Consumer Credit Directive

OVERVIEW

Consumer credit is a type of loan allowing consumers to purchase consumer goods and services for which they do not have the funds. It is regulated at national and EU level. The Consumer Credit Directive (CCD), in force since 2008, is the relevant EU-level legislation.

The CCD has undergone several revisions over the past decade, yet growing digitalisation, insufficient harmonisation and issues affecting consumer protection, among other things, have prompted the Commission to publish a proposal for a new directive. This proposal brings crowdfunding into the scope of the CCD, expands and clarifies the definitions, and adds new articles relative to, among other things, new obligations for creditors, tying and bundling practices, ancillary services, advisory services, unsolicited credit sale, conduct of business obligations for creditors and requirements for their staff. The proposal is part of the Commission’s New Consumer Agenda aimed at updating the overall strategic framework of EU consumer policy.

The proposal is currently examined by the co-legislators. Within the European Parliament, the file has been assigned to the IMCO committee. At the moment, no date has been announced for the publication of a draft report.


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<th>Committee responsible:</th>
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Introduction

Consumer credit in the EU is regulated both at national and EU level; the first relevant EU-level legislation was the 1987 Directive 87/102/EEC on consumer credit, which laid down minimum standards for consumer protection. Among other things, the directive introduced the requirement that credit agreements must be drawn up in writing and must include specific elements. It gave consumers the right to discharge their obligations before the time fixed in the agreement and provided for cases where the rights of a creditor are assigned to a third person.

Over time, the directive started lagging behind developments in the sector. Moreover, given that it only laid down minimum standards, some Member States went further and revised their national legislation to include other types of credit or new credit agreements that were not covered by the directive. The resulting distortion of competition among creditors in the internal market and the emergence of varying levels of consumer protection ultimately led to the revision of the directive and the adoption of the Consumer Credit Directive, currently in force.

Existing situation

Directive 2008/48/EC on Credit Agreements for Consumers (the Consumer Credit Directive or CCD), was first proposed by the European Commission in 2002 but did not get adopted until 2008. The CCD has two main objectives: harmonising EU rules on credit granted to consumers who borrow to finance purchases of goods and services; and opening up the EU consumer loan market whilst improving the transparency of contract terms and the level of consumer protection.

The CCD covers consumer credit amounts ranging from €200 to €75 000, such as loans granted for personal consumption, including automotive vehicles, household goods and appliances, travel, as well as some overdrafts and credit cards. As mortgage credit is different from consumer credit, it is regulated by Directive 2014/17/EU. The CCD sets rules on standard information to be included in advertising. Moreover, it provides that, before consumers are bound by any credit agreement or offer, creditors (or credit intermediaries) must provide them with the information needed to compare different offers, as would allow them to take an informed decision on whether to conduce a credit agreement. In addition, consumers have 14 calendar days to withdraw from a credit agreement without giving any reason. Lastly, they can at any time fully or partially discharge their obligations under a credit agreement, which entitles them to a reduction in the total cost of the credit (interest and costs for the remaining duration of the contract).

The CCD has been amended several times over the past decade, yet a recent review (see below) has identified several outstanding issues: i) digitalisation has led to new market developments (e.g. high-cost loans for less than €200) that are not adequately captured by the current limited scope of the regulatory framework; ii) the CCD does not adequately address behavioural biases, thus creating gaps in consumer protection; iii) some of the CCD definitions need updating; iv) the CCD does not account for consumers vulnerable to over-indebtedness; v) insufficient harmonisation among the Member States has led to the fragmentation of the consumer credit market.

Parliament's starting position

Parliament has been following this topic attentively over the past decade. As an example, in 2012, in a resolution on the implementation of the CCD, Parliament already noted the importance of correctly transposing and enforcing the directive.

In a 2017 resolution relative to the action plan on retail financial services, it stressed, among other things, the importance of tackling consumer over-indebtedness and adapting the existing EU legal framework to the digital world in order to counteract consumer protection risks.
Lastly, in March 2021, the Parliament organised a hearing on consumer protection in the context of the digitalisation of retail financial services during the coronavirus pandemic. The discussion focused on the related challenges and the EU response as part of the upcoming revision of the CCD and the Distance Marketing of Financial Services Directive (DMFSD).

Preparation of the proposal

In 2014, the Commission presented a compliance assessment report on the implementation of the directive. The report noted that the impact of the directive had been limited, given the late implementation by some Member States and the effect of the financial crisis, and concluded that there was a need to continue monitoring the directive’s enforcement. In 2020, the Commission issued another report on the implementation of the directive, presenting the key results of the 2018-2019 REFIT evaluation and the lessons learnt since the directive’s adoption. The report stressed that the directive had only been partially effective in attaining its aims regarding consumer protection and the internal market, due to both external factors and the directive itself.

The REFIT evaluation included two public consultations. The objective of the first was to obtain the views of citizens and relevant stakeholders on the effectiveness of the CCD, while the second had a broader aim: to gather the views of the public on the New Consumer Agenda, which presents a long-term vision for European consumer policy until 2025.

The Commission also drew on a series of studies and reports on issues relating to responsible lending and borrowing, among them: i) an ICF study supporting the evaluation of the CCD, which assessed the impact of the directive on the performance of the internal market for consumer credit and consumer protection across the EU; ii) a behavioural study conducted by LE Europe et al. on the digitalisation of the marketing and distance selling of retail financial services; and iii) two CIVIC studies (the first on measuring consumer detriment in the EU and the second on the overindebtedness of European households).

The Commission has published an impact assessment for the current proposal. The options assessed to achieve the objectives of the proposal were i) a no-policy-change scenario; ii) non-regulatory intervention; iii) a targeted amendment of the directive, focusing on making its current provisions clearer and more effective; and iv) an extensive amendment of the directive to include new provisions. The Commission chose this last option.

EPRS has published an initial appraisal of the Commission’s impact assessment.

The changes the proposal would bring

Chapter I (Articles 1-6) contains general provisions. The key novelties relate to the inclusion of crowdfunding in the subject matter, the expansion of Article 3 relative to the definitions, the obligation for creditors to provide free information to consumers, and the obligation of non-discrimination.

Article 1 (subject matter – corresponding to Article 1 of the current CCD) states that the directive aims to harmonise aspects of the laws, regulations and administrative provisions of the Member States concerning certain credit agreements for consumers and crowdfunding credit services.

Article 2 (scope – corresponding to Article 2 of the current CCD) sets out the scope of the directive, which covers certain credit agreements for consumers and crowdfunding credit services. Some exemptions permitted by Article 2 of the current CCD remain valid, but others – concerning minimum amounts, leasing agreements with an option to purchase goods or services, overdraft facilities, free interest rate credit without charges or credit to be repaid within three months with only insignificant charges – have been removed.
Article 3 (definitions, Article 3 of the current CCD) defines the terms used in the proposal. As much as possible, definitions have been aligned with those in other EU texts, in particular Directive 2014/17/EC on credit agreements for consumers relating to residential immovable property.

Article 4 (conversion of amounts expressed in euro into national currency, Article 28 of the current CCD) sets rules for converting the amounts expressed in euro in the CCD into national currency.

Article 5 (obligation to provide information free of charge to consumers) includes an obligation for giving consumers information free of charge.

Article 6 (non-discrimination) requires Member States to ensure that consumers legally resident in the EU are not discriminated against on grounds of their nationality, residence or on any other grounds as referred to in Article 21 of the EU Charter of Fundamental Rights when requesting, concluding or holding a credit agreement or crowdfunding credit services in the EU.

Chapter II (Articles 7-13) deals with the information to be provided before the conclusion of the credit agreement or the agreement for the provision of crowdfunding credit services. The main novelties are Article 9 on general information relative to credit agreements and crowdfunding credit services, the expansion of Article 10 on pre-contractual information, the obligation for Member States to ensure that creditors are required to provide adequate explanations to consumers, allowing them to assess whether those services are adapted to their needs and financial situation, and the obligation for creditors to inform consumers when they present them with a personalised offer based on automated processing of personal data.

Article 7 introduces general principles for marketing and advertising communications.

Article 8 (standard information to be included in the advertising of credit agreements and crowdfunding credit services – corresponding to Article 4 of the current CCD) sets out the form and content of information to be included in advertising. The standard information concerns key credit features. In specific and justified cases where the medium used to communicate the information to be included in advertising messages does not enable its visual display (for instance, in radio advertising), such information should be reduced to avoid information overload and reduce unnecessary burden. These provisions complement the obligations imposed by Directive 2002/65/EC concerning the distance marketing of consumer financial services and Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market.

Article 9 (general information) requires that clear and comprehensible general information about credit agreements is made available by creditors or, where applicable, by credit intermediaries or providers of crowdfunding credit services at all times.

Article 10 (pre-contractual information – corresponding to Article 5 of the current CCD) creates an obligation for creditors, credit intermediaries or providers of crowdfunding credit services to give consumers personalised, pre-contractual information, on the basis of the standard European consumer credit information form. In addition to this, they are to get a standardised European consumer credit overview one-pager outlining the key features of the credit in question, to help them compare different offers. Pre-contractual information must be provided at least one day before the consumer is bound by any credit agreement or agreement for the provision of crowdfunding credit services. If this is not the case, creditors, credit intermediaries or providers of crowdfunding credit services must remind consumers, one day after the contract is concluded, of the possibility of withdrawing from the two above-mentioned agreements.

Article 11 (pre-contractual information with regard to credit agreements referred to in Article 2(5) or (6) – corresponding to Article 6 of the current CCD) creates an obligation for creditors and credit intermediaries to give consumers personalised pre-contractual information for certain types of consumer credit on the basis of the standard European consumer credit information form, in addition to the standard European consumer credit overview one-pager (detailed in Annex III). For other credit agreements, pre-contractual information must be provided at least one day before the consumer is bound by any credit agreement or offer, otherwise creditors and credit intermediaries must remind
consumers, one day after the contract is concluded, of the possibility of withdrawing from the credit agreement.

Article 12 (adequate explanations) requires creditors, credit intermediaries or providers of crowdfunding credit services to adequately explain to consumers the proposed credit agreements, crowdfunding credit services and ancillary services, in order to enable them to assess whether these agreements or services are adapted to their needs and financial situation.

Article 13 (personalised offers on the basis of automated processing) makes it obligatory to inform consumers whenever, on the basis of automated processing, including profiling, they are presented with personalised offers.

**Chapter III** (Articles 14-17) contains several new provisions relative to tying and bundling practices, agreements for ancillary services, advisory services and unsolicited credit sale.

Article 14 (tying and bundling practices) prohibits tying practices, unless it can be demonstrated that they result in a clear benefit for consumers, taking due account of the availability and prices of the kinds of products in question, while allowing bundling practices.

Article 15 (inferred agreement for the purchase of ancillary services) prohibits inferring consumer agreement through default options such as pre-ticked boxes.

Article 16 (advisory services) establishes standards to ensure that, where advice is given by the creditor, the credit intermediary or the provider of crowdfunding credit services, consumers are made aware of this; Article 16 does not however introduce any obligation for the aforementioned entities to provide advice. It introduces a requirement that a sufficient number of credit agreements or crowdfunding credit services on the market be considered and that advice be given in line with the profile of the borrower.

Article 17 (ban on unsolicited credit sales) prohibits the unsolicited sale of credit, including non-requested pre-approved credit cards sent to consumers or consumers’ overdraft/credit card spending limit being raised unilaterally by the creditor, without their prior request or explicit agreement.

Provisions in **Chapter IV** (Articles 18-19) deal with the assessment of creditworthiness and database access.

Article 18 (obligation to assess the creditworthiness of the consumer – corresponding to Article 8 of the current CCD) requires the creditor/provider of crowdfunding credit services to assess the consumer’s ability to repay the credit. This assessment takes into account the consumer’s interest and is based on necessary and proportionate information on the consumer’s income and expenses and other financial and economic circumstances, without exceeding what is strictly needed to perform the assessment. Where the creditworthiness assessment indicates that the obligations resulting from the agreement are likely to be met in the manner required, Article 18 also requires that credit is made available to consumers, except in specific and justified circumstances. Moreover, when the creditworthiness assessment is based on automated processing, consumers have the right to request and obtain a meaningful explanation of this assessment by the creditor, but also to be able to express their point of view and contest the assessment.

Article 19 (databases – corresponding to Article 9 of the current CCD) introduces provisions to ensure that creditors or providers of crowdfunding credit services are able to access information from relevant databases on a non-discriminatory basis.

Provisions in **Chapter V** (Articles 20-21) relate to the form and content of credit agreements or crowdfunding credit services.

Article 20 elaborates the form of credit agreements or agreements for the provision of crowdfunding credit services.
Article 21 (corresponding to Article 10 of the current CCD) specifies the information to be included in credit agreements or agreements for the provision of crowdfunding credit services.

**Chapter VI** (Articles 22-23) contains provisions relative to modifications of the credit agreement and changes in the borrowing rate.

Article 22 (information on the modification of the credit agreement or the agreement for the provision of crowdfunding credit services) introduces specific safeguards for consumers whenever credit agreements/agreements for the provision of crowdfunding credit services are modified.

Article 23 (changes in the borrowing rate – partly corresponding to Article 11 of the current CCD) sets out the information to be given to the consumer if the borrowing rate changes.

Overdraft facilities and overrunning are the topic of **Chapter VII** (Articles 24-25).

Article 24 (overdraft facilities, Article 12 of the current CCD) introduces provisions to ensure that consumers are kept regularly informed of certain particulars of their overdraft facility.

Article 25 (overrunning – corresponding to Article 18 of the current CCD) sets out rules on tacitly accepted overdrafts whereby a creditor makes available to a consumer funds that exceed the current balance in the consumer’s current account or the agreed overdraft facility. In the event of a significant overrunning, the consumer must be alerted and informed of the conditions that apply.

Provisions in **Chapter VIII** (Articles 26-29) deal with withdrawal, termination and early repayment.

Article 26 (right of withdrawal – partly corresponding to Article 14 of the current CCD) proposes the option for consumers to withdraw from a credit agreement or agreement for the provision of crowdfunding credit services under circumstances similar to those referred to in the DMFSD.

Article 27 (linked credit agreements – corresponding to Article 15 of the current CCD) sets out specific rules on linked credit agreements and consumers’ right of withdrawal.

Article 28 (open-end credit agreements or agreements for the provision of crowdfunding credit services – corresponding to Article 13 of the current CCD) sets out specific conditions for terminating open-end agreements.

Article 29 (early repayment, Article 16 of the current CCD) sets out the right of consumers to discharge their obligations before the due date. Full or partial early repayment entitles the consumer to a cut in the total cost of the credit and the creditor to a fair and objectively justified compensation for possible costs directly linked to the early repayment of the credit.

**Chapter IX** (Articles 30-31) contains provisions on the annual percentage rate of charge and caps on rates and costs.

Article 30 (calculation of the annual percentage rate of charge) concerns the main indicator used to compare consumer credit products. It requires, for consumer credit products, the use of the definition of the annual percentage rate of charge (APR) used in the current CCD.

Article 31 (caps on interest rates, annual percentage rate of charge and the total cost of the credit to the consumer) introduces caps to be placed on the interest rate applicable to consumer credit agreements, on the APR and/or on the total cost of the credit. Member States may decide to set up a specific cap for a revolving credit facility.

The provisions of **Chapter X** (Articles 32 and 33) are new to the directive and set conduct of business obligations and requirements for staff.

Articles 32 (conduct of business obligations when providing credit to consumers) and 33 (knowledge and competence requirements for staff) set important conditions for creditors, credit intermediaries and providers of crowdfunding credit services in order to ensure a high degree of professionalism in the provision of consumer credit, such as requirements for remuneration policies
regarding staff responsible for the assessment of creditworthiness and requirements for appropriate knowledge and skills of this staff.

The important topics of financial education and support to consumers in financial difficulties are the subject of **Chapter XI** (new Articles 34-36).

Article 34 (financial education) introduces financial education measures to be promoted by the Member States, in particular in relation to consumer credit agreements, to improve consumers' financial literacy, including on products sold digitally.

Article 35 (arrears and forbearance measures) introduces measures to encourage reasonable forbearance before enforcement proceedings are initiated.

Article 36 (debt advisory services) requires Member States to ensure debt advisory services are made available to consumers.

**Chapter XII** (Articles 37-38) concerns creditors and credit intermediaries.

Article 37 (admission, registration and supervision of non-credit institutions) stipulates that non-credit institutions must be subject to adequate admission processes, registration and supervision. This should ensure that all creditors and providers of crowdfunding credit services, whether they are a credit institution or not, are adequately regulated and supervised.

Article 38 (specific obligations for credit intermediaries) contains provisions for special measures in relation to credit intermediaries.

**Chapter XIII** (Articles 39-40) contains provisions on the assignment of rights and dispute resolution.

Article 39 (assignment of rights – corresponding to Article 17 of the current CCD), states that certain rights are to be maintained in the event of the assignment to a third party of the creditor's rights under a credit agreement, or the assignment to a third party of the credit agreement itself.

Article 40 (out-of-court dispute resolution), provides that consumers should have access to alternative dispute resolution procedures for the settlement of disputes between consumers and creditors, credit intermediaries or crowdfunding services providers concerning rights and obligations established by the directive. Such alternative dispute resolution procedures and the entities offering them should comply with the quality requirements established by Directive 2013/11/EU on alternative dispute resolution for consumer disputes.

A new Article 41 about competent authorities is the single article of **Chapter XIV**. It requires the Member States to designate specific competent authorities to implement the directive.

Lastly, **Chapter XV** (Articles 42-50) contains the directive's final provisions.

Article 42 (level of harmonisation) and Article 43 (imperative nature of the directive – corresponding to Article 22 of the current CCD) provide that the Member States are not entitled to having in place other provisions in relation to the areas covered by the directive insofar as it contains harmonised provisions in those areas.

Article 44 (penalties, Article 23 of the current CCD) requires the Member States to ensure that appropriate administrative measures or sanctions are applied in the case of non-compliance with the directive. In addition, for 'widespread infringements' and 'widespread infringements with an EU dimension', as defined in the revised Consumer Protection Cooperation (CPC) Regulation, the Member States will be required to incorporate – in their national legislation – provisions on fines of a maximum amount that is at least 4% of the infringing creditor's, credit intermediary's or provider of crowdfunding credit services's turnover in the Member States concerned.

Article 45 (exercise of delegation) sets out the procedures to be followed for allowing certain parts of the directive to be adapted, specified or updated by means of delegated acts.
Advisory committees

The European Economic and Social Committee (EESC) published an Information Report in 2019, which contained an ex-post qualitative analysis of the CCD and proposals addressing the new challenges. The EESC found, among other things that, while the CCD has been effectively transposed in general, its implementation and/or enforcement have been insufficient; it does not ensure a level playing field or promote a single market for consumer credit; its scope should be expanded; creditworthiness assessments are not always properly conducted; and Member States are not doing enough for financial education. As a result, it made specific recommendations, to be considered in a potential revision of the CCD.

The EESC and the Committee of the Regions (CoR) have not yet published opinions on the Commission proposal.

National parliaments

Reasoned opinions on the grounds of subsidiarity can be submitted by 4 October 2021.

Legislative process

The proposal is still at an early stage, and is being discussed separately by the co-legislators. There are as yet no specific dates planned for the adoption of the Parliament resolution.

SOURCES


Consumer credits, European Parliament, Legislative Observatory (OEL).


ENDNOTE

1 It was amended by Directives 2011/90/EU and 2014/17/EU, and Regulations (EU) 2016/1011 and (EU) 2019/1243 respectively.

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First edition. The ‘EU Legislation in Progress’ briefings are updated at key stages throughout the legislative procedure.