary. The Parliament emphasised that a single market in retail financial services needs high levels of consumer protection legislation and consistent and rigorous enforcement thereof across the Member States. The Parliament highlighted the importance of the SECCI form and the need for measures on financial literacy and awareness.

The following year, in its [resolution](#) on the **action plan on retail financial services**, the Parliament detailed its previous position. The Parliament encouraged the Commission to make it easier for consumers to switch to more advantageous retail financial services across the EU. The Parliament urged the Commission to recognise the importance of controlling predatory lending and payday loans and to present legislative initiatives, designed specifically for the financial sector, to end unjustified geo-blocking. The Parliament insisted on transparency and on the protection of vulnerable consumers, and called on the Commission to address over-indebtedness as a matter of priority. The Parliament highlighted the data subject rights and underlined that consumer protection should remain a guiding priority in designing legislation. It also stressed the need for further harmonisation, where necessary. The Parliament invited the Commission to propose harmonised cross-border standards and principles for CWAs. The Parliament called on the Commission to ensure that the 'same service, same risk, same rule, same supervision' principle is applied, so that competition is not distorted, in particular with the emergence of new market players.

In its [resolution](#) of 19 June 2020 on the banking union – annual report 2019, the Parliament called on the Commission to lay down, in the upcoming revision of the CCD, more ambitious provisions on the protection of borrowers against abusive practices, ensuring that those rights apply equally to existing and future loans. Furthermore, the Parliament called on the European Supervisory Authorities (ESAs) to make full use of their powers to ensure a high degree of consumer protection.

Selected written questions

MEPs' written questions concerning risks stemming from certain forms of credit

[Written question on payday loans](#) by Pirkko Ruohonen-Lerner (ECR, Finland), 23 August 2018. The Member pointed to the increasing popularity of payday loans, which has pushed numerous consumers into over-indebtedness. The Member asked if the Commission considered proposing restrictions on companies granting payday loans, such as interest rate caps, a positive credit register, banning of aggressive marketing or even banning payday loans altogether. It asked if the Commission also considered introducing a customer's right to cancel a loan agreement.

[Answer](#) given by Ms Jourová on behalf of the Commission, 1 October 2018. In its reply, the Commission noted that the evaluation of the CCD would look at whether the current scope of the directive, which excludes credit below €200, is still relevant. The Commission mentioned the analysis carried on national approaches to payday loans. The Commission recalled the existing right to withdraw from the contract within 14 days after its signature, and the right to early repayment.

[Written question on short-term high cost credit](#) by Matt Carthy (GUE/NGL, Ireland), 4 October 2019. The Member asked if there should be further requirements or restrictions on advertising by moneylenders and if the Commission would liaise with national authorities to determine how best to protect people from predatory moneylenders.

[Written answer](#) given by Mr Reynders on behalf of the European Commission, 13 January 2020. In its reply, the Commission wrote that high-cost credits (below the €200 threshold) lie outside the scope of the directive. In light of the evaluation's outcome, the Commission would consider whether to further strengthen the protection of consumers, particularly those in a situation of vulnerability.

[Written question on high interest rates for overdraft](#) by Evelyn Regner (S&D, Germany), 23 July 2014. The Member expressed concerns regarding the very high interest rate payable on overdrafts, both within agreed overdraft limits and when those limits are exceeded. The Member noted that these usurious overdraft interest rates particularly affect the most vulnerable and asked whether the Commission considers that the CCD needs to be revised in this context.

[Written answer](#) given by Mr Mimica on behalf of the Commission, 5 September 2014. The Commission noted that the CCD obliges creditors to inform borrowers in detail about the interest rates and charges for overdrafts, and the manner in which those interest rates and charges may

change. The Commission noted that there are diverging opinions about the expected benefits of interest rate restrictions. The Commission added that Directive 2005/29/EC, while not prohibiting usurious practices per se, already prevents traders from acting contrary to the requirements of professional diligence and distorting the economic behaviour of consumers. It concluded that in the area of financial services, Member States may adopt more prescriptive rules with a view, for instance, to prohibiting usurious credits in any circumstances.

MEPs inquiring how creditors have implemented their obligations

[Written question on radio advertising](#) by Daniel Dalton (ECR, United Kingdom), 21 March 2016. The Member reported an increasing concern that, because of their length and complexity, standard information requirements for advertising are failing to protect consumers listening to the radio. The Member asked the Commission if it would evaluate the impact of Article 4 of the CCD.

[Written answer](#) given by Ms Jourová on behalf of the Commission. The Commission clarified that there are standard information requirements only for those advertisements that mention an interest rate or figures relating to the cost of the credit to the consumer. The Commission noted that most consumers and many Member States continue to support the principle of standardised information.

[Written question on usury](#), by a group of EFDD MEPs,¹⁹ 23 July 2014. Considering the increasing phenomenon of usury against individuals and businesspeople in Italy, the Members asked what EU-level measures for combatting this phenomenon are in force.

[Written answer](#) given by Mr Barnier on behalf of the Commission, 19 September 2014. The Commission replied that the level of borrowing rates offered to consumers is not regulated by EU law. The Commission recalled that creditors are obliged to provide information on all relevant costs of a consumer credit. Member States may adopt more prescriptive rules with a view, for instance, to prohibiting usurious credit in any circumstances. Member States are free to set the level of usurious rates.

[Written question on creditworthiness assessment](#) by Chris MacManus (GUE/NGL, Ireland), 25 February 2021. After taking note of the case of a major moneylender that has admitted to using social media to 'assist with credit decisioning',²⁰ the Member asked if the Commission believes that the use of social media in the CWA falls within the letter or spirit of the CCD. He wondered if in its CCD review, the Commission would ensure that this issue is resolved by banning the use of social media in the CWA.

[Written answer](#) given by Mr Reynders on behalf of the Commission, 12 May 2021. The Commission replied that the creditor must assess the consumer's creditworthiness 'on the basis of sufficient information'; in so doing, the creditor is obliged to respect all relevant data protection rules and principles. The Commission highlighted the data protection principles of data minimisation; purpose limitation; and lawful, fair and transparent personal data processing. The Commission further noted that it is up to the relevant data protection authority to supervise and enforce the rules. However, the evaluation of the directive indicated that the current wording in relation to the CWA obligation, in particular the term 'on the basis of sufficient information', is not precise enough.

[Written question on the annual percentage rate \(APR\)](#) by Notis Marias (ECR, Greece), 31 March 2015. Noting that the Greek banks calculate interest based on a 360-day year (meaning that borrowers have to pay up extra interest from which the banks profit), the Member asked what measures the Commission intends to take.

[Written answer](#) given by Ms Jourová on behalf of the Commission, 3 July 2015. The Commission confirmed that one of the harmonised elements of the APR calculation is the number of days in the calendar year (included in remark c) in Annex I of the CCD): 365 days (or 366 days for a leap year). The directive, while obliging the creditors to provide a borrowing rate expressed as an annual rate, does not harmonise the way in which the borrowing rate is calculated.

MEPs questions addressing the cross-border dimension of the CCD

[Written question on retail financial services across borders](#) by Frances Fitzgerald (EPP, Ireland) 11 May 2020. The Member reported on cross-border challenges and asked what the Commission is doing to break down barriers to ensure that consumers can avail of cross-border retail financial services.

[Written answer](#) given by Executive Vice-President Dombrovskis on behalf of the European Commission, 28 April 2020. In its answer, the Commission referred to the CCD and the CMD, as both directive include rules on non-discriminatory access to national databases for assessing the creditworthiness of consumers. The Commission recalled several initiatives such as the 2017 consumer financial services action plan focused on technology.

Citizens' enquiries and petitions

Consumer credit agreements have been subject to citizens' enquiries and petitions. Concerns directly related to the CCD were raised on the implementation of CWAs. For instance, one petitioner worried about the lack of penalties for bank intermediaries who did not carefully assess creditworthiness before granting loans despite their legal obligation to do so. In [petition No 0276/18](#), the petitioner claims that, because of the above, people applying for a loan lack the necessary protection, while being exposed to situations of over-indebtedness. The Commission confirmed that the CCD seeks to prevent irresponsible lending, by introducing an obligation on creditors to do a CWA of the consumer before giving out a credit; however the Commission further noted that the CCD leaves a high degree of flexibility to Member States to regulate how this should be carried out. The Commission recalled that the legal effect of not having performed a suitable CWA also varies widely between Member States. The Commission concluded that it does not have evidence suggesting a lack of sanctions for creditors that do not carry out a creditworthiness check.

EU citizens originating from one Member State and trying to access credit in their country of residence, asked questions regarding the conditions for CWAs applicable to them. In [Petition No°0365/19](#) the petitioner encountered problems because he had no income in the country where he was residing and was no longer a resident of the country where he had income. For the Commission, when evaluating the consumer's ability to repay the credit, the creditor may take into account circumstances such as the fact that the petitioner is a resident of another country but their income derives from another Member State. In a similar situation described in [Petition No°0258/2014](#) where the petitioner could not obtain a bank loan for a household appliance, the Commission, considering the lack of sufficient information about the circumstance, closed the case but acknowledged the potential for discriminatory elements and referred the petitioner to the national authorities.

Council of the European Union

In February 2021, the Council adopted [conclusions](#) on the **new consumer agenda**,²¹ voicing its support for the Commission's intention to revise the CCD with a view to strengthening consumer protection by implementing measures preventing misinformation, over-indebtedness and social exclusion (for example by clarifying the requirements on creditworthiness). The Council encouraged the Commission to look into how to protect consumers from over-indebtedness when engaging in certain types of loans, and highlighted the need for consumers to receive clear, necessary and appropriate pre-contractual information to make informed choices while avoiding information overload. The importance of an effective enforcement cooperation regime and appropriate redress mechanisms was highlighted to allow consumers to make transactions without barriers and with trust.

European Economic and Social Committee

In its [information report](#) of July 2019, the EESC recommended clearer and more stringent principles on the quantity, quality and comparability of information in the pre-contractual stage. It

recommended that the scope of the CCD be expanded to credit below the €200 threshold,²² and that all types and new forms of credit be addressed as a matter of urgency. The EESC called on the Commission to tackle the setting up of national databases and making their cross-checking mandatory, so as to make CWAs more effective. Furthermore, the EESC recommended adopting measures that would help strengthen consumers' financial literacy by taking digital developments into consideration, among other things. It encouraged a broader application of full harmonisation, while preserving better terms for consumers and ensuring a genuine level playing field for operators.

Several EESC opinions address the issue of consumer credit. In its 2017 [opinion](#) on the consumer financial services action plan, the EESC supported harmonised minimum criteria for CWAs. Two years earlier, in its 2015 [opinion](#) on the green paper on retail financial services, the EESC had suggested avoiding obliging banks or other credit institutions to share processed information about their customers' creditworthiness. On the other hand, it suggested sharing raw (non-processed) data – with the customers' consent and in compliance with EU data legislation – to improve the comparability of the CWAs. The EESC called for attention to a potential EU-level credit register that it believes is crucial for cross-border financial services. In 2017, the EESC insisted on financial education for consumers; in 2015 it had already recommended targeted measures for educating individual investors and improving financial advice.

European Banking Authority

The biannual [Consumer Trend Report](#) (CTR) of the European Banking Authority (EBA) identified issues stemming from credits (e.g. the STHC and revolving credit), and mis-selling practices and distorted implementation of some key CCD provisions. The EBA identified three main trends. The first relates to poorly executed CWAs and irresponsible lending practices. The majority of stakeholders highlighted the relevance of responsible lending and CWAs and the link with insufficient financial literacy. They also drew attention to the devastating consequences of the coronavirus pandemic on the economy, which may lead to an outbreak of over-indebtedness. The second trend relates to excessive fees and insufficient pre-contractual information. Stakeholders highlighted the lack of transparency and mischarged fees. The third trend relates to the growing digitalisation. In this regard, the EBA noted the importance of ensuring compliance with the law, irrespective of the channel used to provide retail financial services (technological neutrality). This trend could potentially increase consumers' exposure to security risks, including cyber-attacks and theft or loss of personal data. Enforcement practices have proved to be unequal in some cases.²³ In an attempt to tackle those challenges, the EBA noted that Member States have implemented a wide range of regulatory and supervisory measures, among which linked-credit agreements and revolving credits as priorities.²⁴ Many measures have focused on financial literacy.²⁵

European Court of Justice

The European Court of Justice has provided interpretation on some of the CCD provisions. Additionally, the Court has provided details in relation to the scope and form of pre-contractual information. In [CA Consumer Finance SA v baukhaus \(e.a\)](#), the Court concluded that the burden of proving the non-performance of the pre contractual information obligations laid down in Articles 5 and 8 should not lie with the consumer. The court clarified some aspects of the creditworthiness assessment. In 2014 in [CL le Crédit Lyonnais SA](#) the court noted that 'creditors should not engage in irresponsible lending or give out credit without prior assessment of creditworthiness'. The court added that creditworthiness assessments are 'intended to protect consumers against the risks of over-indebtedness and bankruptcy'. For that reason, in the event of infringement of the lender's obligation to conduct a creditworthiness, the penalties are to be effective, proportionate and dissuasive. In 2019 in [RN v home credit Slovakia](#) the court specified that the APR cannot be expressed as a range referring to a minimum and a maximum rate but rather, as a single rate. In a recent judgment ([Lexitor sp. z o.o.](#)), the court clarified the modalities for exercising the right for early repayment and held that in the event of early repayment, the general concept of 'an equitable

reduction' should be replaced with the more specific concept of 'a reduction in the total cost of the credit' and that this reduction must cover 'the interest and the costs'.

Organisation for Economic Co-operation and Development (OECD)

In 1997, the OECD adopted its [Recommendation on consumer protection in the field of consumer credit](#), in which it insisted on the need for pre-contractual information. In the same vein, it adopted its [G20 high-level principles on financial consumer protection](#) in 2011. These 10 principles address similar concerns as those addressed by the EU legislation. They call for the legal recognition of financial consumer protection; for setting up functional oversight bodies with the necessary authority and resources; for fair treatment of consumers; for proper information disclosure; for improved financial education; for responsible business conduct by financial services providers and authorised agents; for protection of consumer assets and data, including from fraud and abuse; for competitive frameworks; and for adequate complaints handling. The OECD is currently updating the 1977 recommendation to reflect changes affecting the market. There were public consultations around the revision of the recommendation until 21 December 2018.

Even closer to the topic of consumer credit, in 2019 the OECD published a [report on short-term consumer credit: provision, regulatory coverage and policy responses](#), in which it looked at developments in the short-term credit market. It recommended ensuring effective market monitoring and assessing the need and scope for regulation, seeking to better understand consumer behaviour, and providing sufficient financial consumer protection measures, at least equivalent to those applicable to other forms of consumer credit. It recommended the legislators, in the presence of consumer detriment, to consider adopting specific policy solutions, such as enhanced pre-contractual information, caps on the cost of short-term credit under certain conditions, and specific lending provisions based on a high level of responsibility. The report mentioned possible initiatives to strengthen financial education.

ENDNOTES

- ¹ Pursuant to Article 27 (2) CCD, the Commission must monitor how the regulatory choices of Member States affect the internal market and consumers; its results have to be reported to the Parliament and the Council every five years.
[EC-Evaluation 2020](#) overview of the credit market from 2008 onwards, see implementation/state of play pp. 12-17.
- ³ For definitions of credit agreements, see Article 3 of [Directive 2008/48 on credit agreements for consumers](#) (CCD).
- ⁴ The APR is defined as the total cost of the credit expressed as an annual percentage of the total amount of credit, see Article 3 (i) of the CCD.
- ⁵ He has to notify the creditor and pay nothing more than the capital and interest accrued thereon from the date the credit was drawn until the date the capital is repaid (Article 14).
- ⁶ Recital 9 of the CCD: Member States should not be allowed to maintain or introduce national provisions other than those laid down in the directive. Where the directive does not envisage harmonised provisions, Member States remain free to maintain or introduce national legislation.
- ⁷ See list in Article 27(2) of the CCD.
The mystery shopping exercise is defined as the activity of pretending to be a normal customer when you are employed by a company to check how its products or services are being sold.
- ⁹ [EC Evaluation 2020](#): The main concern regarding zero interest loans lies in the very high fees used in case of late or missed payments, conditions that consumers are not aware of.
- ¹⁰ [EC Evaluation 2020](#): STHC are short-term loans to be repaid within a short timeframe, (e.g. payday loans). While they could help increase consumers' financial inclusion, more often vulnerable consumers are obliged to pay high interest rates, which in turn increase the risk of getting them in the vicious circle of borrowing more to repay.
- ¹¹ [EC Evaluation 2020](#): Credit cards are defined here as a type of non-installment credit product that allows the consumer to make use of a credit reserve within an agreed limit and time-period, without having to repay the outstanding amount in a fixed number of payments.

- ¹² [EC Evaluation 2020](#): Revolving credit is a line of credit where consumers pay a fee to a financial services provider to borrow money if and when needed, with the exact borrowing amount dependent on their specific monthly needs.
- ¹³ Credit cards and revolving credit fall out of the remit of the directive depending on the amount borrowed; this may play to the disadvantage of vulnerable consumers who end up repaying high interests and fees.
- ¹⁴ The regulatory landscape regarding CWA varies considerably; a [mapping of national approaches towards CWA](#) was conducted in 2018. Enforcement bodies considered Article 8 unclear and problematic; two thirds of consumer associations mentioned being dissatisfied with CWA practices; conversely, in [EC Evaluation 2020](#), credit providers were of the opinion that Article 8 was useful.
- ¹⁵ For instance, Article 9: in case of cross-border credit, creditors have a right to access databases used in other Member States for CWA. However, the implementation was difficult, considering the different ways in which the Member States' credit databases had been structured, the different types of data gathered by the Member States, and their varying requirements for accessing these data. Only 16 Member States require creditors to consult a database, [EC Evaluation 2020](#), p. 39.
- ¹⁶ [EC Evaluation 2020](#), EVAL pp. 24-25.
- ¹⁷ The Commission notes 'the inability of the directive to fully adapt to these trends is highlighted as one of the main issues limiting its relevance today', [EC Evaluation 2020](#), p. 69.
- ¹⁸ Fintech companies, online banks or peer to peer lending, see [EC Evaluation 2020](#).
- ¹⁹ Piernicola Pedicini, Marco Zanni, Marco Valli, Daniela Aiuto, Marco Zullo, Marco Affronte, Tiziana Beghin, Laura Ferrara, David Borrelli, Laura Agea, Rosa D'Amato, Dario Tamburrano, Fabio Massimo Castaldo, Isabella Adinolfi, Ignazio Corrao, Giulia Moi, Eleonora Evi.
- ²⁰ The case was reported in the Finance Watch report, entitled 'Consumer credit market malpractices uncovered. An in-depth study of consumer credit markets in Spain, Romania and Ireland and what it means for the CCD review'. It recommended 'introduc[ing] detailed rules in the CCD concerning which specific information should be used to allow for a CWA. The assessment should be based only on information needed to perform an adequate personal budget analysis (data on income and expenditures), including all ongoing credit and debts'.
- ²¹ The European consumer agenda contains the Council's position on the principles underlying the consumer protection policy.
- ²² The EESC also argued that the minimum threshold does not take into account the differences in the average income across the EU: €200 corresponds to approximately 50 % of the average monthly wage and 75 % of the average monthly pension in some European countries.
- ²³ See the [Consumer Trend Report](#) for other concerns about practices identified in some of the Member States.
- ²⁴ (See [Consumer Trend Report](#)) To address these growing risks and to ensure adequate protection for consumers, the EBA in its [Guidelines on loan origination and monitoring](#) reported having reinforced the consumer protection dimension by setting specific requirements applicable to lending to consumers.
- ²⁵ See [Consumer Trend Report](#) for an account of regulatory and supervisory measures implemented in Member States.

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