Consumer credit


This briefing provides an initial analysis of the strengths and weaknesses of the European Commission’s impact assessment (IA) accompanying the above-mentioned proposal, submitted on 30 June 2021 and referred to the Committee on the Internal Market and Consumer Protection of the European Parliament.

The 2008 Consumer Credit Directive (the CCD) was intended to ‘harmonise certain aspects of the laws, regulations and administrative provisions of the Member States concerning agreements covering credit for consumers’.1

In its 2017 consumer financial services action plan,2 the Commission underscored the importance of a stronger single market in consumer credit by facilitating cross-border access to loans while maintaining a high level of consumer protection. It also highlighted the need to do more to address consumer over-indebtedness by means of improved creditworthiness assessments.

Over the years, the CCD has been amended several times and in 2018 the Commission launched a REFIT evaluation (the evaluation) of the directive, to analyse whether it remained ‘fit for purpose in today’s legal, economic and technological environment’.3

The evaluation found that while the objectives of the CCD ‘have been partially achieved and remain relevant’, a number of challenges have emerged in its application. According to the evaluation, these challenges are the result of shortcomings in the CCD itself and of new trends in the consumer credit market. Digitalisation, product innovation and changes in consumer preferences over the years since the CCD came into force have changed the environment within which it functions. The implementation report4 adopted by the Commission on the basis of the evaluation considers that these findings point to a possible need to review certain of the directive’s provisions and that ‘such a review could also be a suitable opportunity to consider remedies for other shortcomings, such as improving the definitions’ (Implementation report, p. 12).

In its ‘new consumer agenda’,5 the Commission presents a vision for EU consumer policy from 2020 to 2025, expressing the intention to revise the CCD in order to address a number of new challenges and in particular to adapt it to the growing digitalisation of retail financial services. The new consumer agenda points out the need to ‘improve the rules ensuring that credit is granted only in conjunction with a thorough assessment of the consumer’s creditworthiness [and that consumers] receive all necessary and appropriate pre-contractual information and advice so as to make informed choices when entering into credit agreements’. (New consumer agenda, p.16) The revision of the CCD was also among the REFIT initiatives included in the Commission’s 2020 work programme.6

In a 2016 resolution the European Parliament noted that ‘there are still significant barriers to the creation of a stronger single market for mortgages and consumer credit’.7 In 2017 it invited the Commission ‘to propose harmonised cross-border creditworthiness assessment standards and principles in order to better mitigate the risk of increasing over-indebtedness when facilitating pan-
European online credit and in 2020 called for the upcoming revision of the CCD to be more ambitious in its provisions on the protection of borrowers against abusive practices.

**Problem definition**

In line with the ‘evaluate first’ principle, enunciated in the Commission’s Better Regulation Guidelines, the IA draws on the evaluation of the CCD, which demonstrated that the objectives of the CCD had only been partially achieved, and listed a number of key problem drivers as to why this had happened. According to the IA these drivers had led to the following two overarching problems.

(i) Consumers taking out loans face detriment that could be avoided, in particular over-indebtedness. The IA refers to the Commission’s 2019 Market Monitoring Survey according to which 9% of EU 27 consumers experienced problems in the loans, credit and credit cards market. ‘Of those who experienced a problem, 4 in 10 experienced financial detriment as a result (around 7 in 10 for consumers who find it very difficult to manage financially), and around three in four experienced other, non-financial impacts’. The IA goes on to name some of the sources of consumer detriment, including: ‘insufficient protection e.g. because of loose creditworthiness assessments allowing consumers to take out credits even when this is not warranted by their financial situation; practices and business conduct of credit providers enticing consumers to take out credits they cannot afford; unclear and non-transparent disclosure of prices and fees limiting consumer understanding of the real costs of the credit; and inappropriate use of personal data’ (IA, p. 9).

(ii) The competitiveness of the internal market is not fully achieved. The IA notes the finding in the evaluation that ‘direct cross-border operations represent 5% or less of credit agreements concluded by the credit providers consulted’ (IA, p. 21), and observes that this is partly due to the way the CCD was implemented at a national level, with Member States making different regulatory choices and giving different interpretations to certain provisions of the CCD.

The IA divides each of these two problems into sub-problems, which in turn it discusses individually. It then proceeds to discuss the consequences of the problem and how it will evolve in the absence of intervention at EU level, using current market trends as a benchmark. According to the IA, digitalisation will continue to change the landscape of the consumer credit market ‘[increasing] the presence of unregulated risky products’ (IA, p. 26). Furthermore, the CCD information requirements are not adapted to digital tools and the increasing use of such tools can aggravate the problem of limited consumer awareness of the detail and cost of the credit products they are purchasing.

This systematic approach, complemented by a problem tree graphically recapitulating the text, appears to identify clearly the nature of the problem, its causes, and who is affected (mainly consumers who are not sufficiently protected, operators who cannot exploit to the full the opportunities offered by the internal market, and society in general, which suffers the consequences of over-indebtedness and poor financial literacy) and how.

Annex 6 to the IA complements the main text in providing evidence to support the problem definition, tracing the evolution of the market over recent years and examining factors that could shape the consumer credit market in the future, in particular the Covid-19 pandemic and the impact of digitalisation in the financial sector. The annex helps to measure the scale of the problem and provides references to numerous sources of relevant statistics.

**Subsidiarity / proportionality**

The IA includes a separate section on subsidiarity under ‘Chapter 3 – Why should the EU act?’. There it explains the necessity and added value of EU action. According to the IA, the revision of the CCD ‘aims to modernise the current regulatory framework and fix the areas that the evaluation has flagged as inefficient’. The IA considers that EU intervention is necessary to further harmonise the rules on consumer credits in order to achieve ‘a higher and more uniform level of consumer protection, while facilitating the development of cross-border activities’. It also deems EU action necessary to introduce new provisions to cater for new developments in the consumer credit
market. The IA states that EU action would bring about the added value of 'a clear legislative framework that ensures legal certainty' (IA, p. 30-32).

In the discussion on subsidiarity the IA explains that while certain extensions to the scope of the CCD would bring added value, the idea of extending the scope to include pawnshops and loans above €75,000 was considered to fall foul of the principle of subsidiarity. These extensions to the scope were consequently excluded from the preferred option despite having been contemplated in the optimal option among the retained options considered in an external study supporting the IA (the IA support study) and in the IA itself (see 'Range of options considered' below).

The IA explains that the option to adopt a regulation, which would be directly applicable in the Member States, instead of a directive was discarded 'due to possible non-compliance with the principles of subsidiarity and proportionality' (IA, p. 45).

In the analysis of the options the IA examines the options in the light of the principles of proportionality and subsidiarity as part of its assessment of the coherence of the options with the existing EU legislative framework.

The IA states that 'none of the options analysed ... goes beyond what is necessary to achieve the objectives' and that therefore EU action is justified on grounds of proportionality (IA, p. 62). Furthermore, in line with the Commission’s Better Regulation Guidelines, proportionality is factored in when comparing the options and selecting the preferred policy option. The IA explains that in performing the multi-criteria analysis to compare the efficiency of the different options (see section ‘Assessment of impacts’ below) a conservative approach was taken by weighting benefits and costs equally, whereas ‘benefits should be expected to be more important than costs’. The IA justifies this conservative approach on the grounds that this ensures that the analysis ‘thoroughly addresses the compliance of the options with the proportionality principle’ (IA, p. 55).

At the time of writing, no national parliaments had issued a reasoned opinion on non-compliance with the principle of subsidiarity. The deadline for submissions is 4 October 2021.

**Objectives of the initiative**

The IA clearly identifies general and specific objectives:

Table 1 – Objective tree

<table>
<thead>
<tr>
<th>General objectives</th>
<th>Specific objectives</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reduce the detriment to consumers taking out loans in a changing market</td>
<td>1) Reduce the detriment arising from unregulated credit products</td>
</tr>
<tr>
<td></td>
<td>2) Ensure consumers taking out a credit are empowered by effective and timely information on the risks, costs and impact of credit on their finances, also via digital means</td>
</tr>
<tr>
<td></td>
<td>3) Ensure that credit granting is based on a thorough assessment (by both credit providers and consumers) of the consumer’s best interest</td>
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<td></td>
<td>4) Prevent specific individual or systemic situations from exacerbating consumer detriment and increasing over-indebtedness</td>
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<tr>
<td></td>
<td>5) Reduce barriers to providers offering credit across borders while securing more choice for consumers</td>
</tr>
</tbody>
</table>
Facilitate cross-border provision of consumer credit and the competitiveness of the internal market

6) Simplify the existing legal framework and reduce unnecessary burdens

Source: Author's summary of IA, p. 32-33.

The impact assessment (IA) does not define any more detailed operational objectives in relation to the preferred option, as advised in the Commission’s Better Regulation Guidelines, instead linking the monitoring and evaluation indicators directly to the specific objectives (see ‘Monitoring and evaluation’ below).

As required in the Commission’s Better Regulation Guidelines, the objectives set in the IA establish a logical chain between the problems identified and the policy options considered. In this respect, the impact assessment uses to good effect an intervention logic tree and other tables to illustrate and summarise the links between the problems and sub-problems identified, the general and specific objectives and the analysed policy options (see in particular the intervention logic diagram on page 29 and the policy options detailed measures diagram in Annex 5, p. 105). The general objectives correspond to the two overarching problems identified in the chapter on problem definition, while the specific objectives relate directly to the sub-problems discussed therein.

The objectives appear to be specific, measurable, achievable and relevant, while the proposal provides a transposition timeline and an evaluation timeframe with regard to the application and possible revision of its provisions.

Range of options considered

The impact assessment identifies three policy options in addition to the baseline. These options correspond to those assessed in the IA support study:

- **Option 1** contemplates the adoption of non-regulatory measures, such as recommendations and awareness raising campaigns, to clarify certain aspects of the CCD or to cover issues that are not addressed in the CCD, or not sufficiently so.
- **Option 2** envisages targeted amendments to the CCD to enhance legal clarity, in particular to clarify certain definitions and terms and to further develop the obligations therein. Among the most significant changes under this option:
  - the lower and upper thresholds for credits to fall within the scope of the legislation would be removed (the CCD covers consumer credit between €200 and €75,000);
  - the scope of the act would be broadened to include credit products that are currently not covered, such as leasing agreements, overdraft facilities, interest free loans and pawn shops;
  - the rules on the provision of information to consumers would be revised;
  - the requirements on consumer creditworthiness assessments would be revised;
  - and
  - the conditions for enforcement penalties would be improved.
- **Option 3** would not limit itself to amending the current provisions of the CCD (as in option 2) but would go beyond with extensive amendments, focusing on new provisions and obligations. Option 3 is divided into two sub-options:
  - **Under Option 3a** the extensive amendments would include new obligations and provisions in line with the relevant EU acquis as it evolved after the enactment of the CCD in 2008 with instruments such as the Mortgage Credit Directive with regard to the prohibition on product-tying practices, the European Accessibility Act regarding the provision of effective information for consumers, the Consumer Rights Directive with regard to ensuring consumers are not nudged into sub-optimal choices, the General Data Protection Regulation regarding the use of alternative sources of data for creditworthiness assessments, and the
Consumer Protection Cooperation Regulation\textsuperscript{16} regarding fines issued against infringing traders.

- **Under Option 3b** the extensive amendments would include new obligations and provisions that go beyond the existing EU acquis, 'either because they cover new aspects ... or because they go beyond what is established in other relevant EU legislation (e.g. further requirements for financial education initiatives)' (IA, p. 43). So apart from covering the measures contemplated under options 2 and 3a, option 3b would include measures such as: more detailed requirements on information to be provided by creditors; an obligation on Member States to set caps on interest rates and annual percentage rates of charge; a prohibition on the unsolicited sale of credit; an obligation on Member States to provide independent debt advice services for over-indebted or otherwise vulnerable consumers; an obligation to include specific contractual clauses to cover instances of exceptional or systemic economic disruptions; the introduction of a basic credit product that providers should make available to consumers; and, the setting up of public centralised national databases holding reliable data on late payments and containing identification of national residents.

The presentation of the retained options appears to be clear and balanced. Annex 5 is a useful supplement to the description, with a diagram detailing the policy options and showing how each option would address the problems identified and achieve the objectives set. The options retained appear to be realistic, using the existing policy framework as a departure point and offering a range of interventions with increasing levels of intensity.

As recommended in the Commission’s Better Regulation Guidelines and in Tool 12 of the Better Regulation Toolbox, the IA also gives account of a number of options that were discarded at an early stage and explains why these options were not retained for in-depth analysis.

**After comparing the options, the IA (following the analysis in the IA support study) ranks option 3a as the highest ranking option and is therefore the optimal option.** Options 2, 3b and 1 are ranked second, third and fourth respectively.

Although option 3a is the optimal option among the retained options, the IA explains that, on account of a number of considerations, it was decided not to adopt it wholesale as the preferred option, but to use it as the basis of the preferred option with the exclusion of some of its elements and the inclusion of some extra ones. Thus, for considerations of subsidiarity the scope of the initiative would not extend to pawnshop agreements or to loans above €75 000. Also, a number of measures from other options not originally presented under option 3a are ultimately assimilated into the preferred option for reasons such as their effectiveness in protecting consumers, their cost effectiveness, or their impact on simplification.

This means that the preferred option is different from the optimal option identified from among the retained options in the IA support study and in the IA itself. It also means that the overall combination of measures that constitute the preferred option were not analysed as a self-standing option in the analysis of impacts and in the comparison of the options. The IA partially makes up for this with a relatively expansive discussion of the effectiveness and impact of the final combination of measures in the chapter on the preferred option (Chapter 8 of the IA). There the IA concludes that 'the overall impact of the final combination of measures is very beneficial'. It explains that 'the selected measures from other options were chosen because they are deemed very positive, based on the analysis performed, [and] interact in a complementary, rather than an overlapping or contradictory way, with Option 3a' (IA, p. 64).
Assessment of impacts

In line with the Commission’s Better Regulation Guidelines, the IA analyses and compares the impacts of the options by looking at three criteria. First, the IA scores the effectiveness of the options in addressing the specific objectives.

Second, it looks at the efficiency of the options by performing a multi-criteria analysis of six categories of impacts selected on the basis of their expected magnitude, likelihood and relevance: (i) consumer trust (choices and behaviour) and inclusion, (ii) consumer protection and reduced detriment, (iii) industry level-playing field and competition and cross border credit, (iv) industry compliance costs, (v) EU public administration costs for adoption and enforcement, and (vi) Member State public administration costs for adoption and enforcement. These categories cover economic and social impacts, but do not cover environmental aspects on which the IA considered that the options have a negligible effect.

Thirdly, it assesses the coherence of the options with existing EU legislation. This includes a legal feasibility assessment looking into the necessity, proportionality and subsidiarity of the options.

In comparing the options, the IA finds that option 3b would be the most effective in achieving the objectives of the initiative (with option 3a a close second), whilst the multi-criteria analysis indicates option 3a as the most efficient (with option 3b obtaining a negative score, suggesting that it would be less efficient than the baseline option). Option 3a is also the one found to lead to the highest level of coherence with other EU legislation and with EU policy objectives.

The assessment of impacts and the comparison of the options is mainly a qualitative exercise which is complemented by a partial quantification depending on the availability of quantitative data (see ‘Supporting data and analytical methods used’ below).

SMEs / competitiveness

The IA justifies in a footnote that specific impacts on SMEs have not been identified to be significant, and have therefore not been assessed separately.

Competitiveness, on the other hand, is at the heart of one of the two overarching problems identified in the IA and is reflected in one of the general objectives of the initiative (namely to facilitate cross-border provision of consumer credit and the competitiveness of the internal market) and in the specific objectives stemming from it. Consequently, the analysis of the impacts of the options on competitiveness constitutes a key part of the assessment and comparison of the options.

Simplification and other regulatory implications

One of the specific objectives of the initiative is precisely to simplify the existing legal framework and reduce unnecessary burdens (see ‘Objectives of the initiative’ above). This aspect is therefore considered in some detail in the IA, especially in the assessment of the effectiveness of the options.

The matter is further discussed in Chapter 8 of the IA on the preferred option, which looks into the potential of simplification and burden reduction offered by the proposal. According to the IA, the enhanced legal clarity and the simplification of information requirements will reduce the burden and simplify the operations of businesses in the sector, which would in turn lead to significant savings. By way of example, the IA refers to the IA support study, according to which the simplification of requirements for advertising consumer credit on radio broadcasts has the potential to save advertisers up to €1.4 million a year. When it comes to public administrations, the IA maintains that a higher degree of legal clarity and a simplified regulatory framework would render enforcement procedures more efficient.

On the coherence of the initiative with existing EU legislation, the IA actually defines the retained policy options and distinguishes between them on the basis of their interaction and complementarity with existing legislation, thus making coherence with existing legislation a central consideration in the IA process.
Monitoring and evaluation

For the purposes of monitoring and evaluating the operation of the proposal the IA proposes a number of indicators focusing on the achievement of the specific objectives. The IA also indicates the source of the relevant data to be used for the purposes of monitoring and evaluation.

Stakeholder consultation

Annex 2 to the IA provides insight into the various stakeholder consultation activities that fed into the IA process. Among other consultation activities, stakeholders had the opportunity to give feedback on the inception impact assessment. The feedback period was between 23 June and 1 September 2020 and a total of 25 contributions were received and taken into account.

An online public consultation was conducted between 30 June and 6 October 2020, to gather the views of the public on four initiatives related to EU consumer policy that the Commission planned for 2020 and 2021. The questionnaire was split into four sections, one for each of the planned initiatives, with one of these sections covering the planned review of the CCD. The main object of this section of the questionnaire was for stakeholders to express their general views on what kind of interventions they would favour to improve the provisions of the CCD. 250 respondents answered at least one question in this section with a reasonably balanced distribution among them as to category of respondent and origin.

Among the consultation activities were also two workshops organised within the context of the IA support study. The first workshop, in September 2020, covered key issues affecting consumers and credit-providers and sought the participant’s preferences in regard to policy solutions. The second workshop, in November 2020, built on the findings of the first workshop and gathered feedback on the policy options 'covering aspects such as their expected effectiveness and efficiency in addressing the problems identified and the impacts that they are likely to have'. (IA, p. 78)

In assessing the options, the IA takes into account the impacts that the options are likely to have on different stakeholders. The IA also reserves a dedicated section under 'Chapter 7 – How do the options compare?' to go over the views of the different categories of stakeholders on the options.

Supporting data and analytical methods used

The data underpinning the reasoning of the IA comes mainly from three sources: the evaluation of the CCD, the IA support study and the feedback gathered from stakeholder consultation activities.

The IA support study, publicly available on the Commission’s website, includes desk research with a review of relevant documentation and literature from a variety of sources, including legal and policy documents, statistical data, studies and academic papers, position papers and other publications from relevant stakeholders. In its legal analysis the IA support study examines the legal context of the CCD’s implementation, at EU and at national level, building upon the legal analysis carried out as part of the evaluation. The IA support study identifies a number of measures that could address the problems identified, selects among them those that are most likely to be effective and groups them into clusters to form the policy options assessed. As discussed in the section 'Range of options considered', in the choice of the preferred option the IA finally settles on a cluster that is different from any of the clusters that constituted the retained options examined in the support study.

The IA support study conducts a quantification analysis to monetise the impacts where enough quantitative evidence is available to carry out a cost-benefit analysis. Non-monetisable impacts are qualitatively assessed, including through a multi-criteria analysis. The IA support study makes clear that the main assessment of the options is the qualitative assessment and that the partial quantification is meant to 'support the qualitative assessment but should not be regarded as a stand-alone assessment'. It explains that the final score of the multi-criteria analysis incorporates the quantitative assessment of the costs and benefits of the options (IA support study, p. 56).
The study recognises its limitations, in particular the limited availability of up-to-date, EU-level, comparable quantitative data, and describes the measures undertaken to mitigate the impact of these limitations.

Follow-up to the opinion of the Commission Regulatory Scrutiny Board

According to Annex 1 of the IA, the Commission’s Regulatory Scrutiny Board (RSB) initially issued a negative opinion on a draft version of the impact assessment on 5 February 2021. Following the submission of a revised version, the RSB issued a positive opinion with reservations on 23 April 2021.

In its second opinion the RSB noted that the IA had been substantially redrafted, but that it still contained significant shortcomings that it expected to be rectified, namely, that the EU added value of the options was not sufficiently established and that the preferred option (consisting of option 3a with exclusion of some of its elements and the inclusion of some extra ones) was not sufficiently justified and its overall impact and proportionality not sufficiently analysed. The RSB also proposed that the final preferred option be included as an additional option. The final IA seems to reflect most of the recommendations of the RSB and in its Annex 1 describes how these recommendations were addressed. It does not, however, submit the final preferred option as a comprehensive self-standing option in its initial presentation of the options.

Coherence between the Commission’s legislative proposal and IA

The proposal appears to essentially correspond to the preferred policy option indicated in the IA. It should however be noted that while the IA states that the proposal would retain the same maximum threshold as the CCD for loans falling within its scope (€75 000), the proposal actually covers loans up to €100 000. Recital 15 explains that 'the upper threshold of credit agreements under this Directive should be increased to take into account indexation to adjust for the effects of inflation since 2008 and in coming years.'

The IA is underpinned by three main sources of data: (i) the evaluation of the CCD, which found that the CCD has proved to be partially effective, but faces a number of challenges in its application; (ii) the IA support study, which provides evidence on the impacts of a possible revision of the CCD; and (iii) the feedback gathered from stakeholder consultation. The IA adopts a systematic approach that appears to clearly identify the nature of the problem, its causes, and who is affected and how. It establishes a logical chain between the problems identified and the policy options considered, which are presented in a clear and balanced way. The retained options appear to be realistic and feasible, using the existing policy framework as a departure point and offering a range of interventions with scaling levels of intensity. The options in the IA are analysed and compared through a multi-criteria analysis, incorporating partial quantification of the options that takes into account available quantitative evidence. The multi-criteria analysis finds that option 3a would be the optimal option among those presented, but for considerations of subsidiarity, cost-effectiveness and impact on simplification some of the elements of option 3a are dropped from the preferred option and a number of extra ingredients added. The overall combination of measures that constitute the preferred option were therefore not analysed as a self-standing option in the analysis of impacts or in the comparison of options, although the final package constituting the preferred option is discussed in the chapter on the preferred option. The IA uses a number of visual aids, which are especially valuable in providing the reader with a clear overview of the problems and their drivers, policy objectives and policy options, and help illustrate the complex links between them.
ENDNOTES

7 Resolution of 22 November 2016 on the green paper on retail financial services, European Parliament.
8 Resolution of 14 November 2017 on the action plan on retail financial services, European Parliament.
10 Study on possible impacts of a revision of the CCD, European Commission, May 2021.
11 The IA support study (see reference in endnote 11) on the other hand does identify operational objectives, which however do not appear to be option-specific.
15 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.

This briefing, prepared for the Committee on the Internal Market and Consumer Protection (IMCO), analyses whether the principal criteria laid down in the Commission’s own Better Regulation Guidelines, as well as additional factors identified by the Parliament in its Impact Assessment Handbook, appear to be met by the IA. It does not attempt to deal with the substance of the proposal.

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