



Brussels, 5.11.2020  
SWD(2020) 254 final

**COMMISSION STAFF WORKING DOCUMENT**

**EVALUATION**

**of Directive 2008/48/EC on credit agreement for consumers**

{COM(2020) 963 final} - {SEC(2020) 371 final} - {SWD(2020) 255 final}

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## 1. INTRODUCTION

### Overview of the Consumer Credit Directive's provisions

The Consumer Credit Directive (hereinafter, “the Directive”, or “CCD”) addresses consumer credit between EUR 200 and EUR 75,000 (and over when the credit is destined for the renovation of a residential property) such as loans granted for personal consumption, including automotive vehicles, household goods and appliances, travels, as well as overdrafts and credit cards. By contrast, overdraft facilities<sup>1</sup> to be repaid within a month, interest-free credits,<sup>2</sup> hiring or leasing agreements without an obligation to purchase are among the main types of credits excluded from its scope.

The most important Directive provisions are the following:

- Standard information to be contained in advertising: advertising concerning credit agreements<sup>3</sup>, which indicate an interest rate or an element of the cost of the credit, have to include standard information about all the cost elements of the credit by way of a representative example.
- Pre-contractual information: for all credit offers, the consumer<sup>4</sup> will receive a Standardised European Consumer Credit Information (SECCI<sup>5</sup>) sheet, to be used by all creditors<sup>6</sup> at EU level. It sets out all the essential information the consumer needs in a clear, standard way.
- Annual Percentage Rate of Charge (APR) - the Directive establishes an EU wide method of calculation for the APR, which expresses the total cost of the credit to the consumer, expressed as an annual percentage of the total amount of the credit.
- Right of withdrawal<sup>7</sup> - once consumers have concluded a credit contract, they have 14 days to withdraw from the credit without having to give any reason
- Right of early repayment - the Directive grants to consumers the right to repay early at any time. Under certain circumstances, however, the creditor shall be entitled to

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<sup>1</sup> Overdraft facility is an explicit credit agreement whereby a creditor makes available to a consumer funds which exceed the current balance in the consumer's current account.

<sup>2</sup> See conditions under Article 2(2) (f) of the Directive.

<sup>3</sup> An agreement whereby a creditor grants or promises to grant to a consumer credit in the form of a deferred payment, loan or other similar financial accommodation, except for agreements for the provision on a continuing basis of services or for the supply of goods of the same kind, where the consumer pays for such services or goods for the duration of their provision by means of instalments.

<sup>4</sup> A natural person who, in transactions covered by the Directive, is acting for purposes which are outside his trade, business or profession.

<sup>5</sup> A standardised form designed to show exactly what a finance agreement contains. The form will include key details such as type of credit, Annual Percentage Rate (APR), number and frequency of payments, and total amount owed.

<sup>6</sup> A creditor is a natural or legal person who grants or promises to grant credit in the course of his trade, business, or profession.

<sup>7</sup> Consumer's right to terminate a contract without reason within a specified time period, provided certain conditions are fulfilled.

fair and objectively justified compensation for possible costs directly linked to early repayment.

- **Creditworthiness** - the Directive also imposes an obligation on creditors to assess the creditworthiness of the consumer prior to granting a credit. Such assessment can be done by checking credit databases, for which the Directive imposes non-discriminatory conditions in the event of cross-border access to these databases.

### **Purpose of the Evaluation**

This Staff Working Document presents the result of the REFIT<sup>8</sup> evaluation of the Directive, launched in 2018<sup>9</sup> and part of the REFIT initiatives annexed to the 2019 Commission Work Programme<sup>10</sup>. In line with the Better Regulation guidelines<sup>11</sup>, the main purpose of the evaluation is to assess the effectiveness, efficiency (including potential for simplification and burden reduction), relevance, coherence and EU added value of the Directive, analysing whether it remains fit for purpose in today's legal, economic and technological environment.

The Commission has launched this evaluation in response to a REFIT Platform opinion on the Consumer Credit Directive<sup>12</sup> adopted in September 2017 recommending that the Commission assess the relevance, effectiveness and efficiency of the standard information requirements to be included in advertising, as per Article 4 of the Directive.

Moreover, Article 27(2) of the Consumer Credit Directive, specifies that the Commission “shall undertake, every five years, [...] a review of the thresholds laid down in [the] Directive [...]. The Commission shall also monitor the effect of the existence of the regulatory choices [therein] [by Member States] on the internal market and consumers”<sup>13</sup>.

The work performed under the 2017 Consumer Financial Services Action Plan<sup>14</sup> - following which the Commission undertook to explore ways of facilitating cross-border access to consumer credit whilst ensuring a high level of consumer protection, as well as to seek to introduce common standards for creditworthiness assessment<sup>15</sup> and credit

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<sup>8</sup> The Regulatory Fitness and Performance Programme, or REFIT, is the Commission's programme for ensuring that EU legislation remains fit for purpose and delivers the results intended by EU lawmakers.

<sup>9</sup> [Evaluation Roadmap](#), June 2018.

<sup>10</sup> [Annex II to Communication COM\(2018\) 800 final: Commission Work Programme 2019 Delivering what we promised and preparing for the future](#), October 2018.

<sup>11</sup> European Commission, Better Regulation: Guidelines and Toolbox. [https://ec.europa.eu/info/better-regulation-guidelines-and-toolbox\\_en](https://ec.europa.eu/info/better-regulation-guidelines-and-toolbox_en)

<sup>12</sup> <https://ec.europa.eu/info/sites/info/files/vi4afccd.pdf>

<sup>13</sup> A report on the implementation of the Directive was published in 2014, confirming that all Member States implemented the Directive by the end of 2011, that the Directive had limited impact on the level of cross-border lending mainly because of external circumstances, and that there were some problems with the level of compliance from providers and for consumers to exercise their rights. COM(2014) 259 final.

<sup>14</sup> COM(2017) 139 final, Communication from the Commission – Consumer Financial Services Action Plan: Better Products, More Choice.

<sup>15</sup> Evaluation of the prospect for the debt obligation resulting from the credit agreement to be met.

registers and monitor the distance selling market of financial services – also feeds into the evaluation.

### **Scope of the Evaluation**

The evaluation covers developments since the adoption of the Directive (in 2008) until September 2019. The evaluation covers all EU Member States (MS), although in some instances information and data gathering refers only to a limited sample. These instances are indicated in the text of the Staff Working Document (SWD).

## **2. BACKGROUND TO THE DIRECTIVE**

### **Context of the EU intervention**

#### Origin of EU intervention in the field of consumer credit

Council Directive 87/102/EEC of 22 December 1986 laid down rules at Community level aimed to bring about “a certain degree of approximation of the laws”<sup>16</sup> concerning consumer credit agreements. It covered credit agreements - other than mortgages - longer than three months between ECU 200 and 20,000 but with several exemptions (e.g. credits to be repaid in maximum four payments in a period up to 12 months, zero interest rate loans, etc.). Directive 87/102/EEC introduced the inclusion of an Annual Percentage Rate of Charge (APR) and its calculation and communication to the consumer, as well as the right for the consumer to discharge the obligations under a credit agreement before the time fixed by the agreement – with an equitable reduction in the total cost of the credit. In 1990, the Directive was amended by Directive 90/88/EEC concerning the APR calculation.

At Member State level, the protection of consumers and the consumer credit market was uneven, as Directive 87/102/EEC only provided for minimum standards of consumer protection. This led to Member States introducing additional provisions that covered other types of credit and credit agreements not covered by the Directive.<sup>17</sup> Differences in legislation included, for example, different time limits and procedures in connection with the credit agreement, such as ‘cooling off’, ‘withdrawal’ and ‘cancellation’, as well as repayment.

In 1995 and 1996, the Commission presented two reports on the operation of the Directive, after having consulted relevant stakeholders<sup>18</sup>. These reports revealed substantial differences between the laws of the various Member States, which used a variety of consumer protection mechanisms in addition to the Directive. Such differences in some cases led to distortions of competitions among creditors and created obstacles to the internal market.

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<sup>16</sup> Council Directive 87/102/EEC.

<sup>17</sup> As explained in the explanatory memorandum of the initial Consumer Credit Directive proposal of the Commission, COM (2002) 443 final.

<sup>18</sup> Any individual citizen or an entity impacted, addressed, or otherwise concerned by an EU intervention.

### Development of the 2008 Consumer Credit Directive

The revision of Directive 87/102/EEC was considered necessary to address a series of factors including technical problems in connection with accessing another market, a lack of adequate harmonisation as regards national legislation and the changes to the methods and styles of credit that had occurred since the 1980's.

The Commission first presented a proposal –dated 2002– for a revised version of Council Directive 87/102/EEC, which aimed at offering a fully harmonised set of provisions to provide for a higher level of protection to consumers. However, negotiations between the European institutions on consumer protection standards were protracted and involved substantial changes, leading to revised proposals in October 2004 and again in November 2005. In 2008, the revised proposal was finally adopted and the Directive repealed Directive 87/102/EEC.

Although modelled on Directive 87/102/EEC, the Directive went significantly further, with the introduction of a defined scope and a right to withdraw, as well as a better defined right to early repayment.

While the Directive is mainly of full harmonisation nature<sup>19</sup>, Member States were given a certain degree of flexibility in implementing some of the rules.

### **Intervention logic**

The Directive has **two main objectives**, namely to improve consumer protection and to foster the emergence of a well-functioning internal market for consumer credit. These objectives are intended to be achieved by the Directive's provisions (indicated in the graph below as content/inputs).

The first objective of improving consumer protection includes three specific objectives:

- 1) informing consumers about the costs and conditions of the credit they request,
- 2) providing consumers with rights to terminate their contract, and
- 3) fostering responsible lending among credit providers.

The second main objective of fostering the emergence of an internal market for cross-border credit provision includes two specific objectives:

- 1) facilitating cross-border access to consumer credit offers, and
- 2) ensuring a level-playing field between creditors by providing a harmonised framework.

The objectives of the Directive at the time of its drafting were intended to respond to key **needs**<sup>20</sup>. Primarily the realisation that the existing Directive 87/102/EEC was not fully responding to the needs of consumers and this was leading to reported consumer

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<sup>19</sup> In the case of full harmonisation Member States must implement the EU measures but may not enact or retain any rules which depart from them.

<sup>20</sup> See also “Consumer trends and issues faced around the time of the entry into force of the Directive in 2010”, below in Section 2.



dissatisfaction with the quality of consumer protection. In addition, the absence of a single credit market meant sub-optimal demand and offer of consumer credit. The different levels of consumer protection standards across the Member States had led to differences in legislation and lending practices. Finally, the increase in the number of consumer credits, the development of new types of credit and the related risks for consumers (surcharge, insolvency) needed to be addressed too.

The objectives of the Directive are linked to a set of specific provisions (**inputs**), that correspond to given articles of the Directive. These relate to the provision of information at the advertising and pre-contractual phases (Art 4 and 5), the definition of the Annual Percentage Rate of Charge and its calculation (Art 19), the rights of withdrawal and early repayment (Art 14 and 16), and the obligation on creditors to perform a creditworthiness assessment (CWA) of the consumer (Art 8), which is accompanied by rules on credit database access (Art 9). These inputs in turn lead to **outputs** consisting in the transposition<sup>21</sup>, the practical application and enforcement of the Directive, and other effects (such as the application to other areas or elements outside the scope of the Directive). These outputs are therefore directly measurable in terms of their transposition or practical application and functioning in Member States.

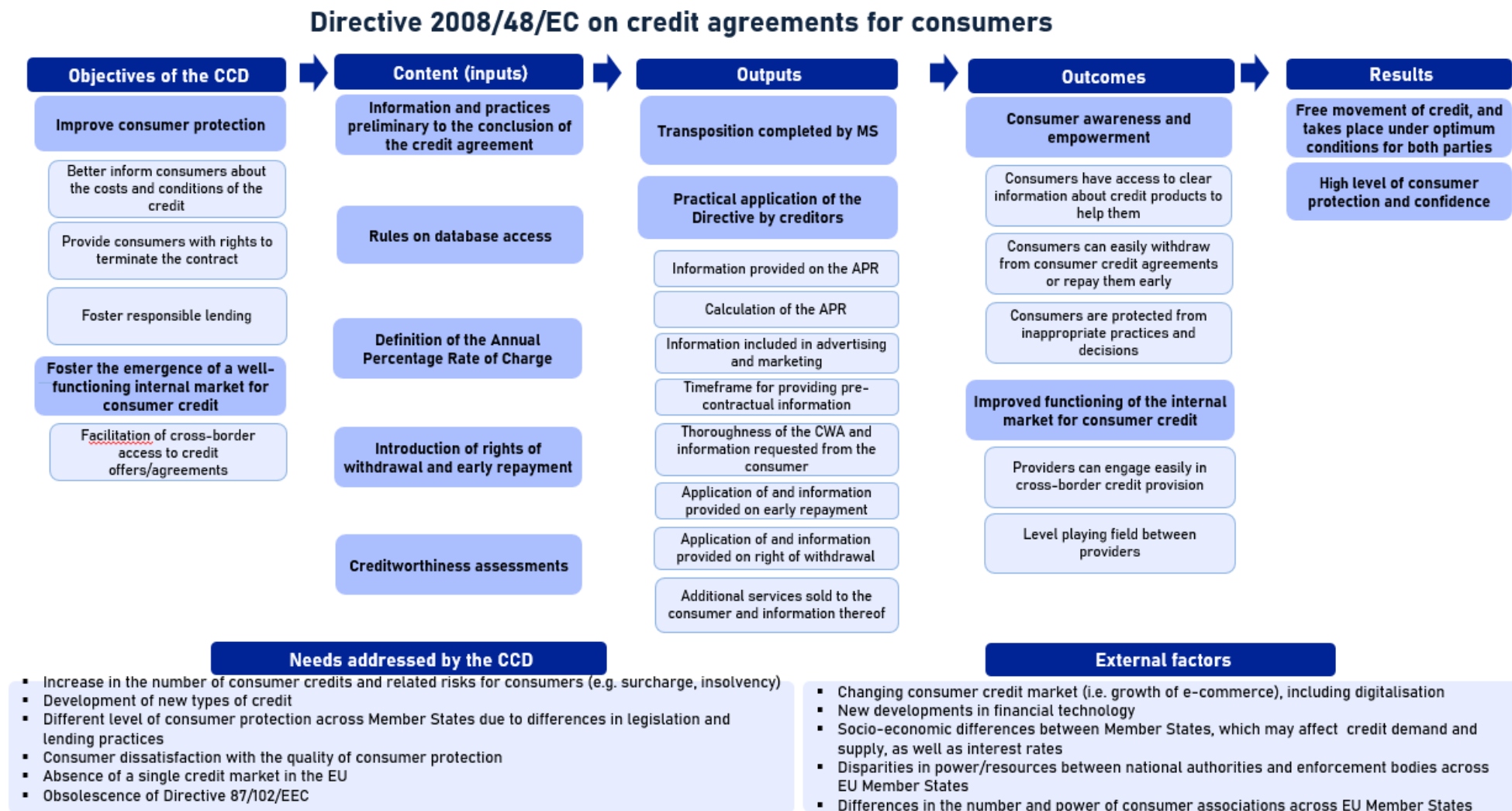
Flowing from these activities, two **outcomes** can be expected: firstly, enhanced consumer awareness and empowerment through access to clear information: this allows the consumer to be able to withdraw from credit agreements and to more easily repay them early. This information protects the consumer against inappropriate lending practices. Secondly, improved functioning of the internal market for consumer credit through ease of access in cross-border credit provision and establishing a level playing field between providers. These two outcomes should ultimately **result** in a high level of consumer confidence and protection, and free movement of credit under optimal conditions for both consumers and credit providers.

Finally, there are several external factors outside the remit of the Directive. This includes changes to the consumer credit market (the growth of e-commerce) and wider digitalisation trends and new developments in financial technology. In addition, the harmonisation in the EU following the implementation of the Directive does not impact the wider socio-economic differences between Member States and which explain credit demand and supply, as well as factors such as interest rates. There are also discrepancies in the status, mandate and resources/power of national authorities and enforcement bodies, and consumer associations.

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<sup>21</sup> Transposition describes the process of incorporating the rights and obligations set out in an EU Directive into national legislation, thereby giving legal force to the provisions of the Directive. The Commission may take action if a Member State fails to transpose EU legislation and/or to communicate to the Commission what measures it has taken. In case of no or partial transposition, the Commission can open formal infringement proceedings and eventually refer the Member State to the Court of Justice of the EU.

Figure 1- Intervention logic of Directive 2008/48/EC on credit agreements for consumers



## **Baseline - the situation before interventions**

The main baseline for the evaluation is the situation prior to the adoption of the Directive. The situation accounted for in 2008, year of adoption of the Consumer Credit Directive, is considered as baseline for the evaluation of the Directive. An additional point of comparison could be the situation following the 2008 financial crisis. However, as highlighted by the 2014 Commission report on the implementation of the Directive, some Member States implemented it after the stipulated deadline and therefore in 2014 it was difficult to identify the impact of the regulatory choices exercised by the Member States<sup>22</sup>.

### The consumer credit sector leading up to 2008-2010

In the early 2000s, the consumer credit market in the EU experienced high levels of growth<sup>23</sup>. Household<sup>24</sup> debt - which include all types of debt such as personal loans<sup>25</sup> and mortgages - have shown constant increase from the late 90s until 2010. Household debt was an important driver of the economic growth during the pre-crisis period. Stable levels of inflation lowered households' constraints of liquidity and enabled consumers to switch from saving to borrowing. However, the credit expansion was also boosted by the development of the Single Market integration in financial services, innovative credit products and the overall optimistic outlook of the EU economy<sup>26</sup>. The positive outlook, combined with the still low interest rates over 2003 – 2005 resulted in consumers taking more credits.

The share of household consumption financed by credit<sup>27</sup> and the level of indebtedness remained relatively constant over the first decade of the 2000s. On average, 12.4% of household consumption was financed through consumer credit. The level of consumer indebtedness<sup>28</sup> corresponded on average to 18.3% of their individual income (wages and salaries).

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<sup>22</sup> COM(2014) 259 final, p. 19.

<sup>23</sup> The highest levels of growth in the consumer credit market were recorded in the new Member States of the EU, such as Lithuania, Estonia, Latvia and Hungary, but also some older Member States, like Greece.

<sup>24</sup> Household is considered a group of persons who share the same living accommodation, who pool some, or all, of their income and wealth and who consume certain types of goods and services collectively, mainly housing and food.

<sup>25</sup> This Staff Working Document quotes data –where available- on personal loans only. Where this is not the case –due to lack of relevant data- this is specified in the text or via a footnote. Personal loans are credit granted to a private person for non-commercial purposes solely on the basis of that person's creditworthiness, income, and financial circumstances.

<sup>26</sup> ECRI, 2013. The bibliography consulted for and quoted in this Staff Working Document can be found in Annex 7.

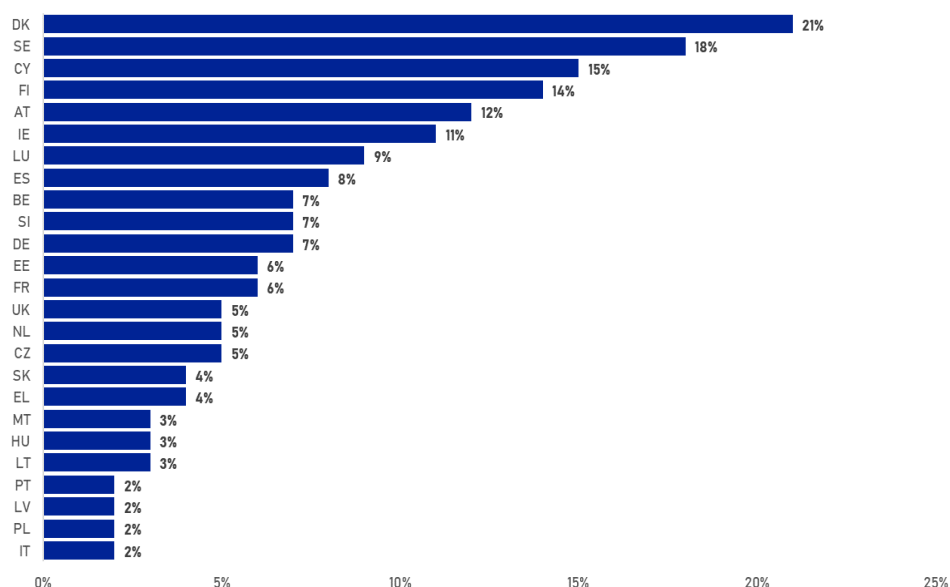
<sup>27</sup> The share of household consumption financed by credit = consumer credit outstanding amount / household expenditure.

<sup>28</sup> Consumer indebtedness = outstanding consumer credit amount / household income.

In 2008, the average interest rate in the Eurozone for consumer credit<sup>29</sup> was 8.9% per year. This interest rate had been fairly stable since 2003. Only after the financial crisis did the average interest rate slowly go down, to around 6% in 2019<sup>30</sup>.

In terms of how common personal loans were in the EU, there are no hard data. However, it is possible to estimate the share of EU citizens with a personal loan in 2006 from the 2011 Special Eurobarometer 373<sup>31</sup>. Incidence rates in 2006 ranged from 2% in Italy to 21% in Denmark.

*Figure 2 - Estimated share of EU citizens with a personal loan in 2006*



*Source: ICF elaboration of Eurobarometer 373 data*

The same can be done for credit cards<sup>32</sup>. The 2006 data show large discrepancies in the estimated number of citizens with a credit card across the EU, ranging from 5% in Hungary to 69% in Luxembourg. While there is equally no hard data on the total number of credit cards available, the wider trend can be seen from the total number of payment cards in circulation in the EU, which shows strong growth of the total number of cards over the period 2000-2010<sup>33</sup>, also – importantly – influenced by enlargement in 2004 and 2008.

On the cross-border dimension of financial services, results from the 2011 Special Eurobarometer 373<sup>34</sup> revealed that a rounded 1% of consumers acquired a credit card in another Member State, as opposed to 0% for personal loans. However, the share of

<sup>29</sup> Excluding revolving loans and overdrafts, convenience and extended credit card debt.

<sup>30</sup> European Central Bank. Statistical Data Warehouse, Interest rates on loans to households.

<sup>31</sup> Which does indicate the share of respondents with a personal loan and how many acquired one in the past five years. On that basis it is possible to derive what was the share of respondents that acquired a personal loan in the past five years (between 2006 and 2011) and thereby deriving the share that had and did not have a personal loan.

<sup>32</sup> A card entitling the owner to use funds from the issuing company up to a certain limit. The holder of a credit card may use it to buy a good or service. When one does this, the issuing company effectively gives the card holder a loan for the amount of the good or service, which the holder is expected to repay.

<sup>33</sup> ICF elaboration of ECB PSS : Payments and Settlement Systems Statistics.

<sup>34</sup> Special Eurobarometer 373, 2011.

respondents that considered acquiring a credit card in another country amounted to 3%, and 2% for personal loans.

#### Consumer trends and issues faced around the time of the entry into force of the Directive in 2010

The process in the years 2002-2008 leading up to the adoption of the Directive in 2008 showed a number of issues and developments on the consumer credit market that set the 2008 baseline, such as<sup>35</sup>:

- Increase in the types of credit used by consumers, for instance the overdraft facility on current accounts, leading to a wider concept of “consumer credit”;
- Indication of there being inadequate protection of consumers by the existing legislative framework, inter alia because of differences among Member States in banking/financial practices (in 2002, more than 35% of consumers considered that the legislation was not protecting their rights<sup>36</sup>);
- Because of differences in national legislations, distortion of competition as a result of different protection levels;
- Limitations to the acquisition of cross-border credit because of barriers linked both to the supply and demand side (see explanation below);
- Wide difference in transparency of financial services among Member States;
- Insufficient available remedies.

For instance, the 2011 Special Eurobarometer 373 shows that a high number of respondents (78%) who acquired a personal loan in the five years before 2011 had received written information about the product. In terms of product comparison, 57% of those getting a personal loan had compared several products before making a decision, while 42% took the first product outright. However, this masks substantial differences ranging from 82% of respondents in Bulgaria comparing products to 35% in Cyprus. For credit cards on average 46% of respondents compared products, and 52% had not.

The acquisition of a consumer credit was predominantly done face-to-face with the provider (76% of consumer surveyed) and through an intermediary or advisor (13%). Distance means were not common (6% of the credit obtained online and 4% by phone).

This survey sheds further light on the main barriers which hampered the purchasing of financial products cross-border. This includes a lack of demand, with consumers considering that offers on the national market were sufficient (32% of consumers surveyed), that they had a preference for products from their home country (23%) or found the language barrier problematic (17%). In addition, consumers felt that they lacked clear information about offers available (21%), were unaware of their rights in a cross-border context (18%), and were worried about fraud or crimes (15%) or about lower levels of consumer protection in other Member States (5%). These figures mask however substantial differences across Member States. For instance, lower levels of

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<sup>35</sup> COM(2002) 443.

<sup>36</sup> COM(2002) 443.

consumer protection were cited as a concern about cross-border purchase by 15% of those in Sweden and 0% in Estonia, Greece and Poland.

### **3. IMPLEMENTATION / STATE OF PLAY**

According to Article 27(1) of the Directive, Member States were required to transpose the Directive before 11 May 2010. All Member States have transposed the Directive by the end of 2011 (some of them later than the deadline imposed by the Directive), with no infringement proceedings being completed (16 were initiated for failure to communicate national implementing measures on time while 4 Member States failed to ensure its timely entry into force or effective application, but all cases were closed soon after)<sup>37</sup>. Twenty Member States transposed the Directive by adopting new legislation, while the rest introduced amendments to pre-existing legislation. No systematic deficiencies in the transposition of the Directive by Member States were identified<sup>38</sup>.

The Directive was transposed in all Member States with a view to achieving maximum harmonisation. Flexibility was nevertheless given to national lawmakers for nine optional provisions under Article 27(2) that offer the possibility for Member States to make use of particular regulatory choices. For instance, Member States had the legal option to decide that the Annual Percentage Rate of Charge would not need to be provided in advertising for overdraft agreements, and eight of them made use of this legal option<sup>39</sup>.

In addition, some provisions of the Directive set clear objectives but do not clearly specify the result to be achieved. This gave Member States some additional discretionary power.. National transposing measures have often gone beyond the requirements of the Directive, laying down additional elements to further protect consumers (e.g. introduction of caps on interest rate). Full details are available in Annex 5.

#### **The consumer credit sector 2008-2019**

After almost a decade of marked growth in the volume of personal credit for consumption, the 2008 financial crisis began a period of contraction that lasted until 2014. The volume of credit for consumption has since recovered, with an average annual growth of credit for personal consumption above 4% since 2015.

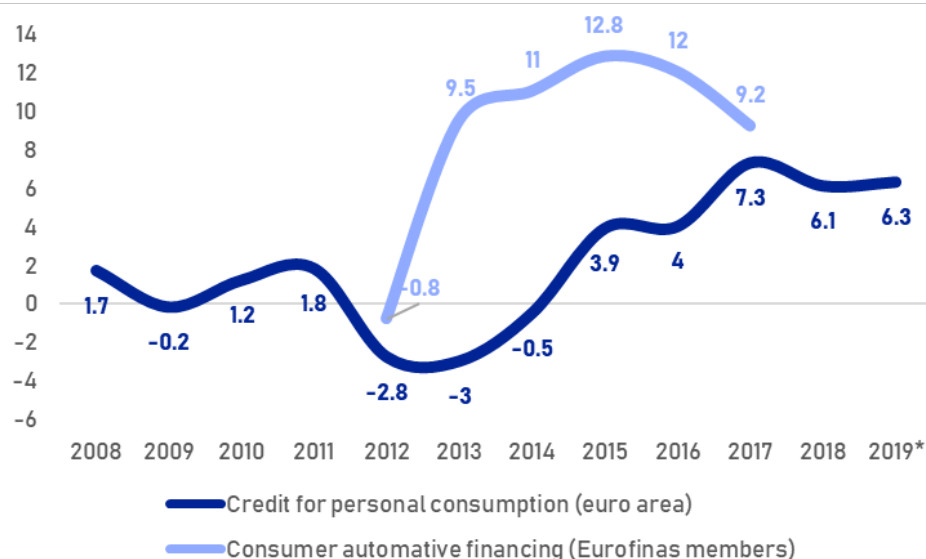
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<sup>37</sup> COM(2014) 259 final

<sup>38</sup> COM(2014) 259 final

<sup>39</sup> Article 4(2)(c).

Figure 3 - Average annual growth rate of credit in % for personal consumption in the Eurozone (2008–2019) and financing of vehicles for private use (2012–2017)



Source: ICF (2019), developed with data from the ECB (monthly Economic Bulletin 2015–2019 and Economic Bulletin 2008–2015) and Eurofinas (Key Facts & Figures 2012–2017).

Note: No data on automotive financing for 2008–2011, 2018, 2019. Data for 2019 on personal consumption credit only cover Q1.

The overall picture of total consumer indebtedness shows decreasing trends until 2014, as of which the level of indebtedness is increasing again<sup>40</sup>.

At the same time, the problem of loan arrears is common among vulnerable consumers, especially in some Member States, and may be symptomatic of a risk of over-indebtedness<sup>41,42</sup>. In 2018, 3.3% of households had arrears on mortgage or rent payments, 2.1% on hire purchase instalments or other loan payments and 6.6% on utility bills<sup>43</sup>. Many European households continue to find it difficult to make ends meet<sup>44</sup>.

<sup>40</sup> When the crisis kicked in, banks drastically reduced the amount of credit given. Thus, the outstanding amount of credit gradually decreased (as older credit still had to be repaid – and generally was repaid). For this reason, the level of indebtedness decreased as well.

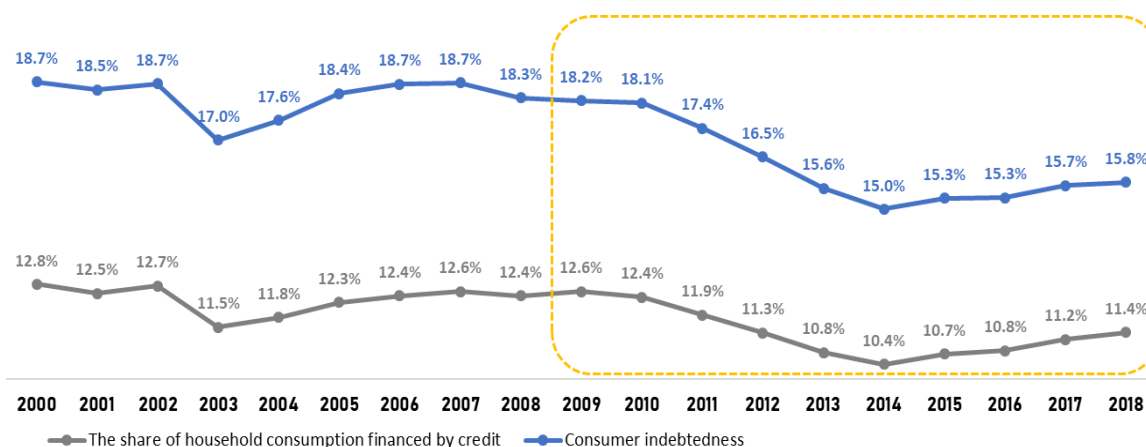
<sup>41</sup> Households are considered over-indebted if they are having – on an on-going basis – difficulties meeting their commitments, whether these relate to servicing secured or unsecured borrowing or to payment of rent, utility or other household bills, see the 2013 Civic report on “The over-indebtedness of European households: updated mapping of the situation, nature and causes, effects and initiatives for alleviating its impact”.

<sup>42</sup> European Quality of Life Survey 2016, Eurofound.

<sup>43</sup> EU-SILC data.

<sup>44</sup> In the 2016 Eurofound European Quality of Life Survey, 41% of respondents reported ‘some’ to ‘great’ difficulty in making ends meet, with large differences between Member States.

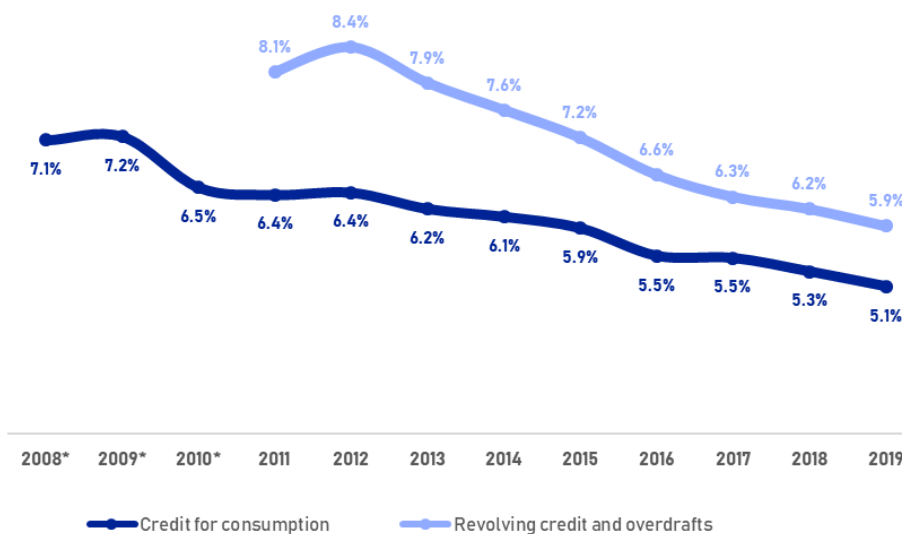
Figure 4 - Share of household consumption financed by credit and consumer indebtedness in the euro area economy, post-crisis



Source: ICF elaboration. Note: The share of household consumption financed by credit = consumer credit outstanding amount / household expenditure. Consumer indebtedness = outstanding consumer credit amount / household income.

Consumer credit and revolving credit interest rates have gradually dropped since 2008. Low interest rates should result in consumers taking on more credit.

Figure 5 - Interest rates for consumer credit in the Eurozone, 2008–2019



Source: ICF, based on ECB data

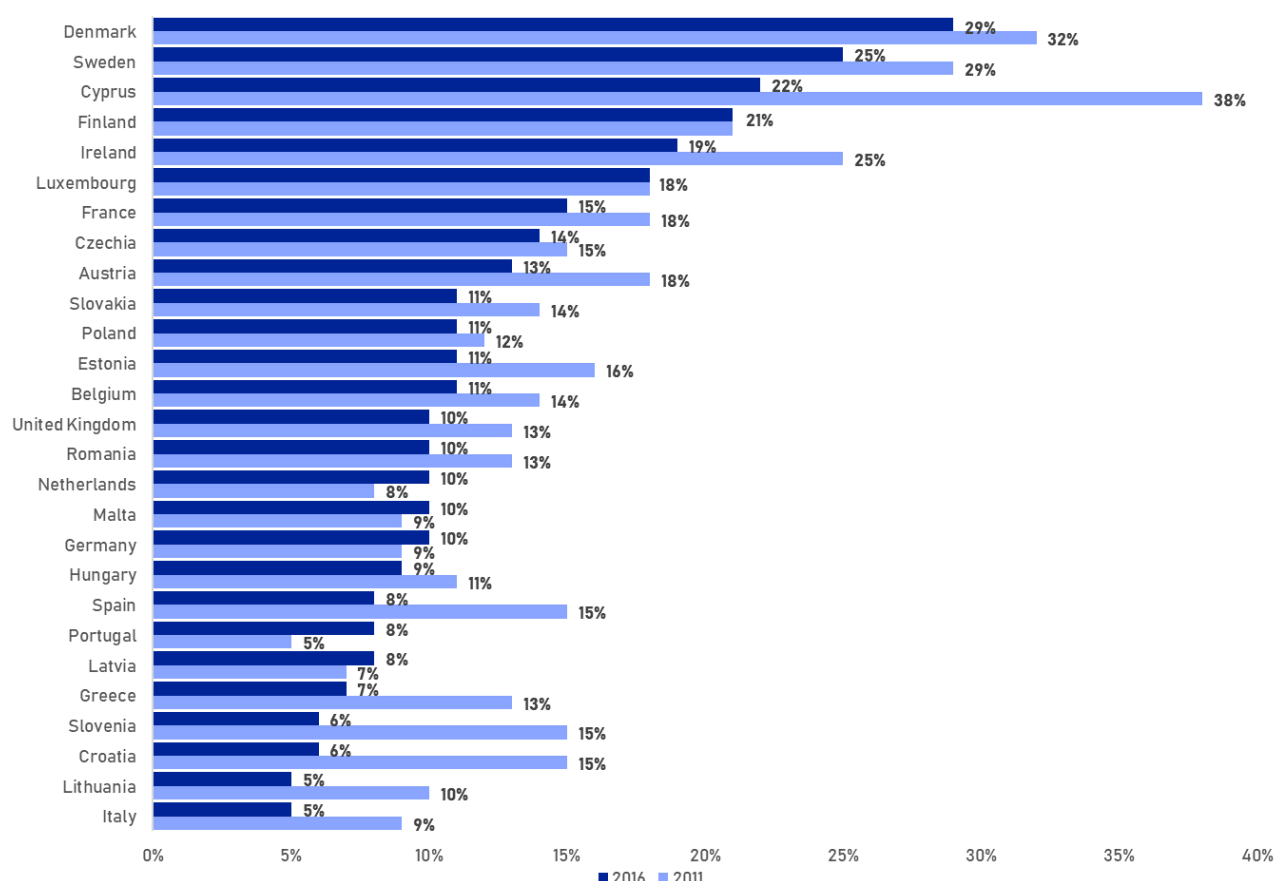
[MIR.M.U2.B.A25.I.R.A.2250.EUR.O;MIR.M.U2.B.A2Z1.A.R.A.2250.EUR.N]. Note: data on revolving credit and overdrafts not available for 2008-2010.

There is no comparable data on the number of EU citizens with a personal loan, but in 2016 the share of EU citizens with a personal loan was around 11%, down from 13% in 2011<sup>45</sup>.

<sup>45</sup> Elaboration of Special Eurobarometer 446 and 373 data, support study for the evaluation of Directive 2008/48/EC, ICF.



Figure 6 - Estimated share of EU citizens with a personal loan in 2011 and 2016



Source: ICF elaboration of Special Eurobarometer 446 and 373 data

Based on EU population data, it is estimated that in 2018 there were around 59.8 million EU citizens with a personal loan,<sup>46</sup> and a total number of personal loans in the EU of 71.8 million<sup>47</sup>.

The number of consumers opting for credit cards has increased slightly since 2011, with 43% of Europeans having a credit card in 2016 (three percentage points (p.p.) higher than in 2011), compared to 11% who had a personal loan (two p.p. lower than in 2011)<sup>48</sup>. The share of EU citizens with a credit card has risen by 3% over the period 2011-2016, according to Eurobarometer figures, ranging from 11% in Hungary to 84% in Luxembourg<sup>49</sup>.

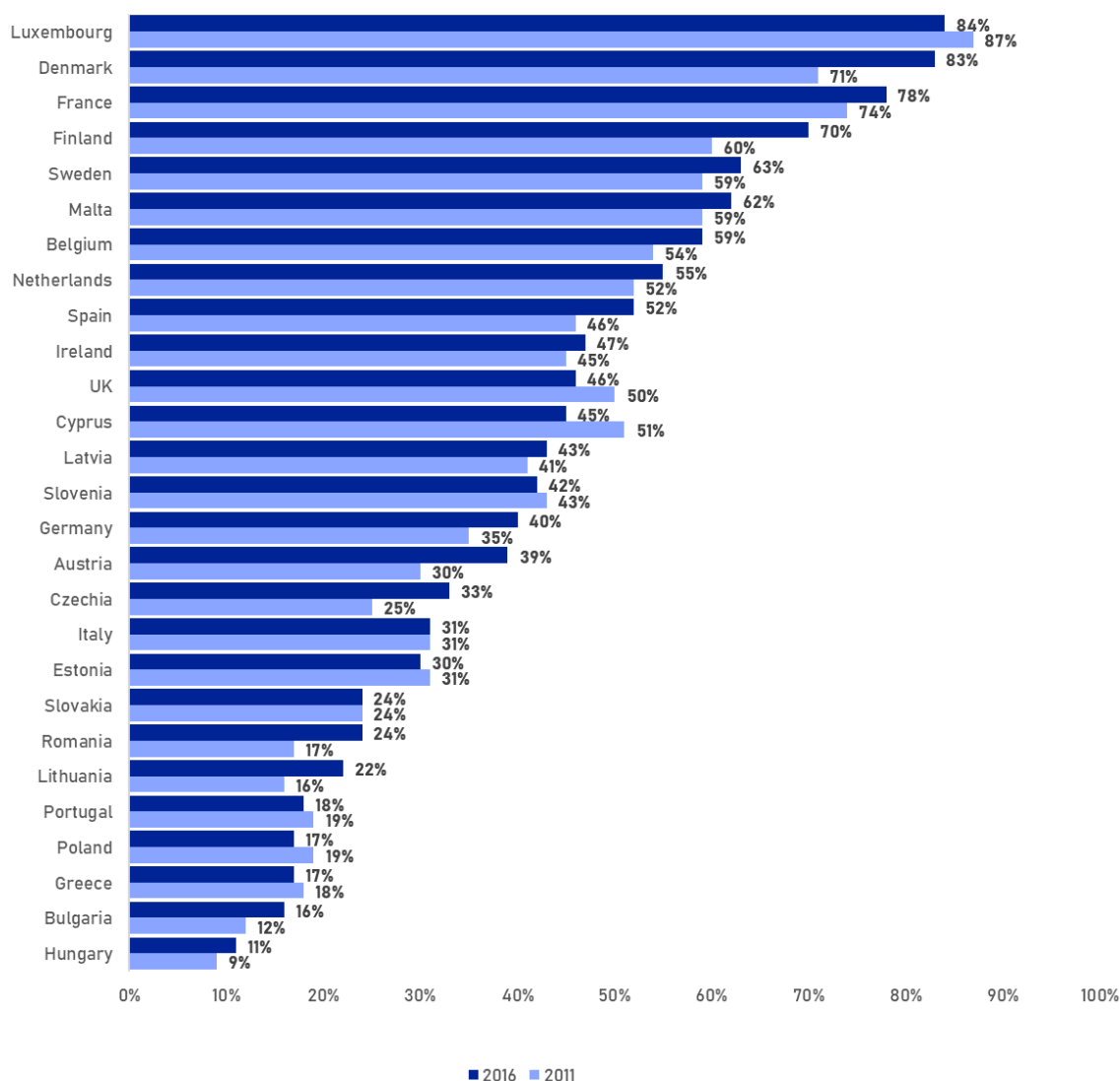
<sup>46</sup> Based on the EU population of older than 15 years, and on the assumption that the share of EU citizens with a personal loan is still unchanged at 13%.

<sup>47</sup> Based on an estimate of an average of 1.2 loans per EU citizen who has a loan.

<sup>48</sup> London Economics Europe, VVA Consulting, Ipsos NV, ConPolicy and Time.lex, 2019.

<sup>49</sup> ICF elaboration of Eurobarometer 446 and 373 data.

Figure 7 - Estimated share of EU citizens with a credit card in 2011 and 2016



Source: ICF compilation, based on Eurobarometer 446 and 373 data

The total number of payment cards has gradually increased in the EU, going up from 474 million in 2010 to 544 million in 2018<sup>50</sup>. Credit cards and revolving credit - a line of credit where consumers pay a fee to a financial services provider to borrow money if and when needed – are covered by the Directive if the amount borrowed falls under its scope of application.

The 2016 Eurobarometer 446 shows no evolution since 2011 on the number of European consumers having obtained a loan or a credit card from a provider based in another Member State (still between 0 and 1%). However, consumer concerns with purchasing financial services from another Member State have somewhat evolved: the number of consumers not knowing their rights in case something goes wrong went down from 18% to 13% between 2011 and 2016. Similarly the importance of the language barrier went down from 17% to 12% over the same period. Nonetheless, general consumer

<sup>50</sup> ICF elaboration of ECB PSS : Payments and Settlement Systems Statistics.

preferences (finding the offer in the national market sufficient, preferences to buy face-to-face or from a local provider) have remained stable.

Finally, an important market development since 2010 has been that of short-term high-cost (STHC) instalment loans<sup>51</sup> - especially payday loans<sup>52</sup> – which have warranted particular attention in several Member States during the last decade. This type of credit is usually taken by consumers who are hard-pressed to meet their financial needs<sup>53</sup>. The credit amount is relatively small and the initial duration short, although such loans are very likely to be extended over time. Payday loans are a relatively small, high-cost instalment loan that has to be repaid over a short term, or until “payday”<sup>54</sup>. Since 2008, the provision of payday loans<sup>55</sup> has expanded across the EU and are now available in many Member States, as highlighted by a recent OECD report<sup>56</sup>.

Payday loans are often offered through digital channels. Digitalisation has expanded rapidly from 2008 to 2018, as pointed out by various indicators. On the one hand, there has been a steady decline in the number of financial institutions, in particular banks, denoting a trend towards fewer points of sales and increased online activity. Similarly, the number of bank branches decreased by 27% from 2008-2018, while the number of bank employees reduced by 14% over 2009-2018.<sup>57</sup> On the other hand, online banking penetration in the EU has increased steadily since 2008. In 2018, around half (51%) of EU adults were using internet banking<sup>58</sup>. This share is constantly increasing and has nearly doubled since 2008, when it stood at 29%<sup>59</sup>.

Limited/no data<sup>60</sup> is available on the average amount and duration of consumer loans.

## **4. METHOD**

### **Main sources of data**

The evaluation took place between June 2018 and October 2019 and drew on the following main data sources – in addition to data on infringement cases and complaints already at the disposal of the Commission:

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<sup>51</sup> High-cost personal loans are a type of instalment credit that is usually unsecured.

<sup>52</sup> A short-term loan expected to be repaid before the consumer's next pay day.

<sup>53</sup> London Economics Europe, VVA Consulting, Ipsos NV, ConPolicy and Time.lex, 2019.

<sup>54</sup> BEUC, 2019.

<sup>55</sup> Payday loans have existed since the 1990s, being largely restricted to the Nordic countries and the US until the latter part of the 2000s.

<sup>56</sup> 16 EU Member States were captured in a recent OECD report examining the provision of STHC credit in a selection of countries, of which 10 reported presence of this type of credit product (AT, CZ, DE, DK, EE, LV, NL, RO, SK, UK), while 6 did not (EL, ES, FR, PT, SE, SI); OECD, 2019.

<sup>57</sup> EBF, 2019.

<sup>58</sup> Among EU Member States, internet banking is most common in Denmark (where 90% of people aged 16 to 74 said they were using it) and the Netherlands (89%), followed by the other Nordic countries - Finland (87%) and Sweden (86%). The lowest shares were registered in Bulgaria (5%) and Romania (7%). Less than 30% of those between the ages of 16 and 74 use internet banking in Greece (25%) and Cyprus (28%). <https://ec.europa.eu/eurostat/web/products-eurostat-news/-/DDN-20180115-1>

<sup>59</sup> CCD Evaluation supporting study.

<sup>60</sup> Data from the Netherlands shows the average personal loan amount to be €6,400. In the UK this is around £7,311 per household or £3,909 per adult. It should be noted that these figures typically are calculated based on the total outstanding credit and the number of household or adults, and not on the median loan taken out.

### Study to support the Directive evaluation

The Study<sup>61</sup> was outsourced to ICF S.A. in November 2018 to feed into the evaluation of the Directive. Its main objective is to provide evidence on whether the current Directive framework is still fit for purpose, analyse developments and lessons learned since 2008 and evaluate the overall functioning of this piece of legislation in relation to its original objectives and to those which arose during its implementation. It focuses on in-depth consultation with stakeholders but also relies on other tasks: legal analysis, literature review, cost and benefits analysis and mystery shopping<sup>62</sup> exercises (both offline and online).

### Stakeholder consultations<sup>63</sup>

The full report of all stakeholder consultation activities undertaken for the evaluation is annexed hereto (Annex 2: Stakeholder consultation – Synopsis Report).

- Online public consultation

The public consultation on the evaluation of the Consumer Credit Directive ran, on the EU survey website, between 14 January and 8 April 2019. The objective of this consultation was to obtain the views of citizens and relevant stakeholders on the functioning of the Directive. The public consultation questionnaire was tailored to two main categories of stakeholders: the general public (i.e. consumers) and stakeholders who are involved in the implementation of the Directive or who have detailed knowledge of the functioning of the different elements of the Directive and their impact on the consumer credit market. In accordance with the Better Regulation guidelines, the consultation was available during 12 weeks and respondents could reply in any of the 24 official EU-languages. The questionnaire attracted 234 responses. An initial summary report<sup>64</sup> of the findings was published in May 2019.

- Online surveys

As part of the study, to get a more detailed knowledge and reach a variety of stakeholders, the contractor launched and promoted online surveys for consumers and creditors. The consumer survey<sup>65</sup> ran between 6 and 18 March 2019, targeted consumers in the EU28 and gathered a total of 3.886 replies on first-hand experience in accessing

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<sup>61</sup> ICF S.A., Study in Support of the Evaluation of Directive 2008/48/EC on credit agreements for consumers (2019).

<sup>62</sup> 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.

<sup>63</sup> Stakeholder consultation is a formal process of collecting input and views from citizens and stakeholders on new initiatives or evaluations/ fitness checks, based on specific questions and/or consultation background documents or Commission documents launching a consultation process or Green Papers. When consulting, the Commission proactively seeks evidence (facts, views, opinions) on a specific issue.

<sup>64</sup> [https://ec.europa.eu/info/law/better-regulation/initiative/1844/publication/350280/attachment/090166e5c4195d31\\_en](https://ec.europa.eu/info/law/better-regulation/initiative/1844/publication/350280/attachment/090166e5c4195d31_en)

<sup>65</sup> The survey was performed by Dynata, whose market research is of very high standards. An explanation of the number of responses in sub-questions is found in the evaluation supporting study.

consumer credit. The creditor survey was launched in February and stayed open until the end of April 2019. 51 banks<sup>66</sup> and non-banks<sup>67,68</sup> replied to it.

- Stakeholder event

The Commission organised a stakeholder event in Brussels (“Protecting consumers in the digital era: can we do better<sup>69</sup>”, co-organised with CEPS) on 18 June 2019 to present the interim findings of the evaluation and gather feedback from relevant stakeholders. More than 140 participants attended the event, exchanging on Directive-related issues like scope, pre-contractual information and advertisement, creditworthiness assessment and responsible lending.

- Ad-hoc meetings

Several ad-hoc meetings with relevant stakeholders (e.g. consumer associations and industry representatives) took place in the course of 2018 and 2019 to discuss the evaluation of the Directive.

- Consultation of relevant expert groups

In evaluating the Directive, the Commission also consulted two relevant expert groups: the Expert Group on the Implementation of Directive 2008/48/EC on Consumer Credit<sup>70</sup> and the Financial Services User Group (FSUG)<sup>71</sup>. While the first one met in two occasions (January and November 2019) to provide input to the Commission from the different national perspectives, the FSUG delivered in April 2019 an opinion<sup>72</sup> on the evaluation of the Directive.

- Contributions received from stakeholders

While carrying out the evaluation, the Commission - often in the context of ad-hoc meetings - has received several contributions (e.g. position papers, statistics, report etc.) from different stakeholders, which have all been passed on to the contractor for the purpose of the study and/or analysed by the Commission itself. It is worth underlining the Information Report<sup>73</sup> adopted by the European Economic and Social Committee in July 2019. It is based on the consultations of 30 Civil Society organisations (CSOs – representing consumers, employers and workers) and national authorities in order to

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<sup>66</sup> A bank is financial institution one of whose principal activities is to take deposits and borrow with the objective of lending and investing and which is within the scope of banking or similar legislation.

<sup>67</sup> In general, non-banks are non-monetary financial corporations. More specifically, they include insurance corporations and pension funds, financial auxiliaries, and other financial intermediaries.

<sup>68</sup> The Directive applies to all credit providers (banks and non-banks). In this respect, the findings applicable to how the Directive has impacted consumers and their behaviours is equally relevant for banks and non-banks. In the course of the evaluation, data was sought on credit provision from non-banks. In the framework of the supporting study, it became very challenging to gather hard data on non-banks credit providers. The creditor survey was also targeting non-banks (269 non-banks were contacted directly), but their response rate was very low compared to banks (only 8 complete responses from non-banks to the creditor survey).

<sup>69</sup> [https://www.ceps.eu/wp-content/uploads/2019/04/06182019-Conference-18-June\\_draft-agenda-1\\_.pdf](https://www.ceps.eu/wp-content/uploads/2019/04/06182019-Conference-18-June_draft-agenda-1_.pdf)

<sup>70</sup> Code E02180 of the Register of Commission Expert Groups and Other Similar Entities

<sup>71</sup> Code E02594 of the Register of Commission Expert Groups and Other Similar Entities

<sup>72</sup> [https://ec.europa.eu/info/sites/info/files/business\\_economy\\_euro/banking\\_and\\_finance/documents/fsug-opinions-190408-responsible-consumer-credit-lending\\_en.pdf](https://ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/documents/fsug-opinions-190408-responsible-consumer-credit-lending_en.pdf)

<sup>73</sup> <https://webapi2016.eesc.europa.eu/v1/documents/eesc-2019-01055-00-00-ri-tra-en.docx/content>

understand how they experienced and observed the impact and the changes brought about by the Directive.

### Experience Gained from the European Commission Consumer Financial Services Action Plan

Under the 2017 Consumer Financial Services Action Plan, the Commission undertook three initiatives in the field of consumer credit, which delivered relevant insights and experiences:

- exploring ways of facilitating access to loans across borders while addressing consumer over-indebtedness linked to credit activities (Action 7);
- working with Member States at identifying national approaches and best practices to credit worthiness assessment for consumer credit (an obligation under the Directive) and access to credit databases (Action 9); and
- monitoring the distance selling market to identify the potential consumer risks and business opportunities (Action 12).

Discussions have taken place with stakeholders (creditors, authorities, consumer organisations) to understand the barriers faced in the cross-border provisions of consumer credit. These include legal and technical barriers (know-your-customer requirements as per anti-money laundering requirements, difficulty in checking the identity and creditworthiness of consumers), language barriers and questions around applicable law.

With the input of the national authorities in charge of enforcing the Directive, the Commission has developed a mapping<sup>74</sup> of national approaches to creditworthiness assessment. Results show that Member States are approaching the implementation of this provision in very different ways.

The Commission has also conducted a Behavioural study on the digitalisation of the marketing and distance selling of retail financial services<sup>75</sup>, finding out that digitalisation has given rise to new market practices –often legally problematic-, impacted providers and their business models. It has also analysed how to provide information to consumers via behavioural experiments and tested the effectiveness of solutions adopted recently at EU level.

### Literature review

A number of studies informed the evaluation, including the Behavioural study on the digitalisation of the marketing and distance selling of retail financial services (2019, London Economics Europe, VVA Consulting, Ipsos NV, ConPolicy and Time.lex) and the Study on Measuring Consumer Detriment in the European Union (2017, Civic Consulting).

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<sup>74</sup> [https://ec.europa.eu/info/sites/info/files/mapping\\_national\\_approaches\\_creditworthiness\\_assessment.pdf](https://ec.europa.eu/info/sites/info/files/mapping_national_approaches_creditworthiness_assessment.pdf)

<sup>75</sup> [https://ec.europa.eu/info/sites/info/files/live\\_work\\_travel\\_in\\_the\\_eu/consumers/digitalisation\\_of\\_financial\\_services\\_-\\_main\\_report.pdf](https://ec.europa.eu/info/sites/info/files/live_work_travel_in_the_eu/consumers/digitalisation_of_financial_services_-_main_report.pdf)

The full list of academic and grey literature used for the support study to the evaluation is available in Annex 7.

## **Limitations and robustness of findings**

### Limitations

The following limitations should be taken into account:

- the data collected to establish the baseline was limited;
- limited information was available for short term high cost loans, overdrafts, linked credit, and cross-border access to databases;
- it was not possible to gather comprehensive data from complaints at national level specifically related to consumer credit;
- in the course of the evaluation, and in the framework of the supporting study, data was sought on credit provision from non-banks, but it became very challenging to gather hard data on non-banks credit providers.

Whenever quantitative data are lacking, this is counter-balanced or complemented with qualitative analysis, estimates and assumptions. In addition, in order to mitigate these limitations, during the evaluation additional industry stakeholders were approached for input and further desk research was carried out. The inherent limitations of the findings of public and targeted consultations, reflecting the views of a sample of stakeholders, should also be taken into account. Nonetheless, efforts have been made to ensure a balanced consultation of all relevant stakeholder groups.

### Robustness of the findings

The quantitative analysis of the consumer detriment and the contribution of the Directive to its reduction, described in Annex 3 as well as in the supporting study, is considered to be robust as it follows the detailed operational guidance to scientifically sound and resource efficient assessments of personal consumer detriment in markets across the EU developed in a 2017 study commissioned by the European Commission<sup>76</sup>.

## **5. ANALYSIS AND ANSWERS TO THE EVALUATION QUESTIONS**

This section presents the findings of the evaluation, based on the triangulation of evidence collected through the different means presented above. Findings are grouped under each of the Better Regulation criteria, contributing to an in-depth analysis of the functioning of each of the key elements of the Directive.

### **EFFECTIVENESS**

The effectiveness analysis considers how successful EU action has been in achieving or progressing towards its objectives.

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<sup>76</sup> “Study on measuring consumer detriment in the European Union”, CIVIC, 2017.

**EQ1 – To what extent has the Directive achieved its objectives? Have the scope of application and the definitions facilitated or hindered the achievement of the objectives? What are the main benefits and drawbacks of the Directive?**

The Directive has two overarching objectives: 1) to ensure a high level of consumer protection and 2) to foster the emergence of a well-functioning internal market.

**Objective 1: Ensuring a high level of consumer protection**

The objective of ensuring a high level of consumer protection has been partially achieved, with differences between the various provisions. Stakeholders consider – although with some nuances - the provisions of the Directive to be helpful and effective, but point to areas for improvement. The introduction of the Directive has enabled the development of a specific legal framework to protect consumers in this sector, which did not exist in numerous Member States at the time of its introduction. However, several Member States have also completed the Directive provisions with additional elements, which would imply that the Directive on its own was not sufficient to reach the highest level of protection and that more stringent measures were needed at Member States level to afford more protection to consumers and/or address detrimental practices.

Overall, the Directive has been partially effective in ensuring a higher level of consumer protection than was the case before its adoption. The majority of stakeholders interviewed<sup>77</sup> considered the Directive effective in ensuring better protection of consumers. Of the consumer associations interviewed, only a slight majority (just over 50%) of respondents considered the Directive effective in this respect, compared to a substantial majority (over 75%) of industry representatives, Member States and enforcement bodies. A majority of respondents to the Open Public Consultation also considered the Directive effective in this respect.<sup>78</sup>

The transposition of the Directive indeed triggered substantial reforms of the consumer credit environment in most Member States<sup>79</sup>. New elements were introduced by the Directive, in particular in relation to pre-contractual information Standardised European Consumer Credit Information (SECCI) and advertisement, as well as the right of withdrawal. These elements have, over time, helped to ensure a higher level of consumer protection. These provisions are considered positive and largely effective by most national authorities, consumer associations and consumers themselves (about their practical working see the specific sections - EQ3, EQ4 and EQ6). Other areas, such as requirements on the Annual Percentage Rate of Charge (APR), already existed prior to the Directive but were completely harmonised, affording a high level of consumer protection across the EU.

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<sup>77</sup> This includes both those interviewed on the phone and those surveyed.

<sup>78</sup> The majority of the respondents to the specific part of the Open Public Consultation (from different stakeholder categories) considered all provisions either very or somewhat effective, with the exception of the information to be included in advertising, which was deemed “somewhat/very ineffective” by 72% of businesses, 36% of consumer associations and 26% of public authorities.

<sup>79</sup> Legal analysis and stakeholder survey.



Studies from the early 2000s showed that consumers expressed a need for further harmonisation, and this has generally been overcome by the Directive as overall consumer protection standards have gone up.

The ability of the Directive to fully meet its objective of ensuring a high level of consumer protection has however been hampered by a number of specific legal developments. The Directive aims at offering a sufficient degree of consumer protection to ensure consumer confidence. An uneven level of consumer protection across the EU leads to fragmentation and unequal conditions to access credit products in other Member States. Even if cross-border activities concern a small part of credit agreements, they are important because they can increase competition and ultimately consumer choice; moreover they are expected to increase thanks to digitalisation.

Some of these legal developments are directly linked to a few provisions of the Directive, which have been implemented in various ways by Member States. In addition, Member States have regulated differently various credit-related issues not covered by the Directive. As such, even though the Directive has fully harmonised several aspects of the provision of credit, the overall level of consumer protection in this sector is somewhat fragmented across the EU.

It depended on political choices made by the co-legislators to exclude several types of consumer credit from the scope of the Directive, which, depending on the Member States, may have then been somehow regulated by specific rules at the national level. This aspect is further analysed under EQ7.

Another example concerns a few provisions<sup>80</sup> of the Directive, which have given rise to different implementation and interpretation across Member States (see EQ3, EQ4).

Furthermore, in many instances<sup>81</sup>, Member States have added elements to their own consumer credit legislation, usually imposing additional requirements on creditors and affording greater protection to consumers. The fact that Member States have felt the need to add such measures may indicate that the Directive was not considered entirely sufficient by Member States to ensure a high level of consumer protection, often adapted to national specificities. This is particularly relevant in relation to the objective of the Directive of ensuring responsible lending, where Member States have gone beyond the Directive provisions to address specific forms of problematic lending practices (e.g. see EQ4 for more details).

Finally, the difference in remedies and enforcement structures (for more details, see EQ2) available for consumers across the EU has meant that, while a fairly high level of consumer protection standards exists, its application is uneven which somewhat limits the achievement of the objective.

## **Objective 2: Facilitating the emergence of a well-functioning internal market**

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<sup>80</sup> The provision of pre-contractual information ‘in good time’ as per Article 4, and to present it in a ‘clear, concise and prominent way’ as per Article 5, and the assessment of the creditworthiness of the consumer on the basis of ‘sufficient information’ as per Article 8.

<sup>81</sup> All Member States with the exception of Cyprus and Greece.

Consumer credit remains predominantly provided at national level, with a very limited cross-border market (0.9% of all loans), and stagnant compared to the baseline. This can be explained by a series of barriers, some of which are directly linked to the way some of the Directive provisions have been implemented by Member States. However, many other barriers relate to aspects beyond the provisions of the Directive, both on the supply side – because of general regulatory and market fragmentation, and on the demand side, because of general consumer preferences, but also by geographically-based discrimination through geo-blocking techniques. The Directive has played a positive role in achieving this objective thanks to certain provisions that have harmonised key aspects of the provision of consumer credit in the EU (Standardised European Consumer Credit Information, right of withdrawal, ...) ensuring a level-playing field on these aspects between providers and the same rights for consumers.

Between 2008 and 2019, cross-border household loans have remained almost unchanged<sup>82</sup> at around 0.9% of all outstanding credit in the eurozone. The lack of significant changes in these figures suggests that the Directive has had little noticeable impact on cross-border access to credit<sup>83</sup>. The consumer credit market in the EU remains predominantly national. With the exception of consumer associations (whose opinions were divided on whether the Directive has facilitated cross-border access to credit and resulted in increased competition at EU level), all stakeholder groups agreed that the Directive has not triggered a significant increase in cross-border operations or EU-level competition.<sup>84</sup> Similarly, while national authorities were relatively positive about the impact of the Directive on the level of consumer protection in cross-border operations, the Directive is seen by the vast majority of stakeholders as having had little or no impact in this respect.<sup>85</sup>

The lack of an internal market for consumer credit is due in part to the way some of the Directive provisions have been implemented, and mainly to the fact that the Directive, on its own cannot actually achieve this objective because of its limited set of provisions<sup>86</sup>, and because of external factors influencing offer and demand.

Perceptions of distortion of competition between creditors in the internal market due to different protection levels were largely addressed by the Directive in the form of a more level playing field with the same standards applying across the EU. This is particularly the case in relation to aspects fully harmonised by the Directive such as the Annual Percentage Rate of Charge (APR), the rights of withdrawal and early repayment as well as the Standardised European Consumer Credit Information (SECCI).

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<sup>82</sup> They dropped to 0.8% between 2011 and 2016.

<sup>83</sup> Interviews of consumer associations, industry, and Member States; Survey of creditors; Open Public Consultation (specific).

<sup>84</sup> Interviews with consumer associations, industry, and Member States; survey of creditors; Open Public Consultation (specific).

<sup>85</sup> Interviews with consumer associations, industry, and Member States; survey of creditors; Open Public Consultation (specific); Open Public Consultation (general).

<sup>86</sup> This is also covered under EQ11 in terms of the apparent incoherence between this objective and its provisions, and EQ15 in terms of the extent to which this objective can still be considered relevant.

On the demand side (as explained in Section 3) general consumer preferences like finding the offer in the national market sufficient, and preferences for obtaining a credit locally, appear to have remained unchanged over the past 10 years<sup>87,88</sup>. Consumers also lack information about existing cross-border offers of financial products<sup>89, 90</sup>. In addition, the lack of knowledge among consumers of available redress mechanisms<sup>91</sup> and of applicable legislation in case of cross-border purchase deter consumers from obtaining credit from another Member State. Indeed, 23% of the consumer surveyed mentioned the uncertainty about their rights abroad as the main reason for not looking for a credit in another Member State. Lack of language skills was also mentioned as a reason by 14% of respondents.

There is however a growing interest among consumers for cross-border credit offers: 29% of the respondents to the consumer survey said they had looked for a credit from a creditor located in another EU country. This compares to only 2% in 2011<sup>92</sup> who said that they would potentially buy a personal loan in a foreign EU country<sup>93</sup>. However this demand is often unmet as traditional creditors rarely target consumers in other countries. Moreover, access to offers available in another country is often limited due to geographical restrictions<sup>94</sup>. In the digital realm, geo-blocking techniques are used by credit providers to re-route consumers or prevent the conclusion of a transaction, effectively denying access to credit for cross-border consumers.<sup>95, 96</sup>

In 2015, the European Commission echoed the then recently adopted Digital Market Strategy and anticipated that actions seeking to avoid geo-blocking and other types of geographically-based discrimination would be taken. Although a new Regulation on geo-blocking was adopted in 2018 (Regulation (EU) 2018/302), financial services have been

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<sup>87</sup> The main barriers to purchasing financial products cross-border suggested a lack of demand, as well as rights-related elements, including awareness, perception of complexity, cost, know-how but also language barriers. Special Eurobarometer 373, 2011.

<sup>88</sup> The creditor survey pointed to obstacles to the functioning of the cross-border consumer credit market including language barriers, consumers' preference for obtaining credit locally.

<sup>89</sup> COM (2015) 0603 final.

<sup>90</sup> 58% of the consumer surveyed as part of this evaluation did not think it was possible to obtain a credit from a creditor based in another Member State.

<sup>91</sup> Open Public Consultation (general); consumer survey.

<sup>92</sup> Special Eurobarometer 373.

<sup>93</sup> Please note that there could be some limitations in the comparison between 2019 and 2011 data, due to difference in the size of the sample and in the methodology between the consumer survey performed for the supporting study to the evaluation (based on 3,886 responses from the EU-28) and data from the Special Eurobarometer 373.

<sup>94</sup> Open Public Consultation.

<sup>95</sup> COM (2015) 0603 final; ECRI, 2018a.

<sup>96</sup> Pursuant to Article 9 of the Geo-blocking Regulation and in line with the Commission statement made at the time of the adoption of the Regulation, the first review of the Regulation due in March 2020 shall provide inter alia: (1) an assessment of the way the Regulation has been implemented and contributed to the effective functioning of the internal market, and (2) a substantive analysis of the feasibility and potential costs and benefits arising from any changes to the scope of the Regulation. This includes the possible elimination of any remaining unjustified restrictions based on nationality, place of residence or place of establishment in sectors not covered by the Regulation, such as services in the field of financial services.

specifically excluded from its material scope for the time being. The Geo-blocking Regulation is currently under review.

These restrictions may include the requirements imposed by providers on consumers wishing to obtain a credit from a creditor based in another Member State to provide an ID or social security number, address, telephone number or tax declaration from the country where the creditor is based as pre-requisite for the transaction to be accepted. This was corroborated by the mystery shopping exercise for this study during which it proved impossible to obtain cross-border credit<sup>97</sup>. Some creditors have a policy of refusing credits to individuals which they consider do not have sufficient economic and personal links with the Member State in which these creditors are established. This can even lead to the impossibility in practice for some people to get a credit in any Member State.<sup>98</sup> This reveals that we are still far from a well-functioning EU internal market for credit products.

These restrictions are the expression of the barriers faced on the offer side, whereby because of the fragmented regulatory framework (uneven implementation of the Directive and a lack of harmonisation of other rules relevant for creditors e.g. tax and civil law, legal framework for debt recovery, and anti-money laundering obligations)<sup>99,100</sup> and differences between markets and consumer preferences (e.g. consumers unaware of the possibility of seeking cross-border credits or unsure of their rights in another Member State, or language barriers<sup>101</sup>), most creditors prefer to operate on a national basis<sup>102</sup>. However, newly emerged fintech companies offering unsecured loans to consumers in various Member States – whose market share is currently insignificant compared to traditional credit providers - could have an impact on the future development of a cross-border market.

Regulatory fragmentation and the consequent lack of exploitation of synergies and economies of scale in the internal market raise costs for providers who want to sell on another market (which are then passed on to consumers), reduce the offer available and make it more difficult for consumers to know the regime which is applicable in another Member State.

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<sup>97</sup> Mystery shopping findings.

<sup>98</sup> A problematic issue that was brought to the Commission attention concerns the difficulties in accessing credit encountered by intra-EU mobile citizens. For instance, a Dutch citizen residing in Spain but receiving his income from a Dutch source may encounter problems in getting access to commercial loans in Spain, based on the argument that he has no income of Spanish origin, while in the Netherlands this access may be refused as well because of the fact that he is not resident in the Netherlands. This problem is not directly linked with the Directive, which does not regulate the conditions under which a credit may be granted (except the provisions on pre-contractual information and creditworthiness assessment), but reveals that we are still far from a well-functioning EU internal market for credit products.

<sup>99</sup> Creditor survey.

<sup>100</sup> See reply to this question for Objective 1, EQ2 and EQ5.

<sup>101</sup> Consumer survey.

<sup>102</sup> Open Public Consultation (general); creditor survey.

## EQ2 – To what extent has the Directive led to legal clarity? What is the level of compliance of businesses and their enforcement?

Issues of compliance have been identified in relation to all the key provisions of the Directive, to varying degrees. There are considerable differences in enforcement tools and remedies used by competent authorities, which impact the functioning of the Directive's provisions in practice.

Legal clarity, although not for all provisions, has improved as the Directive has provided a higher degree of regulatory harmonisation.

Consumer credit legislation in the EU remains very fragmented, limiting the impact of the Directive on **legal clarity**. This fragmentation is due both to how the Directive has been implemented by Member States<sup>103</sup> but also by aspects not covered by the Directive which have been regulated differently across the EU (see EQ1, EQ3 and EQ4 for more details).

Nevertheless, compared to the baseline, the Directive has managed to improve legal clarity in terms of most requirements on the right to withdrawal, right of early repayment, Standardised European Consumer Credit Information (SECCI), Annual Percentage Rate of Charge (APR) and advertisement. More problematic is the situation around creditworthiness assessment (CWA) (see EQ4).

As explained in EQ1, the Directive has partially achieved this objective, as it has increased the level of harmonisation in the aspects it covers. Despite these improvements, there are indications that legal clarity has not improved in all areas since the adoption of the Directive. Very few stakeholders believe that the Directive has brought more legal clarity<sup>104</sup>. Most credit providers stated that the lack of clarity in respect to their obligations is the second most important obstacle they face in complying with consumer credit legislation<sup>105</sup>.

The discretion left to Member States (due to the limited scope of application and the high number of regulatory choices), combined with the vague wording of some provisions, has limited the ability of the Directive to achieve legal clarity and has led to uneven implementation and enforcement of the Directive across Member States<sup>106,107</sup>.

However, this lack of legal clarity should not be attributed exclusively to the Directive, as providers of consumer credit operate in a complex regulatory framework combining EU and national rules.

This evaluation generally finds that **compliance** is high, with Member State authorities and enforcement bodies generally agreeing. However, the lack of legal clarity might have

<sup>103</sup> These differences are rooted in the broad discretion allowed by Article 5(1) and Article 8(1), in particular.

<sup>104</sup> Open Public Consultation (specific).

<sup>105</sup> Survey of creditors.

<sup>106</sup> Legal analysis; Interviews of consumer associations, interview representatives, Member States and enforcement authorities.

<sup>107</sup> Examples of different interpretation or implementation of the Directive where Member States have decided to impose stricter obligations are further elaborated in EQ3, EQ4 and EQ6.

led to divergent situations in Member States, and hence to fragmentation, despite the high compliance of providers with national requirements.

87% of the respondents to the European Economic and Social Committee (EESC) survey found that the Directive had been fully and effectively enforced. However, some stakeholders, in particular consumer associations, enforcement authorities and consumers themselves have identified issues in relation to all provisions of the Directive<sup>108</sup>. The use of information in advertising that is not 'clear, concise and prominent' or does not include a representative example of the APR are the most commonly identified breaches of the Directive's provisions. Poor CWAs and the provision of pre-contractual information without using the SECCI or without providing individualised information were also identified by stakeholders, albeit to a lesser extent<sup>109</sup>. Stakeholders also noted some issues of poor communication of the right of withdrawal and non-compliance with the 14-day period<sup>110</sup>, and the amount to be repaid in compensation to creditors (right of early repayment).

There is no comprehensive data on sector compliance itself. Based on the Consumer Market Scoreboards from 2010 and 2017, the share of consumers who experienced at least one problem went down from 14% to 8%, which is an indication that the Directive has been effective in increasing compliance with its provisions. However, a 2011 consumer credit sweep<sup>111</sup> on "buying consumer credit online", showed that across the then EU-27, Norway and Iceland, only around 45% of over 560 websites were deemed to be compliant<sup>112</sup>.

In terms of **enforcement and remedies**, there are vast differences in existing practices across the EU. Judicial remedies are available to consumers in different forms. At the same time, specific sanctions also differ, with Member States applying monetary and/or criminal sanctions, as well as other administrative sanctions, for breaches of the Directive.

For enforcement, a variety of different authorities are involved. In most Member States, the enforcement authority is either the financial supervisory authority, the consumer protection body or the national bank. A small majority of Member States have only one enforcement body responsible for compliance with the Directive, while almost half have

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<sup>108</sup> Stakeholder consultation, interviews with enforcement bodies and Member States.

<sup>109</sup> Survey with consumer association; Mystery shopping (The mystery shopping exercise is based on a restricted sample so the findings should be interpreted with caution).

<sup>110</sup> London Economics, 2014; London Economics, 2013; EBA, 2019; Consumer survey (20% of the respondents who contracted a loan within the past three years did not receive the SECCI before signing their contract, and less than 30% were not informed of the value of the APR).

<sup>111</sup> A "sweep" is a concerted investigations of consumer markets through simultaneous coordinated control actions to check compliance with, or to detect infringements of, Union laws that protect consumers' interests.

<sup>112</sup> European Commission, 2012. Problems were found for 61% of financial institutions covered and for 87% of intermediary websites, with non-compliance among credit intermediaries higher than for traditional banks. For other non-traditional credit no hard data is available. Issues related to advertising failing to include standardised information, key information (such as interest rates on repayments) omitted and misleading information in the presentation of costs.

[https://ec.europa.eu/commission/presscorner/detail/en/IP\\_12\\_1251](https://ec.europa.eu/commission/presscorner/detail/en/IP_12_1251)

appointed several bodies<sup>113</sup> for ensuring correct implementation of the different aspects of the Directive<sup>114</sup>. While the powers and responsibilities with which these bodies are entrusted are generally very similar across Member States, the enforcement activities differ. For instance, annual inspections are carried out in a couple of Member States<sup>115</sup>, with random inspections taking place in others<sup>116</sup>.

The EESC survey nonetheless highlights that 30% of respondents find that supervising authorities do not have sufficient resources, staff and powers to ensure effective enforcement of the Directive. The EESC report also points out that this situation varies greatly between Member States.

The consumer is able to pursue **remedies** against the creditor when there are problems with its credit agreement. The extent and type, however, are determined by Member States<sup>117</sup>. Since remedies are not harmonised in the Directive, this results in practice in different levels of consumer protection across the EU in case of non-compliance with the Directive. The likelihood of consumers needing or requesting to pursue remedies depend on the scale of the problems they encounter. This evaluation's survey showed that 26% of those experiencing any issues did not make any complaint, while 50% took it to the creditor, 23% to a third party<sup>118</sup>. These figures do not seem to have changed since 2011<sup>119</sup>.

Administrative complaints and alternative dispute resolution mechanisms are available in all Member States. Consumers can seek support from institutions such as the consumer Ombudsman and other enforcement bodies or consumer associations. These bodies receive official consumer complaints and can handle cases outside of courts.

Criminal **sanctions**<sup>120</sup> are found in Austria, Belgium, Denmark, Finland, France, Hungary, Ireland, Latvia, Luxembourg, the Netherlands, Poland, Slovenia and the United Kingdom. Monetary sanctions vary considerably<sup>121</sup> across Member States, with different

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<sup>113</sup> CZ, EE, EL, ES, FI, HR, IE, IT, PL, PT, SI, SE.

<sup>114</sup> For instance, the requirements on creditworthiness assessment stemming from the Consumer Credit Directive are generally enforced by the consumer authority (for all creditors in BE, EE, EL, FR, IS, LV and PL; for non-bank creditors in DK, SE, SI and regional ES authorities), the financial supervisory authority (for all creditors in EE; FR, NL, PL, UK and for banks in DK and SE) or the national central bank (for all creditors in CY, CZ, ES, HU, IE, IT, LT, PT, RO, SK and for banks in ES and SI).

<sup>115</sup> BE, RO.

<sup>116</sup> BG, FI, PL, PT, SK.

<sup>117</sup> This can include the annulment of contracts that are not compliant with the Directive (Belgium), the reimbursement of consumers for amounts that were wrongly collected (Italy), the loss of the right to the interests for the creditor (France) or the suspension of advertising campaigns (Romania).

<sup>118</sup> Consumer survey, 2019.

<sup>119</sup> According to Eurobarometer 373 (2011), over half of consumers reported their issue to the product provider, following by an intermediary or advisor (16%), consumer rights protection association (7%), ADR body or ombudsperson (4%), legal proceedings (3%), while 27% did not complain and 7% only complained to friends or family.<sup>119</sup>

<sup>120</sup> For example in Belgium the failure to provide consumers with the SECCI can be punished with a one-year sentence to prison. In Croatia, Latvia and Poland misleading information or advertising are seen as criminal offences and in Luxembourg the act of providing credit without the right authorisation to do so as well as doorstep selling in spite of consumer's refusal are punishable with prison time.

<sup>121</sup> The amounts of the fines range from the mildest, 26 € in Belgium, to the harshest in Greece, €1 million and Portugal, € 5 million.

levels of sanctions applied for serious or less serious infringements of the law. Six Member States apply the administrative sanction of suspending creditors for a limited period of time, or permanently for repeated offences<sup>122</sup>. One common administrative sanction is the suspension of the creditor's activity in case of repeated offenses. There is therefore a huge disparity in terms of the types and levels of sanctions used by national authorities when enforcing the Directive. The survey carried out by the EESC shows that 40% of respondents would be in favour of the Directive harmonising these penalties (versus 26% who would be against and 33% without opinion) so that they are "effective proportionate and dissuasive (...), [and] harmonised as far as possible, so as to avoid a dumping effect whereby operators base themselves wherever controls are more lenient and sanctions less severe".

The fragmentation of the consumer credit legislation in the EU, which limits the impact of the Directive on legal clarity, and the considerable differences in enforcement tools and remedies used by competent authorities, present a significant obstacle to the development of a well-functioning internal market for consumer credit<sup>123</sup>.

**EQ3 – Is the Directive – through advertising requirements, pre-contractual information (including Standardised European Consumer Credit Information and Annual Percentage Rate of Charge) and other additional information – ensuring that consumers are effectively provided with accurate, clear, concise, timely and comprehensive information free-of-charge?**

The practical implementation of both the provision on pre-contractual information (Article 5) and the provision on advertising (Article 4) varies across Member States but also among providers due to the wording of certain parts of these provisions.

In relation to Article 4, stakeholder views are split as to the effectiveness of the provision on advertising. Evidence shows that its impact varies depending on the prominence it is given and the media used. Moreover, the way in which providers comply with this provision can lead to poor information and imprudent borrowing choices for consumers.

The pre-contractual information provided to consumers under Article 5 is considered effective by a large majority of stakeholders. However, its degree of effectiveness on consumers is impacted by its length, complexity and timing of delivery, as well as the way in which it is provided, notably in the online environment.

Overall, the disclosure of information mandated by the Directive is not entirely adapted to all the channels used by providers to communicate with consumers. Levels of financial literacy impacts the extent to which consumers understand this information.

<sup>122</sup> The legal analysis for this study found that only Belgium, Finland, Greece, Hungary, Italy and Spain suspend creditors in cases of repeated offences.

<sup>123</sup> See EQ1 for more details.



## Advertisement

Member States and creditors' associations consulted agree that all required information is provided at the advertising stage in accordance with Article 4 of the Directive. However consumer associations consulted in the course of this study raised issues with the provision and presentation of this information<sup>124</sup>. A handful of stakeholders, mostly representing consumers as well as enforcement bodies, have indeed reported cases of non-compliance in relation to incomplete or missing information in advertising, in particular when it comes to the conditions attached to the credit agreement which are either omitted or presented in a misleading way by advertising low or favourable interest rates without indicating the conditions attached<sup>125</sup>.

Overall, views collected are split as to whether the current requirements are effective to inform consumers: 53% of stakeholders responding to the Open Public Consultation (mainly consumer organisations and authorities) considered the provisions of Article 4 somewhat effective or very effective whilst 42% (mainly business representatives) considered it somewhat or very ineffective. The survey carried out by the European Economic and Social Committee shows similar results<sup>126</sup>. However, the effectiveness of the provision on advertising has been somehow confirmed in the online environment. The results of a recent behavioural study suggest that the provision of the Annual Percentage Rate of Charge (APR) and the representative example in advertisings displayed online is effective in pushing consumers to compare other offers<sup>127</sup>.

The clarity and prominence of information included in advertising is debatable in some cases, as also hinted by stakeholders. The display of the information in advertising (the framing, the colours, the fonts etc.) is recognised as having a strong impact on consumer decision-making<sup>128</sup>. The wording of Article 4 is vague and does not ensure that the information is provided consistently and presents all the necessary information in a clear and understandable way<sup>129</sup>. Member States have often gone beyond the requirements of Article 4, either by mandating additional information that should be provided to the consumers in advertising or by specifying presentational requirements.

Issues have also been identified in relation to advertisements about consumer credit aired on television and radios, with important information either shown for a very limited amount of time or spoken very quickly, not giving consumers enough time to process and recall it<sup>130</sup>. This would suggest the difficulty of Article 4 in being effective consistently across all media types, with a consequent risk of information overload for consumers (see EQ 9).

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<sup>124</sup> Surveys and interviews of key stakeholders. For example, the font size in certain instances was considered to small to be considered 'clear', while in others important information was included only in footnotes. Another issue that was mentioned is the presentation of unrealistic interest rates, or the presentation of interest rates as if they were the Annual Percentage Rate of Charge.

<sup>125</sup> European Commission, 2019; Surveys and interviews of consumer associations and enforcement bodies.

<sup>126</sup> 40% of respondents considered that the standard information requirements should be presented differently to be more effective while 53% of the respondents consider that they were sufficiently clear.

<sup>127</sup> European Commission, 2019b.

<sup>128</sup> UK FCA, 2017.

<sup>129</sup> European Commission, 2019; Surveys and interviews of consumer association and Member States.

<sup>130</sup> Surveys and interviews of Member States, creditors and creditor associations.

In addition, some compliant advertising practices have been mentioned by consumer associations as being still potentially unclear, incomplete or somewhat misleading for consumers, together with aggressive marketing strategies that could lead consumers to engage in imprudent borrowing<sup>131</sup>. Time-limited offers may increase pressure on consumers to make a rapid decision based on relatively complex information, possibly leading to the choice of a non-optimal credit<sup>132</sup>. This is all the more probable when considering that often this type of credit targets more vulnerable consumers, in some instances including targeted spamming via SMS and email<sup>133</sup>. Several of the online mystery shops (17%) revealed advertising that offered products for a limited amount of time, with the majority found either on comparison websites or on websites accessed via a comparison website.<sup>134</sup>

Some Member States have decided to legislate on the topic and prohibit their use<sup>135</sup>. However, information may still attract consumers and entice them into making a purchase without properly considering their options even without a time-limit. This is the case of ‘baiting rates’ which may attract consumers with an example that is very low and not representative for most consumers. Doing so may mean that the actual repayment rates will be much higher<sup>136</sup>, shedding doubt on whether the information provided can be considered ‘accurate’. This practice was observed in 40% of online mystery shops.

### **Pre-contractual information**

Stakeholders acknowledge that the Standardised European Consumer Credit Information (SECCI) has had a positive impact on consumer protection by providing them with information in an easily understandable and well-structured format<sup>137</sup>. Nearly two thirds of respondents to the Open Public Consultation and 85% of the consumers surveyed considered the SECCI to be effective.

68% of consumers surveyed for this evaluation indicated to have received the SECCI, a finding backed up by the mystery shopping where the SECCI was provided in 74% of the cases<sup>138</sup>. The fact that not all consumers indicate that they have received the SECCI could be explained by two factors: a lack of creditors’ compliance or a lack of consumers’ awareness about documents received<sup>139</sup>.

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<sup>131</sup> Surveys and interviews of consumer associations. These strategies include methods such as time-limited offers, dynamic pricing, baiting and teaser rates and lend themselves well to online sales, which increases their relevance in an increasing digital market.

<sup>132</sup> UK FCA, From advert to action: behavioural insights into the advertising of financial products, 2017.

<sup>133</sup> Asociacion General de Consumidores (ASGECO) [ES], 2015b.

<sup>134</sup> The mystery shopping exercise is based on a restricted sample so the findings should be interpreted with caution.

<sup>135</sup> As is the case in Belgium and the Netherlands.

<sup>136</sup> A study conducted by Which? In the UK, revealed that rates for repayment were up to 150% higher than that initially budgeted. Which? [UK], 2019a.

<sup>137</sup> Open Public Consultation (general): 10% indicated not having received the form with another 26% not being sure; Survey of consumers; Interviews and surveys of stakeholders.

<sup>138</sup> The small sample size of the mystery shopping (51), and taking into account non-completed and rejected loan requests (7) this should be used as anecdotal evidence only.

<sup>139</sup> The consumer survey for this evaluation showed that 29% of consumers consulted were unaware of the existence of the SECCI before signing the credit offer. A similar figure emerges from the individuals who responded to a similar question in the Open Public Consultation. This lack of awareness of a key right

The provision of the SECCI is considered by all stakeholders to have increased consumer awareness of their contracts. However, its length and complexity may create, in some instances, barriers to the proper understanding of the information included therein<sup>140</sup>. Indeed, Open Public Consultation individual respondents are split on whether they understand the information contained in the SECCI: 49% somewhat or totally agreed with information contained in the SECCI being easy to understand while 27% disagreed, and 47% considered it well-presented (while 29% disagreed). Overall, around 70% of the respondents to the consumer survey found the SECCI helpful or somewhat helpful.

The use of excessively technical language may create confusion and an inability to properly grasp the details of the contract that one is about to sign. In a recent study, consumers rated the understandability of the information at 2.91 out of 10 and 73% reported signing contracts they did not fully understand<sup>141</sup>. Different levels of financial literacy<sup>142</sup> among consumers and their ability to understand the information contained in the SECCI can also reduce its effectiveness. Complex documents do not cater to consumers with low levels of financial literacy<sup>143</sup> which, as shown by behavioural studies, have difficulties in understanding key credit information such as interest rates or the APR, for example<sup>144</sup>. Nonetheless, maybe also as a consequence of the Directive, the ability of consumers to search and compare products and services in the credit market has gone up, since 2010, from 6.6 to nearly 7.2 on a 10-point scale<sup>145</sup>.

The length and amount of pre-contractual information has also been flagged as potentially problematic. In the Open Public Consultation, opinions from individual respondent were split on whether information was concise (35% thought it was, 36% thought it was not), implying that it may not be fully effective<sup>146</sup>. Beyond the length and complexity of pre-contractual information, the way it is disclosed to consumers also plays a key role in its effectiveness. Indeed, while the majority of creditors<sup>147</sup> provides this information in full<sup>148</sup>, the format in which they do so is not necessarily facilitating consumers understanding. This is particularly true in the online environment, where providers can use certain techniques in the disclosure of information that can impact

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granted by the Directive reduces the effectiveness of this provision since this implies that the concerned consumers do not know that they are entitled to receiving it.

<sup>140</sup> Surveys and interviews of enforcement authorities, Member States, consumer associations and industry representatives.

<sup>141</sup> ADICAE [ES], 2013.

<sup>142</sup> The ability to understand basic principles of business and finance.

<sup>143</sup> Interviews and surveys of consumer associations and creditors associations.

<sup>144</sup> London Economics, 2013.

<sup>145</sup> 2010 and 2018 Consumer Market Scoreboards, European Commission.

<sup>146</sup> This issue has been raised by several stakeholders responding to the Open Public Consultation, included the EESC in its information report.

<sup>147</sup> Instances of non-compliance have indeed been identified and include the failure to provide information via the SECCI, the failure to provide information on the calculation of the APR, the use of abusive contractual terms and the failure to inform consumers of their right to withdraw from the contract.

<sup>148</sup> London Economics, 2014; Interviews and surveys of enforcement authorities, Member States, consumer associations and industry representatives.

negatively consumers' understanding of credit offers, as demonstrated by behavioural research<sup>149</sup>.

Some stakeholder representing both consumers and creditors found that the format and length of the SECCI is not particularly adapted for mobile technology. In the online environment, it can be provided under a hyperlink, limiting the likelihood for consumers to actually open it and read it<sup>150</sup>. How information is conveyed is important in pre-contractual information, particularly online.

Understanding complex information is not helped by the fact that information is not always provided sufficiently in advance to allow for a proper review. In fact, research has shown that most credit agreements could be concluded just a few days after being requested. Some credits can even be released in a few minutes<sup>151</sup>. This is also used as a marketing tool for enticing consumers to a swift and efficient conclusion of a contract<sup>152</sup>. Indeed, speed of delivery is both a selling point for creditors and an element that consumers consider when choosing between credit options<sup>153</sup>. The wording of Article 5 of the Directive allows for a broad interpretation of the amount of time to be granted to consumers before they sign an agreement. The Open Public Consultation showed that 44% of individual respondents did not consider the time available to read and fully understand pre-contractual information as sufficient<sup>154</sup>. The consumer survey shows that 40% of respondents received it on the day they signed the contract. Some Member States have tried to remedy this by either providing guidance<sup>155</sup> or including more details in the transposing legislation<sup>156</sup> so as to ensure that consumers have sufficient time to review the SECCI.

**EQ4 – How have the provisions relating to creditworthiness assessments worked in practice? To what extent have the provision of the Annual Percentage Rate of Charge and the performance of a creditworthiness assessments contributed to helping consumers find the credit best suited to their needs and avoid over-indebtedness?**

The Annual Percentage Rate of Charge is generally perceived as a useful tool to help consumers find the credit best suited to their needs. However, its potential is hampered by a lack of awareness and understanding among consumers.

The obligation on providers to assess the creditworthiness of consumers is applied in various ways across Member States and types of providers. This renders the assessment

<sup>149</sup> This includes non-transparent pricing structures, with some information placed where it can be overlooked or presented prominently to the detriment of other important elements. See London Economics Europe, VVA Europe, Ipsos NV, ConPolicy, Timelex, 2019; EBA, 2019; ECRI, 2015.

<sup>150</sup> European Commission, 2019; Interviews and surveys of creditors associations.

<sup>151</sup> Mystery shopping.

<sup>152</sup> FSUG, 2019

<sup>153</sup> NIBUD, 2018.

<sup>154</sup> Open Public Consultation, 2019

<sup>155</sup> UK.

<sup>156</sup> PL and RO.

of its effectiveness difficult.

In the face of digitalisation, new technologies<sup>157</sup> and novel types of data are used by providers to assess the creditworthiness of consumers - which raise questions in terms of transparency, relevance, proportionality and fairness, particularly as the relevant provision in the Directive does not specify which data should be used in this process.

Stakeholder views are split as to whether the two provisions are effective enough to help consumers find the credit best suited to their needs and prevent over-indebtedness. The fact that several Member States have introduced specific measures to curb problematic lending practices would suggest that the two provisions are not sufficient on their own to ensure responsible lending.

### **Provision of Annual Percentage Rate of Charge**

The provision on the Annual Percentage Rate of Charge (APR) was introduced to provide a numerical and comparable representation of the cost of credit to consumers<sup>158</sup>, though it should be noted it preceded the current Directive and existed already in the previous Directive. Calculation of the APR is entirely harmonised, with the formula implemented uniformly.

The APR is used by consumers to select their credit offer: 90% of the individuals who replied to the Open Public Consultation considered the APR as somewhat important or very important in their decision. 75% of stakeholders responding to the Open Public Consultation consider the APR effective, while 60% of respondents to the European Economic and Social Committee survey consider that it enables consumers to compare credit offers across the market. However, stakeholders (across all groups) acknowledge that the APR, both as a formula and as a tool, is difficult to understand<sup>159</sup>, especially in light of low levels of financial literacy<sup>160</sup>. According to the consumer survey, 40% of consumers either did not know about the APR or did not understand its contents.

This lack of awareness and understanding by consumers shows an important limitation of a tool considered helpful. Indeed, when correctly conveyed and understood, the APR works well as a comparison tool and helps consumers to choose the credit most appropriate to their needs. This has been established through observations of consumer behaviour and confirmed by stakeholders.<sup>161</sup> However, obstacles persist that limit its effectiveness as a comparison tool for consumers. In addition to those mentioned above, it is worth mentioning how the APR is presented in advertising, such as how it is displayed (font size, prominence) by providers.

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<sup>157</sup> For instance, artificial intelligence to carry out automatic credit scoring.

<sup>158</sup> Recital 19 of the Directive.

<sup>159</sup> Interviews and surveys of creditors, consumer associations and enforcement bodies.

<sup>160</sup> London Economics, 2013.

<sup>161</sup> Interviews and surveys with consumer associations. CEPS-ECRI, 2015; London Economics, VVA and Ipsos, 2016; European Commission, 2019.

Difficult understanding of the APR may be exploited to foster cross-selling practices.<sup>162</sup> This is particularly detrimental for consumers in case of tying practices, i.e. the offering of a credit agreement in a package with other distinct financial products where the credit is not made available to the consumer separately<sup>163</sup>. But also if optional products are advertised as though they were a compulsory and integral part of the credit. This evaluation estimates that cross-selling practices can affect up to 25 million consumers, and is the single most common practice that affects consumers.<sup>164</sup> While this is based on consumer self-reporting and some consumers might not remember having received the APR (which is possible in view a general level of awareness of only 60% according this evaluation's survey), it does show that there might be a relatively small degree of non-compliance. Non-compliance among credit providers, a lack of understanding among consumers, and low levels of financial literacy all reduce the effectiveness of the APR.

### **Creditworthiness assessment**

The obligations to ensure that, before the conclusion of the credit agreement, the creditor assesses the consumer's creditworthiness on the basis of "sufficient information"<sup>165</sup> has been implemented differently across the EU. Although Article 8 has been fully transposed, its practical implementation varies significantly between Member States, leading to a diverse regulatory landscape, as shown by a mapping of national approaches in relation to creditworthiness assessment (CWA) carried out by the Commission.<sup>166</sup> The majority of Member States defined more detailed information to be taken into account in the CWA.<sup>167</sup> In a number of them the consultation of databases is compulsory for creditors.<sup>168</sup>

This implies, that, depending on the Member States, the amount and categories of data collected by creditors, as well as the techniques to do so, differ greatly.

Member State authorities consulted were even split as to whether the regulatory fragmentation causes problems, while almost two thirds of credit providers agree that this does not create problems (possibly a reflection of the current state of the credit market in the EU, which remains predominantly national for creditors).

However, two thirds of enforcement bodies considered existing requirements – in particular the provision of "sufficient information" – to be unclear and problematic and two thirds of consumer associations held the view that consumers are dissatisfied with current CWA practices. On the other hand, credit providers, when expressing their

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<sup>162</sup> Offering of an investment service together with another service or product as part of a package or as a condition for the same agreement or package.

<sup>163</sup> The Mortgage Credit Directive (2014/17/EU) prohibits, as a rule, tying practices with few exceptions (Article 12).

<sup>164</sup> See Annex 3.

<sup>165</sup> Article 8(1) of the Directive.

<sup>166</sup> Mapping of national approaches in relation to creditworthiness assessment under Directive 2008/48/EC on credit agreements for consumers, European Commission, 2018.

[https://ec.europa.eu/info/sites/info/files/mapping\\_national\\_approaches\\_creditworthiness\\_assessment.pdf](https://ec.europa.eu/info/sites/info/files/mapping_national_approaches_creditworthiness_assessment.pdf)

<sup>167</sup> BE, CY, EE, EL, ES, FI, FR, HR, HU, IE, IT, LT, LU, LV, NL, PL, PT, RO, SI, SK, SE, UK.

<sup>168</sup> BE, BG, CY, EL, FI, FR, HU, IE, IS, LT, MT, NL, PT, RO, SI, SK.

opinion on this point, all agreed on the usefulness of the provision, though a few suggested discretion in how they should be performing this obligation.

In carrying out CWAs, creditors may choose to rely on information that is specific to the individual consumer (current income, outstanding financial commitments, savings, etc.)<sup>169</sup> or to consumer type. In Denmark, for example, CWAs are primarily based on statistics rather than an individual consumer's ability to repay or their economic situation.<sup>170</sup>

Stakeholder views are mixed on the effectiveness of the CWA obligation in helping consumers finding the credit best suited to their needs and preventing over-indebtedness, as demonstrated by the survey carried out by the Economic and Social Committee and the stakeholders' replies received as part of the Open Public Consultation. Consumer associations are evenly split as to whether creditors in their Member State consistently carry out CWAs and whether they currently are sufficient and appropriate. Results from the consumer survey and individual responses to the Open Public Consultation suggest nonetheless that creditors check in 80% of the cases whether the consumer is able to repay the credit.

An overall trend that has changed the way CWAs are carried out is digitalisation. Compared to the baseline, digitalisation has de facto increased the number and categories of data about consumers generated online. This evolution is impacting CWA methodologies which are evolving rapidly, with innovations focusing on the use of unstructured data in CWA based on data-scrubbing, social media and machine learning<sup>171</sup>. An increasing number of creditors (primarily fintech companies<sup>172</sup>, including peer-to-peer lending) are using such types of assessment.

Such novel techniques are presented by the industry as a way to help consumers with a thin credit profile to obtain a loan which they would, under more traditional CWA practices, not be able to receive. However, they raise questions in terms of their actual added value compared to more traditional techniques. These practices, which are often directed at vulnerable consumers, can indeed circumvent the need for a solid credit history and sound financial situation<sup>173</sup> but it is unclear their accuracy and robustness on the assessment of the ability of the consumers to reimburse the credit. They also raise questions in terms of respect of data protection legislation, in particular the principles of transparency, fairness, data minimisation and purpose limitation.<sup>174</sup> There are also concerns about the algorithms used to calculate consumers' credit scoring for the purposes of a creditworthiness assessment, especially with regard to their logic, data

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<sup>169</sup> Mapping of national approaches in relation to creditworthiness assessment under Directive 2008/48/EC on credit agreements for consumers, European Commission, 2018.

[https://ec.europa.eu/info/sites/info/files/mapping\\_national\\_approaches\\_creditworthiness\\_assessment.pdf](https://ec.europa.eu/info/sites/info/files/mapping_national_approaches_creditworthiness_assessment.pdf)

<sup>170</sup> Interviews of enforcement authority.

<sup>171</sup> European Commission, 2016c, p. 128.

<sup>172</sup> Technologically enabled financial innovation that could result in new business models, applications, processes, or products with an associated material effect on financial markets and institutions and the provision of financial services.

<sup>173</sup> European Commission, 2016c, p. 130.

<sup>174</sup> ECRI, 2018; ECRI, 2019; Interviews of consumer associations.

sources used, significance and envisaged consequences for the consumer, which entail a number of potential risks, such as opaque decision-making, race/gender-based or other kinds of discrimination.<sup>175</sup>

Similarly, the Directive does not provide guidance on the approach to be taken based on the outcome of the assessment, i.e. whether the credit should be granted or rejected, depending on whether the CWA outcome was positive or negative. Providers might grant credit to consumers with negative creditworthiness assessment because of a long-lasting relationship with them and awareness of temporary economic difficulties. However, some providers' business model is actually based on high interest rates for all consumers to cover the risk of default of some of them (see EQ 7).

While rejecting a credit application in case of negative creditworthiness assessment outcome is not required by the Directive, it has been interpreted by the Court of Justice of the European Union (CJEU)<sup>176</sup> that it does not preclude Member States from adopting such an approach.

CWAs to an extent aim to foster responsible lending<sup>177</sup> (see EQ 15 for more details) and thus to help reduce over-indebtedness. The CJEU<sup>178</sup> has confirmed that creditworthiness assessments *as per* Article 8 of the Directive are “intended to protect consumers against the risks of over-indebtedness and bankruptcy”. Consumer credit, especially when it is provided at high interest rates, can be an important source of financial difficulties of households<sup>179</sup>. Less financially stable households are among those which will have greater difficulty in passing a CWA, making them more likely to turn to short-term and high-cost-type credit. Lower levels of compliance with the CWA obligation have been identified among this type of credit<sup>180</sup>. In certain cases, poor performance in repayment is considered to be part of the creditor's business model, compensated by very high interest rates.

Stakeholders differ in their opinions on how CWA should be performed and there is no consensus as to whether the methodology should be harmonised at EU level<sup>181</sup>. These different approaches may present an obstacle to the facilitation of an internal market, as they do not help to create a level playing field for creditors.

Overall, the open-ended character of the provision of the Directive on how to perform credit-worthiness assessment did not impact the regulatory and practical divergence of national approaches preceding the Directive. Lack of harmonisation in how CWA should be performed was also raised by several stakeholders as a reason hampering cross-border credit. In May 2020, the European Banking Authority published Guidelines on loan origination and monitoring providing requirements for CWAs in relation to secured and

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<sup>175</sup> European Parliament, 2019. EESC, 2019

<sup>176</sup> Judgment of the Court of 6 June 2019, *Schyns*, C-58/18, EU:C:2019:467.

<sup>177</sup> Recital 26 of the Directive.

<sup>178</sup> Judgment of the Court, 27 March 2014, *LCL Le Crédit Lyonnais SA*, C-565/12, EU:C:2014:190.

<sup>179</sup> CIVIC, 2013.

<sup>180</sup> Interviews of enforcement bodies.

<sup>181</sup> The Open Public Consultation in particular revealed that harmonisation was viewed positively mostly by (but not limited to) consumer associations.



unsecured lending<sup>182</sup>, which should lead to more convergence in how CWA is carried out across the EU. The guidelines will apply as of 30 June 2021.

### **The role of creditworthiness assessment (CWA) and Annual Percentage Rate of Charge (APR) in protecting consumers from inappropriate lending and practices**

Several Member States have put in place specific “product governance” measures – not foreseen in the Directive - either aimed at banning certain credit products, capping interest rates or at regulating specific credit product characteristics as these were considered as potentially too costly/harmful for consumers. This would imply that, on their own, CWA and the provision of the APR are not perceived as being effective enough to protect consumers from bad loan decisions and that more stringent measures were deemed necessary by Member States to protect consumers from certain credit products.

This is confirmed by the results of the Open Public Consultation and stakeholder survey: two thirds of Member State authorities did not consider the provision of the APR and the CWA obligation as sufficiently effective to protect consumers and argued for various additional measures, including stricter requirements and alignment with the Mortgage Credit Directive on responsible lending standards (see section on coherence). Similarly, the survey of the Economic and Social Committee shows that 47% of stakeholders that answered find that the CWA obligation is not sufficient to help prevent situations of over-indebtedness.

### **EQ5 – To what extent do the conditions of access to credit databases on cross-border basis vary across the EU?**

Credit databases have been established in all Member States, with the exception of Luxembourg. However, the nature of the credit database (private or public), as well as the type and quality of the data they contain, varies between countries. The conditions of access to credit databases on a cross-border basis also differ significantly. These differences hinder the cross-border exchange of information between creditors.

As such, the provision in the Directive on access to credit databases has had limited impact on fostering the emergence of cross-border access to credit offers.

Articles 8 of the Directive states that the creditworthiness assessment can be made on the basis of consultation of the relevant database and that Member States who require creditors to check such databases can retain this requirement. Article 9(1) further establishes that access to such databases shall be granted to credit providers from other Member States on a non-discriminatory basis. 16 Member States impose the obligation to consult a database in order to assess creditworthiness<sup>183</sup>.

The consultation of credit databases at national level appears to be functioning generally well, although a number of issues have been reported by a few credit providers consulted

<sup>182</sup> <https://eba.europa.eu/regulation-and-policy/credit-risk/guidelines-on-loan-origination-and-monitoring>

<sup>183</sup> Supporting study legal analysis.

for this evaluation. In some cases, explicit restrictions are allegedly imposed on certain credit providers<sup>184</sup>. Issues reported also relate to the quality and depth of the information contained, or to the retention period of such information. Although only a few Member States reported different requirements for foreign providers, industry representatives specifically referenced the different requirements to access credit databases in other Member States or the differences in the content of such databases as one of the main obstacles to accessing the information needed to conduct creditworthiness assessments for foreign consumers<sup>185</sup>.

Since the Directive did not establish the nature, coverage, type<sup>186</sup> and breadth of the data contained in the databases, these differ extensively between Member States, obstructing the effective exchange of data across Member States. This lack of uniformity in the data can also give an incomplete picture of the consumer that can prevent credit providers from carrying out a sound creditworthiness assessment<sup>187</sup>.

Indeed these databases can include only negative data (such as in France, where the public register only includes data about arrears on repayment or application to the over-indebtedness commissions) or, most frequently, both negative and positive (such as ongoing financial commitments) data<sup>188</sup>.

There is also a growing push from certain credit providers and credit registers to include “non-traditional data” (such as data from GPS, social media, web-browsing) in these database. However the added value of such data, its proportionality and compliance with data protection rules is challenged, for instance by consumer organisations<sup>189</sup> (see EQ4). Data protection authorities are looking into the functioning and content of credit databases, as demonstrated by the recent Code of Conduct approved by the Italian Data Protection authority, and which notably frames the use of peer-to-peer lending data<sup>190</sup>.

Along with these explicit limitations, the principle of reciprocity plays a significant role in the limitation of access to credit databases in a cross-border context. It requires credit providers to supply the same type of data that they wish to access through the credit database, but the lack of standardisation in the data to be collected and reported limits the exchange of information between Member States. Moreover certain national legislations impose limits on the categories of data that can be processed (and shared) by databases for creditworthiness assessment purposes.

Private credit databases have nonetheless tried to develop bilateral reciprocity agreements to facilitate cross-border data access to credit databases<sup>191</sup>. Most Member States authorities consulted indicated that conditions of access do not differ based on the

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<sup>184</sup> For instance, in Romania some creditors claim not to have access to relevant credit databases.

<sup>185</sup> European Commission, 2015; Interviews of industry representatives and Member States.

<sup>186</sup> For instance, the definition of default varies across credit registers.

<sup>187</sup> ACCIS, 2017; ACCIS, 2018d; Experian, 2017; Interviews of industry representatives.

<sup>188</sup> ACCIS, 2017; BEUC, 2017; ACCIS, 2018a; Interviews of industry representatives and Member States.

<sup>189</sup> ECRI/University of Edinburgh, 2019.

<sup>190</sup> EDPB, 2019. See: [https://edpb.europa.eu/news/national-news/2019/new-rules-credit-reporting-systems-digital-economy\\_en](https://edpb.europa.eu/news/national-news/2019/new-rules-credit-reporting-systems-digital-economy_en)

<sup>191</sup> In the private sphere, ACCIS has promoted a cross-border data exchange model allowing its members to sign bilateral agreements with credit bureaus in other Member States.

location of the creditor while many did not know and only a few thought they did differ. Between half and two thirds considered the conditions of access to work well in practice, while around 10% disagreed, arguing for harmonisation of its contents<sup>192</sup>.

In the EU, the most common institutional design relies exclusively on private credit databases<sup>193</sup>, followed by a dual system combining both public and private databases<sup>194</sup>. Five Member States have an exclusively public credit register<sup>195</sup>, while Luxembourg has not set up any credit database.

There are no exact figures available on cross-border access to database.

#### **EQ6 – How have the provisions relating to the rights of withdrawal and early repayment worked in practice? How frequently are consumers making use of them?**

Both the right of withdrawal and the right of early repayment are working well, with creditors generally compliant. Overall, more than 70% of consumers are well-informed about both rights. Only around 1% of consumers make use of the right of withdrawal, while the right of early repayment is more commonly used, with around 25% of consumers repaying their loan early, partially or in full. Issues with the right of withdrawal primarily relate to linked credit agreements. For the right of early repayment, key problems relate to the calculation of compensation for creditors.

Stakeholders generally considered the right of withdrawal to work well. Over 80% of organisations responding to the Open Public Consultation rated both rights as effective.

Article 14 of the Directive defines the right of withdrawal and sets a 14-day period for withdrawal from the contract. Such right of withdrawal applies also to ancillary services.<sup>196</sup> and to linked credit agreements<sup>197</sup> covering contracts for the supply of goods or services for which the consumer exercises a right of withdrawal. Article 16 of the Directive establishes the right of early repayment, which allows the consumer to repay their credit, partially or in full, before the end date of the agreement.

#### **Right of withdrawal**

Most stakeholder groups believe that the right of withdrawal is functioning well. Industry representatives were unanimous in stating that the right of withdrawal is respected, while the majority of enforcement bodies, Member State ministries and regulators, and

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<sup>192</sup> Stakeholder interviews.

<sup>193</sup> CY, DK, EE, EL, FI, HR, HU, NL, PO, SE, UK.

<sup>194</sup> CZ, DE, ES, IE, IT, LT, LV, PT, SK.

<sup>195</sup> BE, BG, FR, MT, SI.

<sup>196</sup> Means a service (e.g. insurance) offered to the consumer in conjunction with the credit agreement.

<sup>197</sup> A credit agreement where: 1) the credit in question serves exclusively to finance an agreement for the supply of specific goods or the provision of a specific service and 2) those two agreements form, from an objective point of view, a commercial unit; a commercial unit shall be deemed to exist where the supplier or service provider himself finances the credit for the consumer or, if it is financed by a third party, where the creditor uses the services of the supplier or service provider in connection with the conclusion or preparation of the credit agreement, or where the specific goods or the provision of a specific service are explicitly specified in the credit agreement (see. Article 3(n) of the Directive). The purchasing of white goods is often financed through linked credit agreements.

consumer associations believe it to be working well. 80% of respondents to the Open Public Consultation found the right of withdrawal effective, making it the second most effective provision of the Directive, according to respondents. There are no indications of significant problems in the functioning of the right of withdrawal.

The number of consumers withdrawing from credit agreements is very low across Member States, around 1% on average. Consumers are highly aware of the right of withdrawal<sup>198</sup>. The majority were aware (72%) and informed of their right by the credit provider (75%), before signing a credit agreement. There seem to be potential compliance issues in some cases, however, as 15% of the consumers surveyed were not informed of their right prior to signing the contract. Other stakeholders also noted small compliance issues, where credit providers refused to apply the right of withdrawal on consumer request. The extent to which this is the case cannot be ascertained from the data available.

Recurring issues with the right of withdrawal mainly relate to a lack of clarity on its application to linked credit agreements. Specific issues raised were cases where the financed object was not mentioned in a linked credit agreement, or where the consumer terminated a credit agreement in accordance with Article 15(1) for a contract for the supply of goods or services, but the seller refused to take back the goods, or where the service provider went bankrupt and the consumer had nowhere to apply for a service or goods return. Another issue with linked credit agreements is the joint liability of the creditor under Article 15(3), as it is not clear whether the creditor is responsible for goods that have not been supplied when the seller disappears or goes bankrupt.

Other problems included lack of awareness of the right of withdrawal in some Member States and difficulties with creditors respecting consumers' right of withdrawal (with some refusals noted<sup>199</sup>). A significant minority<sup>200</sup> of consumers had experienced creditors making it difficult for them to exercise their right of withdrawal. Consumer associations generally held that the right to withdrawal is well-respected, but a few issues were raised about awareness of the 14-day withdrawal period and delivery of the notice in time.

German Courts held consumers had a perpetual right of withdrawal where the consumer does not receive all of the correct pre-contractual information or is given incorrect information, meaning that –under specific conditions- they could withdraw from the credit agreement for an unlimited period of time. Slovakia also has a perpetual right of withdrawal but reported no associated problems.

### **Right of early repayment**

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<sup>198</sup> Consumer Survey.

<sup>199</sup> Consumer survey.

<sup>200</sup> 31% of consumers. For this question, the options were 'Strongly agree', 'Agree', 'Disagree' and 'Strongly disagree'. There was no option for 'non applicable'. As a result, all survey respondents answered this question (n=3,886). While only some consumers will have tried to withdraw from their credit agreement, it seems logical that only those really encountering problems would say so, which supports the validity of 31% having experienced difficulties. The consumer survey did not contain a question on whether consumers had attempted to withdraw from the contract. No other data were available to support this high number of persons experiencing difficulties.

All industry representatives stated that the right of early repayment is respected, while the majority of other stakeholders agreed that it functions well. According to the Open Public Consultation, 80% of respondents believe the right of early repayment to be effective. In fact, they consider it the most effective provision of the Directive. Despite this, a fairly large number of consumers reported experiencing issues with the right of early repayment.

A significant majority of consumers are aware of the right of early repayment, with 75% informed by the creditor about their right before contracting the credit. The number of consumers making use of early repayment is quite high, with around one-quarter of consumers making early payments to pay off their credit. This increased slightly between 2013 (22%) and 2019 (27%)<sup>201</sup>. There is no data available on the average cost of early repayments made by consumers. Consumers nevertheless face some problems which primarily relate to the calculation of the compensation to be paid to the creditors, as the compensation was reported to be calculated incorrectly (whether deliberately or not) at times. Several stakeholders also referred to cases of disproportionate compensation fees. It is not possible to ascertain either the extent of the issue or the deliberate nature of any incorrect calculations. Calculation of the fee to be paid in cases of early repayment was more difficult for short-term loans that had to be paid back within one month, for example. Creditors' concerns centred on their ability to recover the costs of such loans, as Article 16(2) of the Directive stipulates that 'if the period does not exceed one year, the compensation may not exceed 0.5% of the amount of credit repaid early'.

Not all Member States impose a compensation fee for early repayment. Article 16(4)(a) offers Member States the regulatory choice to only apply the obligation to pay a compensation fee to the creditor where the amount repaid exceeds a national threshold<sup>202</sup>, which must not exceed EUR 10,000. Eighteen Member States have opted to use this regulatory choice, thus consumers are not required to pay compensation to the creditor, unless the amount they repay is higher than the national threshold.

Other issues reported with the right of early repayment include consumers being charged the entirety of the interest they would have had to pay for the loan and consumers not receiving all of the necessary information about their right of early repayment. In a recent judgment on these issues, the Court clarified that Article 16(1) of Directive 2008/48 gave concrete expression to the right of the consumer to a reduction in the cost of the credit in the event of early repayment by replacing the general concept of 'an equitable reduction' with the more specific concept of 'a reduction in the total cost of the credit' and by adding that therefore, the reduction must also cover 'the interest and the costs'<sup>203</sup>.

In some cases, consumers were denied the right of early repayment altogether, or creditors included clauses in the general conditions that obliged the consumer to

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<sup>201</sup> London Economics, 2013.

<sup>202</sup> Moreover, the compensation to be paid is limited to 1% of the amount repaid 'if the period of time between the early repayment and the agreed termination of the credit agreement exceeds one year. If the period does not exceed one year, the compensation may not exceed 0.5% of the amount of credit repaid early'.

<sup>203</sup> Judgment of 11 September 2019, *Lexitor*, C-383/18, EU:C:2019:702.

renounce their right. The consumer survey found that more than one-third of respondents had experience of the creditor making it difficult for them to use their right of early repayment, pointing to a relatively high number of compliance issues. Similarly, a 2013 London Economics survey found that while close to one-quarter of consumers attempted to repay early, only 86% were successful in doing so.

**EQ7 – Have the scope of application and the definitions used in the Directive succeeded in ensuring a high level of consumer protection and performance of the internal market for consumer credit?**

The scope of application of the Directive has impacted the ability of the Directive to meet its objectives in some cases. For example, the obligation to assess the creditworthiness of the consumer and mandatory rules on pre-contractual information do not apply to loans below EUR 200. As a consequence, in many cases consumers have subscribed to very expensive small value loans without the necessary creditworthiness assessment and the adequate information. In some cases, these expensive loans have contributed to increase households' over-indebtedness. As a result, there are serious stakeholder concerns about the adequacy of the lower threshold of EUR 200. Many Member States extended the scope of application of the Directive to consumer credit not covered by it, hence the regulatory framework continues to be somewhat fragmented.

The wording of the definitions has proved effective, although some ambiguity remains about whether the Directive covers certain types of credits not explicitly referred to in the Directive.

Article 2 of the Directive excludes from the Directive's **scope** credit agreements involving a total amount of credit less than EUR 200 or more than EUR 75,000, with the exceptions of renovations of immovable property following the entry into force of the Mortgage Credit Directive<sup>204</sup>. The list of exemptions in Article 2(2) is extensive and encompasses many widely used loans, most of which were included within the scope of the Commission's first proposal for a Directive concerning credit for consumers<sup>205</sup>. The limitation of the scope of the Directive means that Member States have the freedom to regulate credit agreements above or below the thresholds.

Nearly all consumer associations (over 90%) argued that the current thresholds are no longer adequate, while slightly fewer (80%) Member State authorities considering them inadequate. Among credit providers 30% considered the scope inadequate<sup>206</sup>. In particular, the lower threshold was cited as a problem. The upper threshold of the Directive did not generate as much concern as the lower limit, especially following the

<sup>204</sup> Unsecured credit agreements the purpose of which is the renovation of a residential immovable property are covered by the Directive even in the event that they are worth more than EUR 75,000 as per article 46 of Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property (Article 2(2a) of the Directive).

<sup>205</sup> COM (2002) 443 final.

<sup>206</sup> While 2 out of 10 did not know.

amendment to the Directive following the entry into force of the Mortgage Credit Directive (MCD).

Except for Cyprus and Greece, all Member States have adopted transposing measures that go beyond the requirements of the Directive. Some extend the scope of application of the Directive (or certain of its provisions) to consumer credit not covered or not entirely covered by the Directive<sup>207</sup>, either below EUR 200<sup>208</sup>, above EUR 75,000<sup>209</sup> or to leasing agreements<sup>210</sup>, overdraft facilities<sup>211</sup>, revolving credit<sup>212</sup>, mortgages<sup>213</sup>, credit agreements granted free of interest and without any other charges (i.e. ‘zero-interest rate’ credits<sup>214</sup>) and credit agreements upon the conclusion of which the consumer is requested to deposit an item as security<sup>215</sup> (e.g. credit agreements with pawnshops<sup>216</sup>).

The growth of consumer credit – in both volume and value – due, inter alia, to digitalisation and fall of interest rates, has facilitated access to credit for consumers, while bringing new challenges and risks in respect to some aspects falling outside the Directive scope. These include zero interest rate loans<sup>217</sup>, short-term high-cost (STHC) credit<sup>218</sup>, and credit for leasing and hire purchase.

By setting the bar for entry within the scope of the Directive at EUR 200, potentially detrimental types of credit are excluded from its protection. These include the STHC-type credit that is more appealing to vulnerable consumers who struggle to access other types of credit due to their existing creditworthiness assessments (CWAs)<sup>219</sup>, as well as zero-interest rate loans. STHC loans are offered in many EU Member States, although the extent to which they are used varies between countries<sup>220</sup>. Under the right circumstances (i.e. properly supervised by the relevant authorities and undertaken by

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<sup>207</sup> Legal analysis; Interviews of consumer associations, industry representatives and Member States.

<sup>208</sup> BE, BG, CZ, DK, EE, FI, HU, IT, LV, PT, SK.

<sup>209</sup> DE, DK, CZ, EE, ES, FI, FR, HU, PT, RO.

<sup>210</sup> AT, EE, HU, IT, FI, FR, PT, UK.

<sup>211</sup> AT, BE, FI, PT, FR.

<sup>212</sup> FI, NL, FR, IT.

<sup>213</sup> BG, CZ, HR, HU, RO, SI, SK.

<sup>214</sup> BE and UK.

<sup>215</sup> Where the item is kept in the creditor's safe-keeping and the liability of the consumer is strictly limited to that pledged item.

<sup>216</sup> BE.

<sup>217</sup> Credit agreements where the credit is granted free of interest and without any other charges or zero interest rate loans are commonly used in the EU, especially when financing the purchase of certain products, such as electronic devices. These loans are very often concluded via retailers, who act either as credit providers or credit intermediaries. They may fall outside of the scope of the Directive (Article (2)(f)), but even if they may appear to be very advantageous credit products, they have the potential to be detrimental to the consumer. This is because, despite the 0% interest rate, which could assimilate them to a deferred payment of invoices, they can provide for very high fees for late or missed payments, conditions of which the consumer is often unaware. Some countries (e.g. Germany) have decided to apply some Directive provisions (i.e. right of withdrawal) to all consumer credit, irrespective of whether or not an interest rate is charged.

<sup>218</sup> 16 EU Member States were captured in a recent OECD report examining the provision of STHC credit in a selection of countries, of which 10 reported presence of this type of credit product (AT, CZ, DE, DK, EE, LV, NL, RO, SK, UK), while 6 did not (EL, ES, FR, PT, SE, SI); OECD, 2019.

<sup>219</sup> BEUC, 2019; European Parliament, 2018; European Commission, 2019.

<sup>220</sup> A 2019 London Economics study noted that payday loans are especially widespread in Lithuania and the UK, where 37% of low-income households have resorted to this type of credit.<sup>220</sup>

consumers with a good level of financial literacy), these types of credit could help to increase the financial inclusion of consumers with little or no credit history, thereby possibly also preventing them from having recourse to illegal creditors<sup>221</sup>. However, the high cost of such credit represents a risk in itself, particularly as most of the consumers of STHC credit are categorised as risky consumers, meaning that credit providers increase the interest rates to cover the risk of default, which, in turn, makes it more difficult for the consumer to repay. STHC credit also tends to become more expensive over time, worsening the consumer's financial situation as he or she is forced to either use the rollover option or take up more credit to repay the initial debt.<sup>222</sup> These risks are further exacerbated by a widespread lack of transparency and insufficient disclosure of information to the consumer which, together with the low level of financial and digital literacy among consumers of this credit product, results in a lack of consumer awareness of the true cost of the credit. Significantly, the accessibility of this type of loan favours impulsive decisions (especially as typical payday loan marketing strategies tend to emphasise the benefits of obtaining a loan instantly), further heightening the risk of over-indebtedness.<sup>223</sup>

To offset the potential for detrimental effects, some Member States have sought to bring them within the scope of the Directive, regardless of the loan amount<sup>224</sup>, which is often below the lower Directive threshold of EUR 200. The European Economic and Social Committee (EESC) also argued that the minimum threshold does not take into account the differences in the average income across the EU.<sup>225</sup> The stakeholder consultation exercise suggests that there is an appetite to abolish (or at least lower) the minimum threshold of the Directive, especially among consumer organisations and Member States.<sup>226</sup> It is to be noted, however, that stakeholders did not comment on the extent to which it could be expected for the Directive to address these types of products if they were included in its scope. Indeed, even if covered by the Directive, most of these credit products could still have a very elevated Annual Percentage Rate of Charge (APR) even if fully compliant. It does not therefore automatically address the main problems especially for more vulnerable consumers.

Credit cards<sup>227</sup> and revolving credits<sup>228</sup> can present similar issues for consumers and the extent to which they are covered by the Directive will depend on the amount borrowed

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<sup>221</sup> OECD, 2019, p 28.

<sup>222</sup> European Parliament, 2018; EBA, 2019; FSUG, 2019; FinCoNet, 2017.

<sup>223</sup> FinCoNet, 2017; European Commission, 2019.

<sup>224</sup> BG, ES, FR, HR, PT, SE, SI, SK.

<sup>225</sup> As pointed out by the European Economic and Social Committee, EUR 200 corresponds to approximately 50% of the average monthly wage and 75% of the average monthly pension in some European countries.

<sup>226</sup> Interviews of consumer organisations, industry representatives, Member States and enforcement authorities; Open Public Consultation (specific).

<sup>227</sup> 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

<sup>228</sup> Revolving credit is defined as 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.



(the Directive covers credits above 200 EUR and below 75,000 EUR). For instance, the extended use of credit cards can play to the disadvantage of consumers, since it rests on several behavioural biases likely to lead consumers to accumulate debt over a long period of time<sup>229</sup>. Consumers may consequently end up in situations where they are making minimum repayments that simply cover the interest and fees, without ever reducing the debt (i.e. persistent debt)<sup>230</sup>. This is highly profitable for credit providers<sup>231</sup>, particularly given the very high cost of a credit card. Issues of lack of information and choice between credit options were also reported by Member States in relation to revolving credits<sup>232</sup>. Some Member State regulators have acted to curb revolving credit, most notably in France<sup>233</sup>, and Netherlands<sup>234</sup>. Some stakeholders see the need to cover specific products currently exempted from the scope of application of the Directive or benefitting from a lighter regime, like those listed below. They claimed that reducing the number of exceptions would also contribute to legal clarity, limiting risks of circumventing Directive rules.

Overdraft facilities are credit agreements that allow consumers to become overdrawn up to a certain limit at a set interest rate, effectively acting as pre-approved credit.<sup>235</sup> Overrunning<sup>236</sup>, on the other hand, are not pre-agreed and usually entail very high interest rates and additional fees for the consumer. Although there is no EU-wide data on the extent to which overdraft facilities are used by consumers, national data from France and Germany suggest that they are increasingly used in some Member States as alternatives to payday loans and revolving credit.<sup>237</sup> One of the main advantages of overdraft facilities is that they constitute a useful tool to cover small and sudden financing needs. However, like credit cards, they are a very expensive credit product compared to instalment consumer credit, and in some cases even compared to payday loans.<sup>238</sup> The use of

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<sup>229</sup> These behavioural biases are: over-optimism: overestimating one's ability to maintain a zero balance; myopia: overvaluing the short-term benefits of a credit transaction and neglecting the future impact; and cumulative cost neglect: dismissing the cumulative effect of a large number of small credit options.

<sup>230</sup> According to the UK Financial Conduct Authority, a persistent debt is defined as a situation where, over a period of 18 months, a consumer pays more in interest, fees and charges than on the principal of the debt.

<sup>231</sup> European Parliament, 2018; BEUC, 2019.

<sup>232</sup> Belgium noted the issue of offering consumers the choice between revolving credit or payment in instalments, rather than making the former the default option. In the UK, Citizens Advice found that three-quarters of consumers with a revolving credit line had seen their credit ceiling raised without their explicit request.

<sup>233</sup> Where, according to BEUC 2019, p.10, consumers must be offered the choice between revolving credit and payment in instalments when sold products in shops.

<sup>234</sup> According to VFN 2018, in May 2019, in conjunction with the AFM, the Dutch credit institutions association agreed on stricter rules on revolving credit, including maximum withdrawals, more frequent CWAs (with credit refused where the outcome is negative), and a maximum revolving credit duration of 15 years.

<sup>235</sup> Overdraft facility means an explicit credit agreement whereby a creditor makes available to a consumer funds which exceed the current balance in the consumer's current account (Article 3(d) of the Directive).

<sup>236</sup> Means a tacitly accepted overdraft whereby a creditor makes available to a consumer funds which exceed the current balance in the consumer's current account or the agreed overdraft facility (Article 3(e) of the Directive).

<sup>237</sup> Que Choisir [FR], 2019c; Finance Watch, 2018 and 2019.

<sup>238</sup> BEUC, 2019.

overdraft facilities also entails similar risks to those linked to credit cards<sup>239</sup>. In addition, consumers risk misunderstanding the conditions applicable to the overdraft facility in terms of costs, limits, etc. While the Directive covers overdraft facilities that do not need to be repaid within one month, some ambiguities remain regarding those to be repaid within one month. Overrunning are only subject to a 'light regime' under Article 2(4). As a result, some countries (e.g. France) have noted that credit providers are encouraging consumers to turn to types of products that are slightly less controlled.<sup>240</sup>

Zero-interest rate loans (i.e. loans with an interest rate of 0%) are commonly used in the EU, especially when financing the purchase of certain products, such as electronic devices. These loans are very often concluded via retailers, who act either as credit providers or credit intermediaries<sup>241</sup>. They may fall outside of the scope of the Directive<sup>242</sup>, and even if they may appear to be very advantageous credit products, they have the potential to be detrimental to the consumer. This is because despite the lack of interest, they generally foresee very high fees for late or missed payments, conditions of which the consumer is often unaware<sup>243</sup>. For this reason, some countries (e.g. Germany) have decided to apply some Directive provisions (i.e. right of withdrawal) to all consumer credit, irrespective of whether an interest rate is charged<sup>244</sup>.

Leasing agreements have seen rapid growth in the EU in recent years. The Directive only covers leasing agreements in so far as these oblige the consumer to acquire the good(s) upon expiration of the contract, which means that most of the leasing agreements concluded are not bound by Directive obligations. Consumers entering into leasing agreements may therefore be exposed to risks that could be addressed if the Directive was extended to these agreements. One consumer organisation in France, for instance, noted that consumers often lack sufficient information to make an informed decision<sup>245</sup>.

In relation to credit agreements for which the consumer is requested to deposit an item as security and where the liability of the consumer is strictly limited to that pledged item i.e. credit agreements with pawnshops, one consumer association pointed out that they should be bound by information requirements, as in many cases the fees applied are very high.

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<sup>239</sup> Namely over-optimism (i.e. the consumer wrongly assumes that he or she will not become overdrawn) and myopia (i.e. the consumer over-values the benefits of the present transaction while dismissing the impact on his or her financial situation).

<sup>240</sup> Que Choisir [FR], 2019c.

<sup>241</sup> Credit intermediary is a natural or legal person who is not acting as a creditor and who, in the course of his trade, business or profession, for a fee, which may take a pecuniary form or any other agreed form of financial consideration:

- presents or offers credit agreements to consumers;

- assists consumers by undertaking preparatory work in respect of credit agreements other than as referred to in;

- concludes credit agreements with consumers on behalf of the creditor (Article 3(f) of the Directive).

<sup>242</sup> "This Directive shall not apply to the following: [...] credit agreements where the credit is granted free of interest and without any other charges and credit agreements under the terms of which the credit has to be repaid within three months and only insignificant charges are payable;" Article (2)(f).

<sup>243</sup> House of Lords, 2006; EBA, 2019.

<sup>244</sup> Finance Watch, 2018 and 2019; Legal analysis.

<sup>245</sup> Que Choisir [FR], 2019a.

Various articles of the Directive provide for regulatory choices that allow Member States to make specific exclusions to the Directive. Member States' use of regulatory choices varies significantly: all of them have made use of the one in Article 10(1), many of the one in Article 2(6) and 16(4)(a) and less than a half having made use of the others in Article 2(5), Article 4(1) and 4(2)(c), Article 6, Article 10(5), Article 14(2) and Article 16(4)(b)<sup>246</sup>.

In terms of **definitions**, Article 3 is generally considered to be effective and successful by all stakeholders<sup>247</sup>. Clarifications have been suggested, particularly to ensure that the Directive covers the new market players that have emerged with the increase in digitalisation (e.g. peer-to-peer lending<sup>248</sup>). Aside from the risks<sup>249</sup> and potential to be detrimental to the consumer, the uncertainty as to whether these platforms are bound by the same rules as traditional credit providers, and the differences in Member States' regulation, appears to be one of the key obstacles to ensuring a level-playing field for all credit providers, regardless of their nature.

Peer-to-peer lending<sup>250</sup> is not included in the list of exemptions in Article 2(2) of the Directive and is thus not explicitly excluded from its scope of application. However, there is little clarity (either in the literature or among the stakeholders) on whether it is covered by the Directive. This is because the Directive has defined 'creditor' as 'a person who grants or promises to grant credit in the course of his trade, business or profession' (Article 3(b) of the Directive). Given that the lenders in peer-to-peer lending are usually private individuals, many stakeholders consider them to fall outside the scope of the Directive, an argument that is also reflected in recent studies. In some countries (e.g. Denmark), the national legislator has explicitly placed private lenders under the obligations of consumer credit<sup>251</sup>. However, whether it would fall inside the scope would also depend on the potential role of the P2P platform.

## EFFICIENCY

Efficiency considers the relationship between the resources used by an intervention and the changes generated by the intervention.

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<sup>246</sup> For more details, see Legal Analysis.

<sup>247</sup> Stakeholder interviews.

<sup>248</sup> Which consists of the use of an electronic platform to match lenders/investors with borrowers/issuers to provide unsecured loans, including consumer credit.

<sup>249</sup> According to ECRI 2018, a lot of consumers using these platforms lack sufficient knowledge of their functioning. For instance, many of the complaints involving peer-to-peer lending in the UK are from consumers who were not aware that they were borrowing from a peer-to-peer lending facility, while others had doubts about their recourse from the lender, compared to other forms of credit.

<sup>250</sup> For more details, see annexed study to support the evaluation, outsourced to ICF.

<sup>251</sup> This discussion culminated in Order of 23 October 2015, *TrustBuddy AB*, C-311/15, EU:C:2015:759, where the Finnish Supreme Court brought the issue before the CJEU. TrustBuddy, however, went bankrupt and no judgment followed.

**EQ8 – What are the costs and benefits (including any reduction in consumer detriment) associated with the Directive and what are they influenced by? Can they be considered proportionate?**

Overall, the benefits of applying the Directive, especially in terms of reduction in consumer detriment<sup>252</sup>, outweigh the costs.

Several stakeholder categories, namely consumers, national authorities and consumer organisations agree that costs and benefits of the Directive are proportionate. However, some industry representatives stress that – in relation to specific provisions - costs for the implementation of the Directive outweighed the benefits.

**Quantification<sup>253</sup>**

Costs associated with the Directive encompass direct compliance costs (including administrative burden)<sup>254</sup> and consumer hassle costs. Indirect costs include reduction in available credit (costs passed on to the consumer), lower consumer spending and an associated reduction in GDP. The benefits can be direct, for example higher levels of consumer protection (and lower consumer detriment), development of the single market through cross-border activity and increased level playing field, and associated welfare gains and increased consumer choice. Indirect benefits include consumer awareness and behaviour, and improved consumer trust in banks regarding their loans, credit and credit cards, which has risen steadily since the 2010.

Overall the evaluation finds that benefits outweigh the costs of applying the Directive, as shown below, though the results reported should be treated with caution. Full details of the quantification approach are shown in Annex 3.

For public administration, initial set-up costs for the Directive are estimated to have been up to EUR 6 million for the EU-28 in transposing EU legislation in national law, and recurrent costs at around EUR 300,000 per year for the EU-28, mostly in monitoring compliance and enforcement costs (sweeps, investigations).

For the industry, calculated on the basis of the roughly 7,400 banks in the EU in 2010 (as opposed to 5,100 in 2018), set-up costs included: familiarisation with the Directive; adapting IT systems for pre-contractual and Standardised European Consumer Credit Information (SECCI) requirements, creditworthiness assessment (CWA) and Annual Percentage Rate of Charge (APR); internal communications and staff training on

<sup>252</sup> A measure of harm that consumers may experience when market outcomes fall short of their potential.

<sup>253</sup> The quantitative analysis is based on the “Study on measuring consumer detriment in the European Union” published in 2017, which developed a detailed step-by-step operational guidance to scientifically sound and resource efficient assessments of personal consumer detriment in markets across the EU. The developed methodology was applied in six selected markets (mobile telephone services; clothing, footwear and bags; train services; large household appliances; electricity services; and loans, credit and credit cards) and four countries (France, Italy, Poland and the UK). This allowed the methodology to be tested in a geographically balanced sample of countries, selected also to allow results to be extrapolated to all twenty-eight EU Member States. For more information on the quantification method, see Annex 3.

<sup>254</sup> Following the “Better Regulation Guidelines”, compliance costs include the following sub-costs: administrative costs and substantive compliance costs. Unfortunately, the data available does not allow us to estimate each type of sub-costs.

advertisement, pre-contractual information and APR; updating the website and adapting contractual documentation. These are estimated to be in the order of EUR 340 million in the period 2008/2010 or EUR 46,000 on average per bank. Recurring costs are estimated to be between EUR 160 and 200 million per year for additional costs<sup>255</sup> in complying with advertisement requirements, for staff to provide pre-contractual information and SECCI forms and the APR, and carrying out CWAs. While there are also other industry players, including non-banks, credit intermediaries and those involved in advertising, it is not possible to estimate costs, on the basis of the information available, for these stakeholders. Their approximate number is not known.

Benefits in terms of a reduction in consumer detriment since 2008 are estimated at EUR 2.6 billion, of which EUR 1.55 billion in reduced financial detriment and EUR 1.05 billion in reduced time losses due to the Directive. The annual reduction of consumer personal detriment is equal to the consumer detriment in each year minus the consumer detriment in the baseline year (2010). The total reduction of the consumer personal detriment is the net present value of all the annual reductions of consumer personal detriment in the period 2011-2018. The annual consumer personal detriment is calculated by multiplying the number of problems experienced by consumers with credits in that year (obtained based on data from the Consumer Market Scoreboards) by a) the post-redress financial costs (i.e., magnitude of a problem) experienced by a consumer due to having had one problem with his/her credits and b) the monetised time losses that the consumer had in order to try to solve one problem (and or get redress)<sup>256</sup>.

The attribution to the Directive is tentatively estimated at between 20 and 25%, though it is important to point out that there is no data as such that enable an assessment of attribution. Please note this is based on expert judgement and reasoning of other factors involved<sup>257</sup>. Other factors influencing a reduction in consumer detriment include the development of the credit sector itself, more stringent legislation in certain Member States, a possibly uptake in overall sector compliance due to familiarity with the Directive, and increases in consumer awareness over time, as well as the impacts of other legislation and other factors not taken into account.

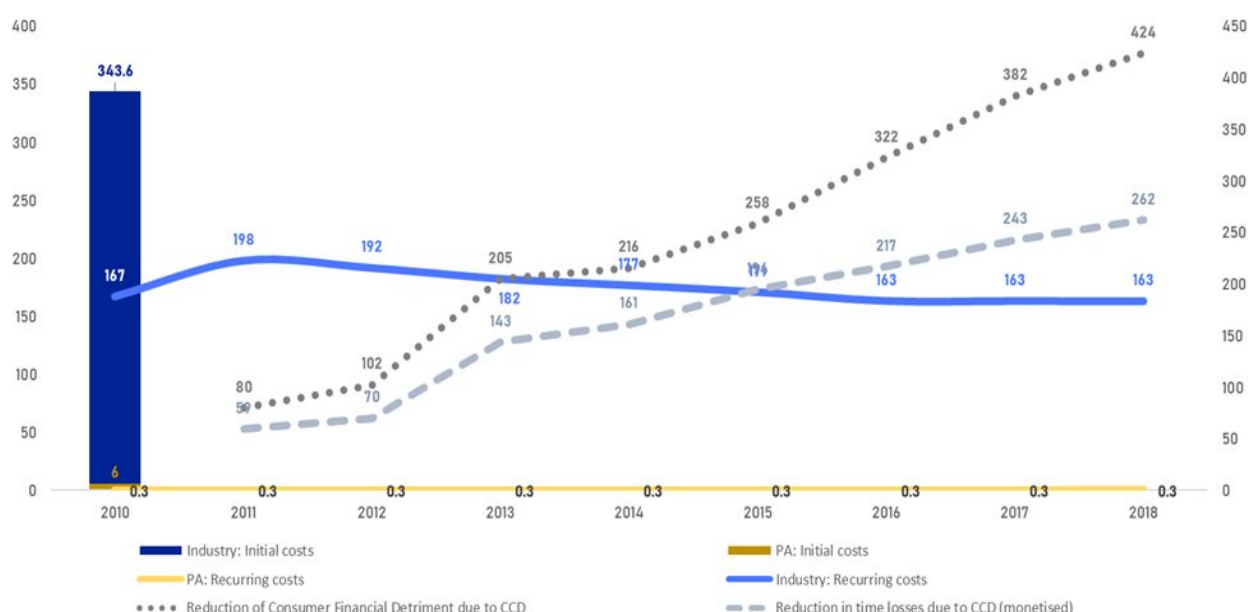
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<sup>255</sup> Pre-contractual information and other relevant information would also still be provided in the absence of the Directive, and this has been taken into account for the estimates on recurring costs. The recurring costs therefore reflect the action needed on behalf of credit providers to prepare and make such information available. However, only part of these costs are made explicitly because of the Directive.

<sup>256</sup> The data from CIVIC study on magnitude and time losses for the year 2015 was extrapolated to the other years considering the evolution of the number of complains (used as a proxy for the size of the problems experienced by the consumers) from the Consumer Markets Scoreboards.

<sup>257</sup> This is explained in Annex 7 of the study supporting the evaluation.

Figure 8 - Overview of estimated direct costs (PA and industry) and benefits in millions of euro for the period 2010-2018 (2010 prices).



Source: ICF elaboration on existing data and assumptions (for more details see Annex 7 of the study supporting the evaluation).

This suggests that developments in the market, EU and national level legislation, and other factors came together to substantially reduce consumer detriment. This figure has risen from 2014 onwards, showing increased detriment reductions in later years. A share of consumer detriment savings are due to developments in the credit market (more competition, lower prices), with some part attributable to the Directive, although most related to external factors (such as lower interest rates in the current economic climate). Other developments include national practices and policies, such as changes in national legislation and their application, and enforcement and monitoring.

The benefits to consumers of the Directive can also be measured by looking at consumer trust levels. Consumer trust<sup>258</sup> in banks regarding their loans, credit and credit cards has risen steadily since the 2010 baseline, from 6.2 to 7 on a scale from 0 to 10. While this figure cannot be directly linked to the Directive itself as it is also influenced by the

<sup>258</sup> ICF elaboration of Consumer Market Scoreboard data.

economic upturn after the financial crisis from 2007-2008 (and the effects in the years thereafter) and wider trends in satisfaction, gradual increases in trust levels do point to overall satisfaction of consumers with their loans to which the Directive will have contributed (as with detriment).

The share<sup>259</sup> of consumers affected by consumer credit-related issues is expected to be substantially lower than before the entry into force of the Directive<sup>260</sup>. Not all of the problems that consumers are facing could be addressed through the Directive, however. Some are related to consumer awareness, national application and enforcement of legislation, and new market developments, and are beyond the ability of the Directive to be addressed directly.

There is further potential for improving the efficiency of the Directive by solving some compliance issues through better enforcement. The number of consumers negatively affected by issues linked to the respect to the right of withdrawal is comparatively small. The rate is higher for the right of early repayment, although still relatively insignificant as a share of all loans and compared to other areas. In the area of pre-contractual information, many more consumers are affected by imperfect information in respect of the APR and the SECCI form, although not all of the consumers impacted will have suffered specific problems or detriment as a result. For the CWA, the number of consumers affected by creditors not having asked for their ability to pay is substantial. There are many other problems, however, that could not be assessed, such as consumers affected by incorrectly having been granted a loan (and possibly indebting themselves) or where procedures were not followed correctly, though such estimates could be made. 25 million consumers are estimated to be affected because of issues with revolving credit and as many because of cross-selling practices. No reliable estimates could be made in regards to cross-border detriment as there is no comprehensive data on how many consumers could not obtain a loan even if they wished to do so. However, the evaluation's mystery shopping exercise showed that there were obstacles in all cases where cross-border shopping for consumer credit was attempted. While representing anecdotal evidence only, it is nonetheless reasonable to assume that the practical obstacles to cross-border shopping would affect many consumers. According to Eurobarometer 443 less than 0.5% (3 million consumers) have purchased a personal loan in another Member States and that contrasts with 29% who looked for one (17 million consumers). It means that up to 14 million consumers are impacted by the impossibility to obtain a loan from another Member State. For many there were personal reasons not to proceed, but a subset will be due to the inability to do so. There are also cases of consumers who did not look for cross-border loans because the conditions were not right.

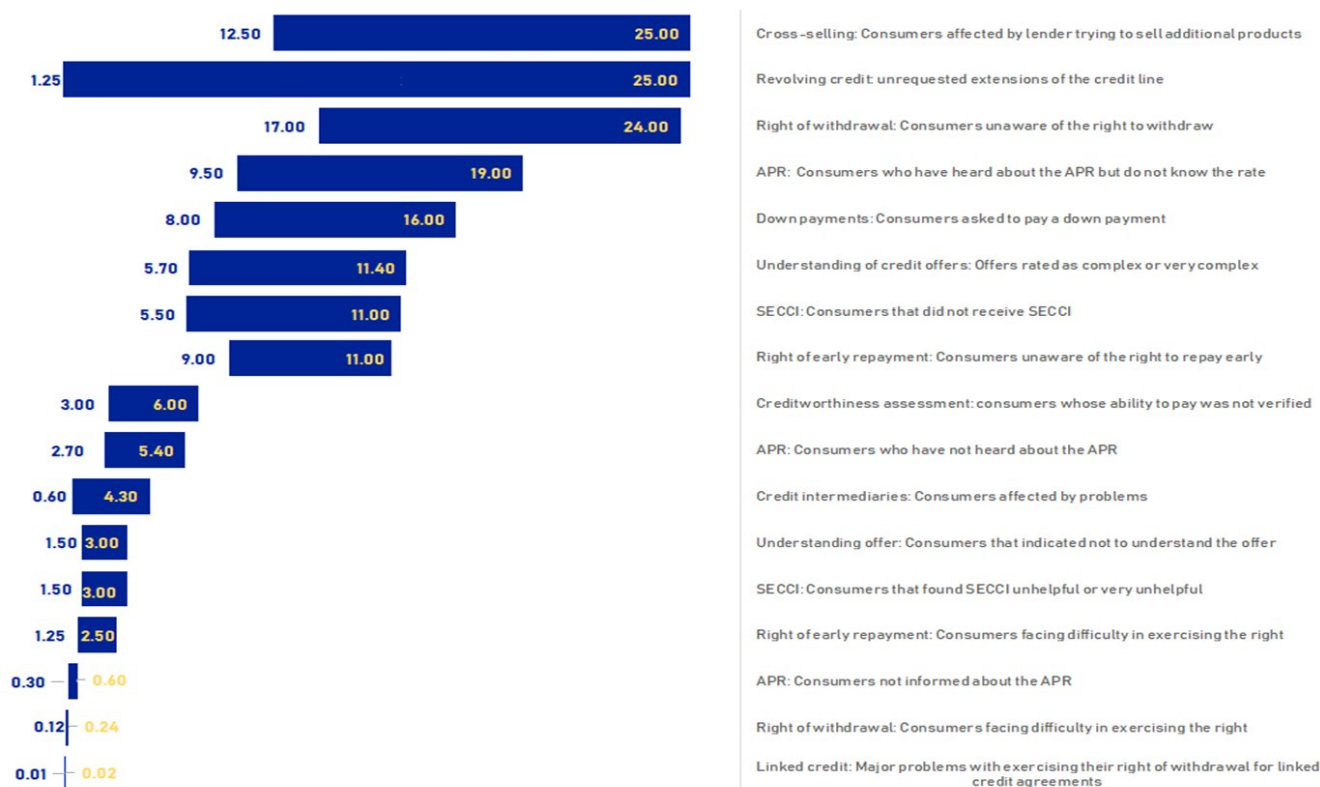
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<sup>259</sup> It should be pointed out that the number of consumers affected is based on the views expressed by a representative number of EU-28 consumers in surveys, and subsequently extrapolated for all consumers in the entire EU-28 (based on the EU population of 18 years and older). As the findings from different surveys vary and there are no exact figures, it is in any case best to express estimates in terms of overall ranges. These provide an indication of the order of magnitude and scale of the problem (numbers of consumers affected) for each element, without pinpointing an exact number.

<sup>260</sup> The total number of consumers affected cannot easily be compared given that the consumer credit market was smaller.

Overall, the evaluation therefore estimates that the number of consumers affected by a sub-optimally functioning cross-border market is substantial. Furthermore, with increasing digitalisation it can be assumed that more and more consumers will look for cross-border credit.

*Figure 9 - Estimated number of consumers potentially negatively affected per Directive provision/area, in millions of consumers for the year 2018 (range).*



Source: ICF elaboration (for more details see Annex 7 of the study supporting the evaluation).

## Views from stakeholders

Numerous consumers generally agreed that costs generated by the Directive are proportionate to the benefits, a view shared by the national authorities and consumer organisations consulted. The results from the Open Public Consultation also revealed that 66% of respondents considered benefits to outweigh the costs, overall. Dissenting views mostly came from industry representatives, as half of them (54%) pointed to the fact that the implementation of the Directive implied additional costs that were not matched by its benefits. However, as the evaluation also finds that the regulatory landscape is fragmented due to Member States going beyond the Directive, differences in enforcement levels and specific national contextual factors influencing demand and supply, these statements require nuance. Indeed, stakeholders commented on the implementation of the national legislation and not the Directive as such. The extent to which the costs of implementation can be attributed to the Directive itself cannot therefore be reliably estimated.



Over half of the respondents to the Open Public Consultation considered the benefits to outweigh costs, and a quarter argued the opposite, with the remainder being unsure. Almost one in six representative of creditors considered benefits not to be proportionate to its costs. Industry stakeholders noted, in particular, administrative burden and the compliance costs of elements such as information requirements, the right of withdrawal, the right of early repayment and CWA. At the same time, half of the respondents to the survey of creditors did not have an opinion on whether costs outweigh the benefits of the Directive. This evaluation estimates that there were initial start-up costs for businesses but that ongoing costs do not exceed benefits to creditors in view of the increase in the number of loans, and the volume of outstanding loans.

Advertisement requirements were argued to be very costly (to the extent that some credit providers have stopped advertising on certain channels) and not efficient by industry representatives (see EQ9).

Overall, in spite of claiming that the Directive is imposing a heavy burden on them, creditors failed to substantiate the costs incurred for complying with the Directive and to disentangle them from those stemming from national rules going beyond the Directive, casting doubts on their magnitude.

**EQ9 – To what extent are the provisions of the Directive cost-effective? Are there any provisions particularly hampering the maximisation of the benefits?**

The overall costs of the Directive provisions to industry, public administrations and consumers are estimated above to be lower than the reduction in consumer detriment, and thus to render them generally cost-effective. There are no indications of certain provisions significantly hampering the maximisation of benefits. However, it appears that the cost-effectiveness of certain provisions, notably the one on advertising, varies greatly depending on the medium used to reach the consumer.

Overall, the evaluation concludes that the provisions of the Directive are largely cost-effective, although data limitations (see EQ8) warrant a cautious approach.

While provisions such as the right of withdrawal and right to early repayment, as well as provision of the Annual Percentage Rate of Charge (APR) and Standardised European Consumer Credit Information (SECCI), hinder the maximisation of benefits to some extent, given that some consumers are still affected by problems in exercising their rights, this seems to be due to enforcement issues rather than the Directive itself.

Two thirds of industry representatives indicated that certain provisions are particularly costly or burdensome, with the obligations stemming from providing pre-contractual information most often mentioned as being burdensome and cost-ineffective especially in view of their length and perceived inadequacy in digital contexts. Member States' representatives overwhelmingly did not consider costs to be particularly problematic, though one Member State authority pointed to current requirements in pre-contractual information and advertisement to be too prescriptive and to the Directive lacking in flexibility. Consumers associations considered provisions to be generally cost-effective,

though one argued that current pre-contractual requirements are too complex for consumers and thereby cost-ineffective.

An area which is not considered particularly cost-effective is advertising. Several industry stakeholders publicly pointed to the cost of advertisement<sup>261,262</sup>. This seems less of a problem linked to the application of existing rules at the point-of-sale, on websites of credit intermediaries or directly on websites of the creditor, but rather for specific contexts such as radio and possibly TV. For mobile devices and in social media contexts current rules are also contested by some industry representatives. This evaluation estimates the costs to industry derived from continued compliance with advertisement requirements at several thousand of euros a year per bank and while there are no data for other channels, the joint cost to industry would seem to be considerable.

The issue, however, lies not only in the burden and cost itself, but rather in the fact that for some channels – such as radio – credit information messages (representative examples, warning) have an impact on a tiny fraction of consumers, rendering them both possibly redundant and, therefore, cost-ineffective (see further explanations below under EQ10). At the same time, a 2019 Commission study pointed out that the provision of the representative example in advertising does help consumers in making better choices in the online environment. Whether that ultimately makes them sufficiently cost-effective cannot be ascertained.

It is estimated that benefits to consumers could be larger for credit products currently either partially regulated or outside the Directive's scope, and that affect a potentially significant number of people, such as shown in EQ7 and EQ8. However, as pointed out throughout this report, inclusion in scope is not the only driver of a reduction in consumer detriment as this would also depend on current national legislation and levels of enforcement.

**EQ10 – Is there scope for simplification and burden reduction? What provisions or areas of the Directive could be simplified to reduce the burden on stakeholders without undermining the effectiveness of the Directive?**

The evaluation finds that there could be some scope for regulatory burden reduction (e.g. on the provision of information), but doing so could risk to undermine the effectiveness of the Directive and to lower the level of consumer protection. Hence it is not clear whether the Directive could be simplified without harming its objectives<sup>263</sup>.

Opinions on whether the Directive could - or should - be simplified were divided among

<sup>261</sup> Such as Eurofinas 2018b and 2018c and AER 2018. See also the five submissions by business organisations on the perceived burden caused by standard information that has to be provided when advertising consumer credit agreements in particular on radio considered by the 2017 REFIT Platform Opinion on the Directive <https://ec.europa.eu/info/sites/info/files/vi4afccd.pdf>.

<sup>262</sup> As stressed in the 2017 REFIT Platform opinion.

<sup>263</sup> According to [Better Regulation](#) principles, initiatives to change existing EU legislation should aim to simplify and deliver the policy objectives more efficiently (i.e. by reducing unnecessary regulatory costs). However, opportunities to reduce regulatory costs and to simplify the existing legislation should not affect negatively the achievement of the underlying policy goals.

consumer organisations. Some argued that simplification of legislation (particularly the provision of information) would enable better consumer understanding of the information, as well as their rights. However, others linked simplification to a potential narrowing of consumer protection standards.

A considerable share of industry stakeholders pointed to administrative burden and compliance costs as a recurring issue (even if they could not qualify that burden with relevant data). On the other hand, several industry representatives highlighted that any change to the Directive – even a reduction in administrative burden – also implies new compliance costs, thereby partially undoing some of the intended gains. To strike a better balance between costs and benefits, the creditors surveyed suggested simplifying the rules on the provision of information and minimising legal disparities by ensuring a higher degree of harmonisation. As explained above, pre-contractual information (including the Standardised European Consumer Credit Information) and advertisement information are considered by industry to imply significant costs and are argued to have sub-optimal effects in their main objective (informing consumers). At the same time, having been in place for around a decade, the initial costs for providing pre-contractual information are now sunk costs, and there are few indications of substantial ongoing compliance costs (with existing systems increasingly automated). In the area of advertising, some industry representatives considered there to be substantial continuous costs and pointed to scope for burden reduction<sup>264</sup>.

A majority of Open Public Consultation respondents argued that there are areas in the Directive where there is room either for simplification or reduction of costs, but they did not provide detailed explanations. Most of the national authorities interviewed believe that the Directive has not created any unnecessary burden and that there is no need for further simplification of the legislation. However, a quarter of them held the opposite view, arguing that the information duties impose a burden on both creditors, who have to prepare and provide the information, and consumers, who are expected to read and fully understand the documents.

The potential for burden reduction identified by some stakeholders should, however, not lead to a reduction in the protection of consumers.

## COHERENCE

The evaluation of coherence involves looking at how well or not different actions –both at EU and national level- work together.

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<sup>264</sup> The Association of European Radios (AER) argued that the existing regulatory framework is particularly burdensome on radio ads given the specific form (and short duration of ads), and argued that credit warning messages should rather be provided at the point-of-sale. As only a tiny share of 3 to 4% of consumers surveyed in the UK and France were able to recall the exact credit amount mentioned in a radio ad, it is argued to be ineffective in protecting consumers and thereby an unnecessary burden on radio operators. Eurofinas pointed out that simplification is possible in the social media domain, with existing information requirements in the Directive not being adapted to the space and time requirements in the digital age.

### **EQ11 - To what extent is the Directive internally coherent?**

The Directive and its implementation at Member State level shows a fair degree of internal coherence, overall, particularly when it comes to ensuring consumer protection. The main issue, however, is that Directive provisions are not particularly coherent with its objective of facilitating the emergence of a well-functioning internal market, as it cannot be achieved by relying only on the Directive's provisions (see Relevance section and specifically EQ15).

Stakeholders did not express themselves specifically on the Directive's internal coherence.

The Directive provisions work well together and have contributed to achieve the objective of improving consumer protection: these include the obligation to provide pre-contractual information, information to be included in advertising, the obligation to assess consumers' creditworthiness, as well as the possibility to withdraw from a credit agreement and/or to repay the credit earlier than agreed at contractual stage.

On the other hand, the scope of the Directive and its exemptions contradict somehow the objective of ensuring consumer protection, as they exclude several consumer credit products frequently used by consumers (see EQ7). As explained in EQ4, the provisions of the Directive are somehow insufficient to fully protect consumers from irresponsible lending practices and inappropriate decisions.

There is also a degree of incoherence when it comes to the second objective of the Directive, i.e. fostering the EU internal market for consumer credit, as the objective itself cannot be (fully) expected to be addressed by the Directive. The vague wording of certain provisions (e.g. Article 8 on creditworthiness assessment) has led to their diverse application across Member States.

In addition, the Directive does not, and is mostly not set up to, address certain barriers that have been identified by stakeholders and which prevent the creation of an internal market for consumer credit (see EQ1, EQ2 and EQ5). These barriers include consumer preferences, language and cultural barriers, conduct of business rules, authorisation and supervisory requirements, uncertainty over enforcement etc.

It must also be noted that the discrepancy between the general objectives and the specific provisions of the Directive is partly attributable to the negotiation process between the co-legislators, whereby several elements of the Commission's proposal were not included in the final text, which included, for instance, more specific provisions on responsible lending or credit databases.

### **EQ12 – To what extent is the Directive coherent with other national-level consumer policy and legislation (including legislation going beyond the scope of the Directive, relevant for consumer credit)?**

Overall, Member States' transposition of the Directive offers a high level of coherence between national legislation and the provisions of the Directive. However, several Member States have implemented some provisions of the Directive in very different

ways and/or have introduced provisions going beyond those foreseen in the Directive, thereby leading to legal fragmentation and undermining the internal market objective of the Directive.

Most of the national transposing measures are largely coherent with the Directive. A few Member States, however, transposed several EU Directives in a single piece of legislation, which has reduced clarity in some cases. Only Cyprus and Greece did not adopt measures beyond the requirements of the Directive, instead opting for a literal transposition of the Directive.

Overall, 40% of the respondents to the Open Public Consultation considered there to be a degree of incoherence of the Directive with national-level legislation. This evaluation finds that, on the basis of research conducted, this mainly relates to specific choices made upon transposition or much after its implementation.

Going beyond the provisions of the Directive when transposing is ultimately a choice of the national legislators, that can make use of different regulatory choices where there are provisions which are not harmonised in the Directive.

Moreover, several Member States have legislated on areas outside the harmonized scope of the Directive introducing requirements on issues not explicitly covered - although very much linked to - some of the Directive's provisions (by way of product governance rules and interest caps<sup>265, 266</sup> to limit the cost of short-term high-cost loans or revolving credit, for instance).

Indeed, several Member States used the opportunity to introduce more stringent rules when transposing the provisions of the Directive into their national laws. Market developments (such as the growing use of pay-day loans) have also forced Member States to take action in more recent years. As explained in EQ1 and EQ2, this situation has contributed to a legal fragmentation within the internal market.

For instance, and as seen in EQ4, Member States have implemented the creditworthiness assessment (CWA) obligation in different ways, often specifying how the assessment is to be conducted and the documents that must be consulted.

In addition, some Member States' transposition of the Directive may create confusion and potentially lead to obstacles in ensuring the free movement of credit offers. One such example is the perpetual right to withdrawal in Germany and Slovakia<sup>267</sup> (see EQ6). Moreover, several Member States transposed the Directive and the Mortgage Credit Directive (MCD) into a single Consumer Code, or broadened the scope of application of

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<sup>265</sup> See Annex 5.

<sup>266</sup> In Italy, for example, the cost of the loan cannot be higher than the 'usury' ceiling calculated as a coefficient of the average credit market price, above which it becomes illegal. Banca d'Italia [IT].

<sup>267</sup> See case study 3 in the study supporting the evaluation (Right of withdrawal) for further details. In Germany, in cases where the consumer did not receive all of the pre-contractual information or where the information received was incorrect, they have the right to withdraw from the credit agreement for an unlimited period of time. In Slovakia, the right to withdrawal is perpetual, with immediate effect and free of charge, if the contracting parties have not agreed a termination notice period. This can be problematic for creditors as it creates a level of uncertainty regarding revenue.

MCD provisions on consumer protection. This, in certain instances, led to a lack of harmonised framework and to some inconsistencies and overlap in the transposition of EU credit legislation<sup>268</sup>, which has come under the scrutiny of the Court of Justice of the EU<sup>269</sup>.

Some of the national transpositions may thus be seen as incoherent with the Directive, as they impede the creation of a cross-border credit market in the EU to a certain extent, mainly due to a lack of harmonisation of the Directive across Member States.

### **EQ13 – To what extent is the Directive coherent and complementary with other relevant EU-level legislation?**

The Directive is generally coherent and complementary with other EU-level consumer policy and legislation. There is some degree of discrepancy with the Mortgage Credit Directive, which lays down some more detailed obligations. Some minor room for further alignment or synergies with other relevant EU pieces of legislation was identified in several instances. A majority of respondents to the Open Public Consultation found the Directive to be consistent with other EU-level legislation.

Several EU-level legislative instruments touch upon aspects that are covered by the Directive or are potentially relevant for the provision of consumer credit. Some were adopted prior to the Directive (e.g. the Distance Marketing of Financial Services Directive (2002/65/EC, ‘DMFSD’), the Unfair Commercial Practices Directive (2005/29/EC, ‘UCPD’), the Unfair Contract Terms Directive (93/13/EEC, ‘UCTD’)<sup>270</sup>), while others entered into force after 2008 (e.g. the Mortgage Credit Directive (2014/17/EU, ‘MCD’), the Anti-Money Laundering Directive ((EU) 2018/843, ‘AMLD’) and the revised Payment Services Directive ((EU) 2015/2366, ‘PSD2’)).

A majority of the respondents to the Open Public Consultation considered the Directive to be consistent with other relevant legislation at EU-level. Between 57% and 65% of respondents thought this to be the case for the MCD, UCPD, PSD2, General Data Protection Regulation (GDPR), UCTD and DMFSD.

The most common examples of incoherence mentioned by Member State authorities concerned the MCD and its requirements for responsible lending and creditworthiness assessments (CWAs), the reflection period and right of withdrawal, its definitions, and the level of harmonisation. In fact, while the MCD – adopted in 2014- differs in scope to

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<sup>268</sup> In Czech Republic and Hungary, for example, the MCD and the Directive were jointly transposed, thus the transposing measures apply to consumer credit over EUR 75,000 and are not necessarily aimed at renovation works on a residential immovable property (such as foreseen by Article 46 of the MCD amending Article 2 of the Directive). In Germany, national laws transposing the Directive also apply to credit above EUR 75,000, making it more coherent with mortgages. The Directive also applies to mortgage credit in Croatia, although without combining the MCD and Directive provisions in the same transposing act. In Sweden on the other hand, only parts of the MCD relating to consumer protection were introduced in the Directive transposing measures, thereby offering a higher standard of consumer protection.

<sup>269</sup> Judgment of 14 February 2019, *Milivojević*, C-630/17, EU:C:2019:123.

<sup>270</sup> UCPD and UCTD take an horizontal approach as their rules apply to all types of products and services and to all methods of marketing and selling. They have been recently amended by the Directive (EU) 2019/2161. on better enforcement and modernisation of EU consumer protection.

the Directive<sup>271</sup>, both Directives aim to provide a harmonised framework in relation to certain aspects of credit agreements, most of which are covered in both pieces of legislation. The MCD, which on average covers higher value and more legally complex credit agreements, provides a higher level of consumer protection against over-indebtedness and irresponsible lending.<sup>272</sup> The tools provided by the Consumer Credit Directive to promote responsible lending and avoid over-indebtedness (e.g. CWA and information duties) rely on the assumption that consumers will act rationally if they are provided with the correct information (see EQ15). By contrast, the MCD has transferred a significant part of the duty to ensure that consumers are borrowing responsibly onto credit providers notably by ensuring that credit can only be granted where the results of CWA indicate the consumer ability to repay the loan. The additional obligations in respect of explanations, information (in particular in case the credit application is rejected), advice and CWA (e.g. definition of amount and categories of data to be used) are intended to ensure that consumers are not sold products that are unsuitable for them. The introduction of conduct of business rules governing the design, manufacturing and sale of credit products also plays a key role in protecting consumers against over-indebtedness, complemented by the obligation for Member States to promote financial education.

Despite the different approach to responsible lending, apart from Member States authorities, very few stakeholders raised concerns about coherence between the Directive and the MCD<sup>273</sup>. This may be because the obligations imposed by the two Directives govern different types of credit, thus do not hinder credit providers in complying with both. However, better alignment of the provisions could improve the implementation of both Directives, as it would improve legal clarity for Member States and credit providers and ensure a consistent approach to protection of consumers against over-indebtedness<sup>274</sup>. This was noted by several stakeholders representing consumer associations, industry representatives and national authorities, who identified room for greater consistency between both texts. National authorities were particularly keen to see the Directive provisions on CWA aligned with those in the MCD<sup>275</sup>. Several also suggested introducing other MCD provisions to ensure more coherence, such as the conduct of business rules or the prohibition of tying practices<sup>276,277</sup>. Some stakeholders referred to the need to achieve better alignment of the definitions included in Article 3 of the Directive and Article 4 of

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<sup>271</sup> Article 1 of the MCD establishes that it covers credit agreements that are secured by a mortgage or another comparable security used on residential immovable property and those whose purpose is to acquire or retain property rights in land or in an existing project building (explicitly excluded from the Directive as per Article 2(a) and (b)).

<sup>272</sup> The MCD also includes provisions addressing the conduct of businesses, remuneration policies, as well as tying and bundling practices.

<sup>273</sup> Interviews with consumer associations, industry representatives and Member States; Open Public Consultation (specific).

<sup>274</sup> The need to improve consumer protection against over-indebtedness was identified as one of the main shortcomings of the Directive (see EQ15).

<sup>275</sup> Interviews with industry representatives and Member States.

<sup>276</sup> The offering or the selling of a credit agreement in a package with other distinct financial products or services where the credit agreement is not made available to the consumer separately.

<sup>277</sup> Interviews with Member States.

the MCD and the terms used throughout the texts. An example is the definition of the APRC<sup>278</sup>, which in the MCD includes a reference to the costs that need to be included and the present value of all future or existing commitments<sup>279</sup>.

No major inconsistencies were identified between the Directive and other relevant EU-level legislation, although room for further alignment or synergies were identified in several instances. This is in line with the feedback from key stakeholders, most of whom believed that the Directive was coherent with other EU-level legislation, including the PSD2, the UCPD, the GDPR and the DMFSD<sup>280</sup>, while other key stakeholders pointed to the e-Privacy Directive, the e-Commerce Directive, the Benchmark Regulation, the Insurance Distribution Directive (IDD) and the AMLD<sup>281</sup>. Please see the relevant Annex for more details.

**EQ14 - To what extent are the provisions of the Directive and their implementation at national level coherent with national and EU-level data protection legislation?**

There are several provisions of the Directive that are directly impacted by the General Data Protection Regulation. In this respect, more clarity could be achieved through better referencing in the Directive the relevant aspects of the General Data Protection Regulation. The Directive does not specify the amount and categories of data that can be used –or not- in the creditworthiness assessment process and does not tackle automated decision making in creditworthiness assessments.

There are no inconsistencies between the Directive and the the General Data Protection Regulation (GDPR) as such. Creditworthiness assessment (CWA) must be carried out in full compliance with the GDPR, including the processing of data obtained from credit databases. Better alignment could be ensured by explicitly indicating that credit providers are bound by GDPR obligations and relevant national data protection legislation when collecting, sharing and storing consumer data.<sup>282</sup> A specification of the categories of data that can be used for CWA along the lines of the Mortgage Credit Directive (MCD),

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<sup>278</sup> As defined by Article 4(15) of the MCD, the APRC “includes the costs referred to in Article 17(2) and equates, on an annual basis, to the present value of all future of existing commitments (drawdowns, repayments and charges) agreed by the creditor and the consumer”.

<sup>279</sup> Article 4(15) MCD.

<sup>280</sup> Open Public Consultation (general).

<sup>281</sup> Interviews with consumer associations and industry representatives; Open Public Consultation (specific).

<sup>282</sup> GDPR sets out seven key principles, including: lawfulness, fairness and transparency; purpose limitation; and data minimisation. When data is collected, data controllers must be clear about why it is being collected and how it is going to be used. In addition, data controllers should only process the minimum amount of data required for their purposes. Personal data is required to be accurate, fit for purpose and up to date. When personal data are not needed anymore for the purpose for which it was collected, they should be deleted or destroyed unless there are other grounds for retaining it. GDPR states that data controllers should have the appropriate levels of security in place to address the risks presented by their process. Data controllers must take responsibility for the data they hold and demonstrate compliance with the other data protection principles. In addition to these principles, the article on automated decision-making and its guidance, as well as the provisions on the rights of information and data access are relevant for creditors in the way CWAs are carried out and credit databases are used .



together with a reference, in particular, to the data minimisation principle would improve legal certainty.

The vast majority of stakeholders consulted for this evaluation argued that the application of the Directive is done in full compliance with EU personal data protection laws (mostly about the use of credit databases that provide data to assess the credit-worthiness of consumers). However, a number of risks were highlighted by a few stakeholders. The European Consumer Organisation BEUC<sup>283</sup> and the Financial Services User Group (FSUG),<sup>284</sup> for instance, have expressed concerns about the new types of personal data (e.g. digital footprints or social network data) collected online (notably by new types of providers such as certain fintech providing online credit or crowdfunding platforms<sup>285</sup>) for verifying the creditworthiness of consumers and the impact this could have on vulnerable consumers in particular and their access to credit. These stakeholders argue that limited or no rigorous scrutiny of consumers' ability to pay (creditworthiness) can in fact lead to higher risks of default and indebtedness, with vulnerable consumers accessing loans they cannot repay.

While only 13% of respondents to the Open Public Consultation reported that the GDPR is incoherent with the Directive, there is uncertainty as to the practical implications of requirements on the identification, collection, sharing and use of data of consumers for the purposes of the CWA. Recent work by national data protection authorities is thus helpful in providing guidance on how the GDPR impacts the functioning of the Directive provisions<sup>286</sup>.

GDPR clarifies that data subjects have the right to ask for human intervention in case of decisions based solely on automated processing which significantly affect them e.g. automatic refusal of an online credit application. In addition, data subjects have the right, in case of automated decision-making, including profiling, to receive meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing. However, the fact that the Directive does not specify which categories of data can be used – or not- nor their amount in the CWA process is a gap that the GDPR cannot fill on its own effectively, particularly considering the objective of the CWA obligation to ensure consumers are provided with loans that are appropriate to their financial situation (see also EQ15 on the relevance of the Directive provisions in light of digitalisation).

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<sup>283</sup> BEUC, 2017.

<sup>284</sup> FSUG, 2019.

<sup>285</sup> Crowdfunding is the practice of funding a project or venture by raising monetary contributions from a large number of people. It is often performed via internet-mediated registries that facilitate money collection for the borrower (lending) or issuer (equity).

<sup>286</sup> In October, the Italian Data Protection Authority (Garante per la protezione dei dati personali) approved a new Code of conduct for credit reporting systems operated by private entities regarding consumer credit, creditworthiness and punctuality in payments, proposed by the trade associations: [https://edpb.europa.eu/news/national-news/2019/new-rules-credit-reporting-systems-digital-economy\\_fr](https://edpb.europa.eu/news/national-news/2019/new-rules-credit-reporting-systems-digital-economy_fr)

Beyond CWA, compliance with GDPR is also key when it comes to advertising practices, in case of prices determined in an automated manner<sup>287</sup> or lack of information on the pricing structure<sup>288</sup>. These practices have significant consequences for consumers, as they limit their access to certain financial services. Consumers, according to the GDPR, can also prevent the processing of their personal data for marketing purposes at any time, by withdrawing any consent previously provided, or objecting to the processing of their personal data for marketing purposes.

## RELEVANCE

Relevance looks at the relationship between the needs and problems in society and the objectives of the intervention and hence touches on aspects of design.

### **EQ15 - Are the objectives of the Directive still relevant? Does the Directive address current and anticipated future needs and challenges (e.g. market developments, consumer behaviour and needs), including those of consumers and providers?**

Considering the developments explained in section 3 and the above analysis, while the objectives of the Directive remain relevant, certain shortcomings prevent it from addressing the current and anticipated future needs and challenges of consumers and credit providers, particularly in relation to issues linked to digitalisation and responsible lending.

The Directive was intended to establish a well-functioning internal market in the field of consumer credit and to ensure a high level of consumer protection. Despite the fact that both these objectives are also pursued, directly or indirectly, by other relevant EU-level legislation (e.g. Mortgage Credit Directive (MCD)), the evidence gathered suggests that the Directive is still considered relevant, as it provides a specialised framework that takes account of the functioning and specific issues related to consumer credit.

More than 10 years later, however, needs have evolved, especially considering the changes brought by digitalisation and the challenges the EU is facing to fully engage in the transition towards a green economy including the uptake of energy efficient loans<sup>289</sup>.

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<sup>287</sup> Article 22 of the GDPR may be triggered, leading to heightened information requirements. The European Data Protection Board/WP29 Guidelines on automated individual decision-making and profiling for the purposes of Regulation 2016/679 specify that “Automated decision-making that results in differential pricing based on personal data or personal characteristics could also have a significant effect if, for example, prohibitively high prices effectively bar someone from certain goods or services.”

<sup>288</sup> The lack of transparency in advertising practices can be considered a misleading omission (UCPD Article 7 (4)(c)). In addition, the lack of transparency when processing personal data for advertising purposes may also lead to possible violation of a number of GDPR provision, in particular Article 5(1)(a), Article 13, 14 and Article 22 if automated decision making is employed. The processing of personal data may also be used for price discrimination purposes; while, the practice of price discrimination is not expressly illegal, its uses may lead to problems, such as excluding certain segments of society or providing a higher price to determined categories of people based on certain categories of personal data (for instance, based on the home addresses of the consumer, the price might be higher or lower).

<sup>289</sup> In her “Political Guidelines For The Next European Commission 2019-2024”, President of the European Commission Ursula von der Leyen stressed that “Europe must lead the transition to a healthy planet and a new digital world”.

## Objective 1: Ensuring a high level of consumer protection

The need to ensure a high level of consumer protection is readily acknowledged by all stakeholders, and the Directive provisions have enhanced consumer protection since the introduction of the Directive. However, the relevance of the Directive provisions in ensuring consumer protection in light of the changes in the credit market and in consumer behaviour is less evident.

The relevance of this objective is reflected in the way that most Member States have transposed and implemented the Directive, in most cases going beyond the requirements laid down by the Directive to ensure better consumer protection<sup>290</sup>. The extent to which the provisions of the Directive are aligned with the needs of consumers in practice is subject to debate. Several provisions of the Directive proved particularly relevant to address issues that consumers faced a decade ago. The extension of the right of withdrawal as well as the harmonisation and establishment of a common formula to calculate the Annual Percentage Rate of Charge (APR) all proved useful for consumers<sup>291</sup>.

Ten years on, the Directive covers some – but not all - of the current consumer needs<sup>292</sup>. The last decade has seen important changes in consumer behaviour that are not reflected in the provisions of the Directive. Consumers' decision-making processes in deciding to take up credit have changed as a result of digitalisation and the transformation of consumption habits. Over 90% of the Open Public Consultation respondents agreed that digitalisation has changed the credit market over the past ten years. For instance, consumers are slightly less concerned with the location of the provider, instead getting used to smoother and faster processes, also as a result of the industry's push for quicker processes. The approach to consumer protection adopted by the Directive is anchored in the 'information paradigm', whereby the 'average consumer' is assumed to make good decisions based on the information received<sup>293</sup>. This is a somewhat outdated paradigm, however<sup>294</sup>.

Whilst the general feedback collected in the Open Public Consultation show that a large majority of stakeholders consider the Directive provisions relating to consumer information as relevant, the details contained in their contributions as well as the

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<sup>290</sup> Examples of these additional steps are: the extension of the scope of the Directive to other credit; caps on interest rates; authorisation regimes; stricter CWA obligations; strengthened supervision and enforcement measures; further requirements with respect to advertising.

<sup>291</sup> Interviews with consumer organisations and Member States.

<sup>292</sup> Interviews with consumer organisations, Member States and enforcement authorities; FSUG, 2019. Although opinions on whether the Directive addresses current needs were evenly divided among national authorities and industry representatives, all consumers organisations stated that it meets consumer needs in their Member State. It should be noted, however, that most consumer complaints concern the level of fees, pre-contractual and contractual information, debts and debt collection, levels of interest rates and management issues, meaning that some of consumers' main issues are not addressed by the Directive.

<sup>293</sup> For more information see Sibony Anne-Lise & Helleringer Geneviève, 'EU Consumer Protection and Behavioural Sciences' in Sibony Anne-Lise & Alemanno Alberto 'Nudge and the Law: A European Perspective', Hart Publishing, 2015.

<sup>294</sup> BEUC, 2017; European Parliament, 2018; Interviews with industry representatives.

evidence collected as part of this study show a more nuanced landscape. Indeed, the provisions of the Directive are not entirely adapted to current consumer behaviour and the way information is displayed online as the Directive does not specify how information should be presented to consumers specifically in a digital environment where different dynamics (in terms of speed of information and consumer experience) apply. Indeed, consumers are unlikely to read and process large amounts of information (which only in part derives from the Directive and, on the contrary, is sometimes used to exploit behavioural biases), and often sign without understanding the conditions of the agreement, especially when undertaking credit online<sup>295</sup>.

Another shortcoming relates to the Directive's limited coverage of responsible lending. While the early versions of the Directive proposed by the Commission spelled out the objective of avoiding consumers' over-indebtedness and included specific obligations seeking to ensure responsible lending<sup>296</sup>, the final version after negotiations did not establish such a clear duty<sup>297</sup>. Some of the Directive tools -especially the obligation to perform a creditworthiness assessment (CWA) and to provide adequate and comprehensive information- are underdeveloped to effectively ensure responsible lending and avoid over-indebtedness.

From the perspective of credit providers, responsible lending requires them to design credit products responsibly and to establish business practices that ensure that these products are sold to consumers who can reasonably fulfil their obligations. The Directive fails to address product design issues, with many of the problematic products falling outside the scope of the Directive (see EQ16). From a consumer perspective, responsible lending focuses on their ability to understand their options, the conditions applicable, and the potential risks. Even where they are covered, the Directive does not contain any provision to mitigate their risks. Responsible lending concerns were highlighted by 20% of consumer associations, while also a few industry representatives argued that responsible lending requirements can reduce consumer detriment and costs for credit providers. As discussed previously, some Member States have adopted specific provisions to address problematic lending practices.

Several irresponsible lending practices have been observed in the consumer credit market. Chief among these are the cross-selling of products like insurance policies (in many cases to unsuitable consumers), the targeting of vulnerable consumers by promoting easy and quick access to some of the most potentially dangerous credit products (e.g. short-term high-cost credit) and failing to support consumers who are struggling to repay on time. A number of shortcomings prevent the Directive from tackling these issues:

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<sup>295</sup> Interviews with consumer associations, Member States and industry representatives; Survey of creditors; FinCoNet, 2017; Danish Competition and Consumer Authority, 2018; European Commission, 2016d; See case study 1 in the study supporting the evaluation (Pre-contractual information) for further details.

<sup>296</sup> For instance by avoiding unreasonable credit contracts, introducing duties of credit providers to assess and advise on the risks of default and holding them responsible during all phases

<sup>297</sup> BEUC, 2017.

- the Directive does not specify explicitly that CWAs should be borrower-focused (i.e. focused on whether this can be done without incurring substantial financial harm), as confirmed by the case law of the Court of Justice of the EU ;
- it does not establish the consequences of a negative CWA<sup>298</sup>;
- it does not impose any restrictions on cross-selling;
- it does not require Member States to provide for a general obligation on creditors to offer consumers the most suitable credit;
- it does not impose on credit providers an explicit duty to recommend suitable credit agreements to consumers , but only an obligation for Member States to ensure that creditors and intermediaries provide adequate explanations to consumers. Moreover, it does include standards on advisory services;
- it does not establish any obligation of fair treatment of consumers at risk of default or that have defaulted.

Some Member States have gone beyond the requirements of the Directive to mitigate these risks. Measures taken include establishing further requirements in advertising, e.g. obliging credit providers to include messages warning consumers that borrowing money costs money.<sup>299</sup> With respect to standard information requirements to be included in advertising, most Member States went beyond the requirements laid down by the Directive to ensure better consumer protection.<sup>300</sup>

The stakeholder consultation reveals a perceived need – particularly among consumer associations and national authorities - for the Directive to further promote responsible lending and increase consumer protection against over-indebtedness. Other than the adaptation of information requirements, there were no suggestions for specific supporting measures apart from a reference to the need of further promoting financial education (both among credit providers’ employees and consumers)<sup>301</sup>. However, the Financial Services User Group (FSUG) recently put forward several suggestions<sup>302</sup>, including the introduction of conduct of business rules, rules on product oversight<sup>303</sup> and EU-level interest rate caps<sup>304</sup>.

Finally, some consumer associations highlighted that better protection of consumers could be achieved by strengthening enforcement of credit providers’ obligations<sup>305</sup>. A

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<sup>298</sup> This aspect may be clarified, to a certain extent, through Judgment of the Court of 6 June 2019, *Schyns*, C-58/18, EU:C:2019:467 as the CJEU noted that the obligation to perform a CWA seeks to protect consumers against the risks of over-indebtedness and insolvency.

<sup>299</sup> Legal analysis and supporting study’s case study 2 (*Advertising and Marketing*) and case study 6 (*Credit worthiness assessment*) for further details.

<sup>300</sup> Legal analysis; interviews with Member States. See case study 8 in the study supporting the evaluation (*Thresholds and scope*) for further details.

<sup>301</sup> EESC, 2019; Interviews with industry representatives.

<sup>302</sup> FSUG, 2019.

<sup>303</sup> Similar to the 2016 EBA Guidelines on product oversight and governance.

<sup>304</sup> Based on good national practices and defining an acceptable default rate within a risk pool for all creditors. Alternatively, EU-level legislation could provide that Member States shall impose a cap on interest rates. An interest rate cap is the maximum interest rate that may be charged on a contract or agreement.

<sup>305</sup> Interviews with consumer associations.

small number of stakeholders argued that the Directive could potentially contribute to better enforcement by harmonising sanctions across the EU<sup>306</sup>.

The Directive does not address the issue of financing sustainable consumption. However, the Commission has recently launched an EU Green Deal and the issue is likely to become relevant for consumer credit as well in the near future<sup>307</sup>.

## **Objective 2: Facilitating the emergence of a well-functioning internal market**

Stakeholders acknowledge the importance of having a harmonised framework to ensure a level-playing field between creditors even though they do not seem to consider cross-border access as an important need. This is also due to external regulatory and natural obstacles that hamper cross-border offer of credit (see EQ1). However, cross-border demand is expected to raise because of increased digitalisation in the sector and changes in consumer behaviour. The transformations linked to digitalisation might not be adequately captured by the provisions of the Directive.

Stakeholders across all groups – especially industry representatives and national authorities - acknowledge the relevance of a legal framework that allows a level-playing field for all credit providers (regardless of their nature and location) in ensuring the functioning of the internal market. Regulatory fragmentation raises costs for providers who want to sell on another market, creates an unlevel playing field for creditors, and reduces the offer available for consumers, hampering the achievement of a well functioning internal market (see EQ1).

Neither consumers nor credit providers see achieving an effective cross-border market for consumer credit as the most pressing need. However, while cross-border credit is insignificant as a whole<sup>308</sup>, still nearly 30% of consumers in this evaluation's survey indicated to have looked for loans in other countries, showing there to be a demand potential<sup>309</sup>. Although several obstacles play a role in this, the low levels of demand are also explained by a lack of interest, as consumers are satisfied with the national offer (especially in large economies) or prefer to purchase products in their own country<sup>310</sup>. From the perspective of the offer, the low demand for cross-border credit and the legal fragmentation result in a lack of incentives for credit providers, especially traditional providers<sup>311</sup> - which usually set up a local branch and provide credit from there. There are indications, however, that the cross-border market may develop in the future, due to

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<sup>306</sup> Interviews with Member States, EESC.

<sup>307</sup> The third phase of Energy Efficiency Financial Institutions Group (EEFIG) - established by the European Commission and United Nations Environment Program Finance Initiative - was launched in November 2018 (until 2022) with the aim to act as an action-oriented platform, to collect, develop, implement and disseminate innovative ideas to accelerate finance for energy efficiency in Europe. One of its working groups is thus currently working on the financial performance of loans to improve the energy efficiency of housing ([www.eefig.eu](http://www.eefig.eu)).

<sup>308</sup> European Commission, 2016b; Consumer survey; Open Public Consultation (general).

<sup>309</sup> Consumer survey.

<sup>310</sup> European Commission, 2016b; ECRI, 2018a; Open Public Consultation (general); Interviews with Member States, consumer associations and industry representatives.

<sup>311</sup> Due to the digital environment in which they operate, fintech companies are less constrained by geographical barriers.

the digitalisation of business processes and changes in consumer behaviour, raising new issues for consumers and credit providers<sup>312</sup>. Against this background, achieving a well-functioning internal market is likely to become increasingly relevant.

The adoption of the Directive led to a certain degree of legal harmonisation (as discussed in EQ1), but did not achieve the intended degree of uniformity for all rules across the EU. Similarly, credit providers believe that the new framework did not significantly improve legal clarity. The limited impact of the Directive may be an indication that the provisions of the Directive were not entirely in line with the objectives pursued by the Directive (see EQ11). A decade after the adoption of the Directive, important shortcomings have been identified that suggest that the Directive is ill-equipped to address several current and future needs<sup>313</sup>.

Digitalisation has triggered the emergence of new players (e.g. fintech companies such as peer-to-peer lending and online banks). As discussed under EQ16, it is unclear whether these new players are bound by the Directive obligations, which in turn raises questions in terms of level-playing field with traditional providers.

Digitalisation has also transformed the way that credit providers communicate and engage with consumers. It has changed the way in which consumer data are processed, both for marketing and creditworthiness assessment (CWA) purposes. Business processes have also been significantly impacted as a majority of consumer credit is now sold using a combination of online and offline processes, and credit providers are increasingly using – in the absence of detailed requirements – alternative information in CWA (see EQ4) as well as automated decision-making processes.

The inability of the Directive to fully adapt to these trends is highlighted as one of the main issues limiting its relevance today<sup>314</sup>. This limitation was noted by all stakeholder groups consulted for this study, especially industry representatives and national authorities<sup>315</sup>. However, these transformations show that pursuing the objective of facilitating the emergence of a well-functioning internal market remains relevant, not only because of the need to guarantee a level-playing field between creditors independently of their type or the practices they use, but also in the light of increased digitalisation which is likely to foster cross-border market.

#### **EQ16 - How relevant and adapted are the scope, thresholds and definitions in the Directive to the current market situation?**

The scope of application of the Directive seems partly inadequate to ensure sufficient consumer protection in relation to certain credit products. The main issues include the

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<sup>312</sup> The expected increase in cross-border demand could lead to an augmentation of credit agreements relating to foreign currency loans, with the attached significant exchange rate risks, which could lead to substantial consumer detriment. To limit those risks, for example, the Mortgage Credit Directive (2014/17/EU) introduced specific requirements for foreign currency loans of the MCD.

<sup>313</sup> European Parliament, 2018; EESC, 2019; Interviews with consumer organisations, industry representatives, Member States and enforcement authorities.

<sup>314</sup> ECRI, 2018a; EESC, 2019.

<sup>315</sup> Interviews with consumer organisations, industry representatives and Member States.

EUR 200 threshold, particularly in case of high-cost credit, and the exclusion of specific products. The definitions of creditor and credit intermediaries are not completely relevant to ensure the Directive is adapted to the digital era.

While three quarters of respondents to the Open Public Consultation argued that the scope of Directive is relevant, the minimum and maximum thresholds of Article 2(2)(c) are generally perceived as only partially relevant, as they establish an artificial distinction between credit, based on the amount rather than the nature of the credit. Only 10% of consumer associations and 20% of Member State authorities did consider the scope to be adequate, as opposed to half of industry representatives.

As explained under EQ7, the EUR 200 minimum threshold is particularly problematic, as it prevents the Directive from tackling some of the issues linked to high-cost and revolving credit. These types of credit may result in high levels of consumer detriment, as they tend to be very expensive and are typically used by vulnerable consumers with limited access to other types of consumer credit, often leading to over-indebtedness. In relation to credits above EUR 75,000 threshold, it can be argued that there is a gap in legislation, as only those for the purposes of renovating an immovable property are covered by the Directive. However, as they are less common (in total numbers, not in total value), stakeholders have much less frequently pointed to the higher threshold as a potential problem.

The list of products exempted under Article 2(2), or of products only partially covered by the current Directive, also raises several concerns, as highlighted under EQ7. Four main products are perceived as particularly risky: zero-interest loans (they can have high penalties for running late for periodic instalments), overdraft facilities (they can be raised to higher ceilings without consumers being aware), leasing agreements (that do not impose an obligation to purchase the good in terms of the ability to exercise rights) and agreements with pawnshops (equally for exercising rights). Although the extent to which these credit products are used by consumers varies, some Member States nevertheless highlighted their increasing importance in the field of consumer credit and the need to minimise the risks for consumers.

Most of the Article 3 definitions remain relevant to the current market situation, with only a slight revision or clarification of the definition of ‘creditor’ and ‘credit intermediary’ suggested as necessary to ensure that the Directive covers the new players in the market since 2008. Stakeholders pay particular attention to this point because of the emergence of peer-to-peer lending (P2PL)<sup>316</sup> platforms, which pose risks for both lenders and borrowers. Although P2PL platforms are not one of the exemptions of Article 2(2), there is little clarity on whether they are covered by the Directive, thereby diminishing the relevance of the Directive and degree to which it is adapted to current trends. Lenders on such platforms are usually private individuals and it is somewhat

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<sup>316</sup> Enables individuals to obtain loans directly from other individuals, cutting out the financial institution as the middleman. P2P lending is also known as social lending or crowdlending.



unclear, in such case, if they fall strictly within the definition of ‘creditor’, as they may not necessarily provide credit ‘in the course of [...] trade, business or profession’.

The uncertainty around the scope of application of the Directive has allowed some types of credit products to remain partially or not at all covered by the Directive, and has also resulted in a very fragmented legal framework across the EU and different degrees of consumer protection standards and enforcement rules (potentially creating incentives for regulatory arbitrage). As Member States are free to regulate credit agreements not covered by the Directive, they have opted to tackle their own most pressing issues in diverse ways.

Overall, a majority of stakeholders across all groups therefore argued that the scope of application of the Directive should be revised. Industry representatives pointed out that all consumer credit providers should be bound by the same rules (even if enforcement standards might currently be different for banks and non-banks<sup>317</sup>), while national authorities and consumer organisations would like to see certain credit products brought within the scope of the Directive to enhance its overall effectiveness.

## **EU ADDED VALUE**

EU added value looks for changes which it can reasonably be argued are due to the EU intervention over and above what could reasonably have been expected from national actions by Member States.

### **EQ17 - Where does the EU added value of the Directive lie? Would the benefits delivered by the Directive have been achieved in the absence of EU-level intervention?**

The added value of the Directive is widely recognised by all stakeholders, with overwhelming agreement that all its provisions should remain regulated at EU level. The EU added value lies in the Directive’s contribution to increasing consumer protection and, to a lesser extent, harmonising the provisions governing consumer credit in the EU.

Stakeholders agree that consumer credit - and consumer protection, in particular - benefit from EU-level action and a harmonised approach. 83% of the respondents to the European Economic and Social Committee survey found that the Directive had increased transparency and fairness in credit agreements between creditors and consumers. All stakeholder groups acknowledge the importance of a harmonised framework allowing for a level-playing field for all credit providers<sup>318</sup>. Between 88% and 93% of respondents to the Open Public Consultation considered all provisions to have added value at EU-level,

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<sup>317</sup> In several Member States, different authorities supervise banks and non-bank creditors. Traditionally, banks are supervised by Central Banks or National Financial Authorities whilst non-banks are supervised by Consumer Protection Authorities.

<sup>318</sup> Interviews of consumer organisations, industry representatives, Member States and enforcement authorities.

with only creditworthiness assessment (CWA) somewhat a bit lower at 74% (probably because of the various ways it has been implemented at national level).

In order to meet the Directive's objectives to guarantee a high level of consumer protection across borders and to facilitate the emergence of an internal market for consumer credit, the role of the EU in ensuring a even level of protection for consumers and a level-playing field for providers is key. Moreover, considering that the provision of cross-border credit is expected to increase with the developments linked to digitalisation, an EU framework will be all the more necessary. Overall, the findings of this study present a rather fragmented regulatory landscape across the EU, with some elements of the Directive more harmonised than others, which is an indication that the Directive has partially achieved its potential in terms of adding EU value. The Directive managed to create a level-playing field on certain provision, which is partially hampered by vast differences in application of the Directive, enforcement, and contextual differences in the demand and supply of the credit market. At the same time, key benefits of the Directive would likely have been only partially achieved – in their reach or in the number of Member States – in the absence of EU-level intervention.

As described above, specific benefits relate primarily to individual provisions, the Directive as a whole, or its wider effects. The benefits stemming from the Directive vary significantly between Member States, mostly based on whether relevant national predecessors existed to the Directive. Some of the provisions introduced by the Directive were entirely novel for some Member States and as such had a unique impact<sup>319</sup>. This points to clear added value of the Directive in ensuring certain consumer protection standards. As discussed in EQ1 and EQ2, the introduction of standardised formats such as the Standardised European Consumer Credit Information (SECCI) and the Annual Percentage Rate of Charge (APR) clearly has reduced fragmentation across the EU and minimised disparities in consumer protection between Member States. Similarly, the right of withdrawal and of early repayment help creating EU-wide minimum levels of consumer protection.

What remains unclear, however, is whether such provisions would have been developed by Member States in the absence of the Directive and thus whether the same result would have been achieved. While, in some Member States<sup>320</sup>, transposition of the Directive had little impact on the national framework regulating consumer protection<sup>321</sup>, making it difficult to establish whether the impact would otherwise have been delivered, in others the Directive definitely added value to the national framework<sup>322</sup>. In most cases, Member States have implemented significant changes to national legislation in order to transpose and implement the Directive. It could thus be assumed that the introduction of the

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<sup>319</sup> For example, several Member States had no standardised information sheet prior to the introduction of the SECCI.

<sup>320</sup> Belgium is one such example.

<sup>321</sup> Legal analysis in the study supporting the evaluation; Interviews of Member States and consumer associations.

<sup>322</sup> For instance, Slovenia mentioned that in the absence of the Directive there might be little or no regulation in the field of consumer credit, which would seem to indicate that the Directive played a fundamental role in the regulation of that sector.

Directive's provisions had a positive impact on the national framework that may not otherwise have happened<sup>323</sup>. The introduction of the Directive also avoided fostering greater national disparity as some Member States refrained at the time from modifying their national legislation before the Directive adoption, which prevented the creation of much bigger differences than those preceding the adoption of the Directive. This in turn reduced the risk of regulatory arbitrage and of legal loopholes exploitation to achieve competitive advantages, while also diminishing further challenges to enforcement.

The evaluation finds that most Member States have gone beyond the requirements of the Directive and implemented additional measures at national level. These additional measures focus almost exclusively on raising consumer protection standards. This may be an indication that the Directive's provisions alone were not entirely sufficient to protect consumers to a level required by those Member States, which decided to adopt stricter measures as part of the transposition. However, in certain cases, some Member States adopted additional measures much after 2008-2010 as a response to very particular issues<sup>324</sup>.

Regulatory fragmentation and national differences in consumer protection standards were identified as leading to distortions of competition among creditors in the EU and creating obstacles to the internal market before the introduction of the Directive<sup>325</sup>. These barriers have not been entirely eliminated with the entry into force of the Directive. However, many external factors (e.g. Member States going beyond the Directive and several credit-related aspects falling outside of the scope of the Directive) are responsible for this and therefore the Directive alone cannot reasonably have been expected to boost cross-border activity. While the added value of the Directive to facilitate the development of a more transparent and efficient credit market benefitting both businesses and consumers so far is clear, its current form runs the risk of diminishing in value as areas not foreseen at the time of its drafting become more prevalent. The added value of the Directive in its current form may thus decrease in the future given that it is not entirely adapted to market changes (changing consumption patterns, unfair lending, new market players etc – see EQ15) that are likely to intensify because of digitalisation.

**EQ18 – What would be the most likely consequence of withdrawing the Directive? In the absence of EU-level action, to what extent would Member States have the ability or possibility to enact appropriate measures?**

If the Directive were to be withdrawn now, Member States may, over time, legislate (differently) on those elements of consumer credit that are currently harmonised by the Directive, entrenching the already fragmented landscape that governs consumer credit. This would likely lead to vastly different levels of consumer protection across the EU, also impacting the level-playing field between creditors and the cross-border provision

<sup>323</sup> Legal analysis in the study supporting the evaluation.

<sup>324</sup> This is the case for interest rate caps, which in many cases were put into place following specific issues (such as the emergence of payday loans) that were less common and not widespread throughout the EU at the time of transposition and for which a general provision in the Directive might have been disproportionate.

<sup>325</sup> Council of the European Union, 2007. 9948/2/07 REV 2.

of credit – likely to increase in the years to come due to digitalisation.

The lack of a harmonised framework may prove detrimental, especially as the market evolves. Fragmentation would increase as some Member States are likely to opt for further regulatory action while unequal levels of enforcement also raises the risks of regulatory arbitrage.

A withdrawal of the Directive could indeed result in Member States having different formulas for the calculation of the Annual Percentage Rate of Charge (APR) or requiring creditors to provide different types of pre-contractual information and advertisement and in various formats. Consolidated rights, such as the right of withdrawal and the right of early repayment, could be amended, making them subject to different timeframes in the Member States. Differences in the market, such as the prominence of short-term loans in a given Member State could lead to a different APR calculation methodology that is more favourable to certain types of credit. Creditworthiness assessments and the use of credit databases are another area where undoubtedly differences may widen. Member States could opt for different approaches on automatic credit scoring carried out by artificial intelligence. Equally, they may authorise creditors to use certain new forms of data which would currently not be considered appropriate or proportionate for creditworthiness assessments (CWAs).

Such changes at national level would not necessarily damage the interests of other Member States, though differences in standards could affect neighbouring countries. It would, however, most probably lead to greater differences in the levels of consumer protection across the EU than those visible today.

In terms of impacts on creditors, changes to the type and format of pre-contractual information, for example, or the information to be included in advertising, and the length of the right of withdrawal and caps on repayment charges would require costly and burdensome adaptations to business practices across Member States. This would also hamper the level-playing field between creditors.

As a result of the above, reduction in the harmonisation of the provisions governed by the Directive would invariably also have a negative impact on cross-border access to credit. Greater differences between Member States would lead to greater difficulties and costs for creditors to comply with the different regulations, possibly hindering the emergence of an internal market in consumer credit, at a moment when digitalisation could help overcome certain practical barriers in the provision of credit and as consumers appear increasingly interested in cross-border credit offers<sup>326</sup>.

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<sup>326</sup> Consumer survey question 6a - thirty percent of consumers appear interested in cross-border offers for consumer credit.

## 6. CONCLUSIONS AND LESSONS LEARNED

The evaluation results will feed into the review of the Directive, which was included among the REFIT initiatives of the Commission Work Programme 2020. Based on the outcome of the present evaluation, the review will assess potential options to ensure better consumer information, taking into account the impact of digitalisation, as well as strengthened consumer protection from irresponsible lending practices, particularly those spread online.

### Effectiveness

The Directive's objectives of ensuring a high level of consumer protection and facilitating the emergence of a well-functioning internal market have been partially achieved. The evaluation found a number of limitations and shortcomings. Although partly due to the Directive itself, these stem mainly from the practical application of the Directive in the Member States, its enforcement, aspects not covered by the Directive and the development of overall credit supply and demand.

As regards the first objective, the introduction of the Directive has enabled the development of a specific legal framework to protect consumers concluding a credit agreement, which is key to ensure consumer confidence. However, several Member States have introduced additional elements, probably because further measures were needed to address detrimental practices. Uneven consumer protection across the EU leads to fragmentation, different rights for consumers and unequal conditions for cross-border access to credit products. Even if currently limited (around 1% of all loans), cross-border credit activities already impact some EU consumers and are expected to increase thanks to digitalisation.

Concerning the second objective, there are two aspects to be considered. On the one hand, cross-border credit provision, whose small size can be mostly explained by a series of barriers, most of which relate to aspects beyond the provisions of the Directive, both on the supply and on the demand side (regulatory and market fragmentation, general consumer preferences, geographically-based discrimination through geo-blocking techniques...). However, certain barriers to cross-border credit provision are linked to the way some of the Directive provisions have been implemented by Member States (e.g. adding elements to their own consumer credit legislation, usually imposing additional requirements on creditors and affording greater protection to consumers). An increase in cross-border credit provision could foster competition and ultimately benefit consumer choice. On the other hand, ensuring a level-playing field between creditors by providing a harmonised framework. The Directive has played a positive role in achieving this, thanks to harmonisation of certain key aspects (Standardised European Consumer Credit Information, right of withdrawal, ...) ensuring that providers have to comply with the same obligations across Member States. Hence, even though cross-border transactions remain very limited, the aim to achieve a better functioning internal market for consumer credit was partially met. Nonetheless, further reduced regulatory fragmentation would lead to exploitation of synergies and economies of scale in the internal market, lower

costs for providers (and consequently for consumers) who want to sell on another market and increased offer.

Despite regulatory fragmentation, legal clarity has improved as the Directive has provided a higher degree of regulatory harmonisation (although not for all provisions). However, different approaches to enforcement (including sanctions as well as remedies available to consumers in case of lack of compliance) at national level resulted in different levels of consumer protection across the EU.

The effectiveness of the Directive's provisions has been assessed taking into account market developments since its adoption, like the emergence of new providers, new products and new channels (i.e. digital tools). Current and future needs of consumers and credit providers could be addressed more effectively, particularly in relation to issues linked to digitalisation and irresponsible lending.

- Information disclosure: the effectiveness of both the provisions on advertising and pre-contractual information has been hindered by the way the required information is provided in online environment and on certain media, which can lead to information overload. The amount and complexity of the information provided in the Standardised European Consumer Credit Information reduces the form's effectiveness, particularly on digital tools. As regards the provision on advertising<sup>327</sup>, evidence shows that its impact varies depending on the prominence it is given and the media used. How information is provided is key: information provided in a timely, clear and salient way, could improve consumer understanding.
- Annual Percentage Rate of Charge: it provides a coherent formula and a comprehensive comparison tool across all Member States. When correctly conveyed and understood, it helps consumers to choose the credit most appropriate to their needs.
- Creditworthiness assessment: Member State interpretations of the creditworthiness assessment provisions of the Directive vary, and this creates a diverse landscape as regards the requirements for such assessment, potentially hampering the provision of cross-border credit. Properly performed creditworthiness assessments are indispensable in protecting consumers from over-indebtedness, and poorly performed creditworthiness assessments are often identified for those types of credit that are most appealing to consumers with limited credit histories, such as short-term, high-cost loans. There are concerns about data protection, and particularly about transparency, relevance, proportionality and fairness, as regards the use of new technologies and novel or alternative types of data. There are also concerns about granting of loans despite a negative creditworthiness assessment. These elements hinder the effectiveness of

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<sup>327</sup> As requested by the 2017 REFIT Platform opinion on the Directive, the effectiveness of the standard information requirements to be included in advertising was assessed. However, the potential for simplification of the advertisement without harming the consumer protection objective of the Directive could not be ascertained, see EQ9 and EQ10.

the provision, especially for more vulnerable consumers and in the light of the expected increase in the digitalisation of the consumer credit market.

- Credit databases: they have been established in all Member States, although their nature (private or public), as well as the type and quality of the data they contain, varies between countries, with associated differences in how they function in practice. Along with these explicit limitations, the principle of reciprocity plays a significant role in the limitation of access to credit databases in a cross-border context, since the lack of standardisation in the data to be collected and reported limits the exchange of information between Member States. The Directive's provision on access to credit databases has had limited impact on fostering the emergence of cross-border access to credit offers.
- Rights of withdrawal and early repayment: they are widely considered as important in offering high levels of protection to consumers. The evaluation found that a majority of consumers are aware of both rights, with the right of withdrawal far less frequently used than the right of early repayment. Relatively few consumers experience problems in exercising their right of withdrawal, with slightly more facing issues with early repayment. A recurring issue with the right of withdrawal relates to a lack of clarity on its application to linked credit agreements. Issues with the right of early repayment primarily relate to incorrect calculation of the compensation to be paid to the creditors.
- Definitions: the wording of the definitions has proved effective, although some ambiguity remains about whether the Directive covers certain new forms of lending that have appeared online (e.g. peer-to-peer lending).
- Scope: the scope of application of the Directive has not generally impacted the ability of the Directive to meet its objectives, though there is serious stakeholder concerns about adequacy of the lower threshold of EUR 200. Many Member States extended the scope of application of the Directive to consumer credit not covered by it, contributing to the fragmentation of the regulatory framework.

### **Efficiency and scope for burden reduction and simplification**

The evaluation found that the costs of the Directive are proportionate to its benefits, and estimates that those benefits outweigh the costs. The chief benefit of the Directive is the reduction in consumer detriment. Other factors contributing to a reduction in consumer detriment include the development of the credit sector itself, more stringent legislation in certain Member States, a possible uptake in overall sector compliance due to familiarity with the Directive, and increased consumer awareness.

Costs associated with the Directive include direct compliance costs, such as initial set-up costs. For public entities, this includes transposition of legislation, while private companies incur staff training and adaptation of IT systems costs. Public entities also have the recurring costs of monitoring, compliance and enforcement. While the 2008-2010 implementation period saw initial start-up costs for businesses - and for public administrations, to a lesser extent - ongoing and recurring costs are relatively limited for most provisions. Consumer detriment in consumer credit is estimated to have decreased over 2010-2018, with 20-25% of that reduction attributed to the Directive.

The evaluation estimates that many consumers may be affected by cross-selling practices where creditors try to push additional products by making them conditional on loan offers, unrequested extensions of the credit line<sup>328</sup> on revolving credit, asking for advance (down) payments, and - to a lesser extent – non-verification of the ability to pay (as part of creditworthiness assessments) and non-receipt of the Annual Percentage Rate of Charge or Standardised European Consumer Credit Information. Consumers' lack of awareness of their rights under the Directive may impede their exercise of those rights, in particular the right of withdrawal and understanding the Annual Percentage Rate of Charge.

The evaluation concludes that the provisions of the Directive are cost-effective. While some of the costs of implementing these provisions weigh on creditors, some (in particular creditworthiness assessment) costs would also be incurred in their absence in order to mitigate against the risks of defaulting customers.

There is further potential for improving the efficiency of the Directive by solving some compliance issues through better enforcement.

In the wake of the 2017 REFIT platform opinion, the evaluation also identified some scope for burden reduction and potential simplification, essentially for those elements that are costly yet without sufficient benefit to consumers, e.g. requirements for radio (and possibly TV) ads. However, such process runs the risk of potentially undermining consumer protection standards, hence it is not clear whether the Directive could be simplified without harming its consumer protection objective.

## **Coherence**

The Directive and its implementation at Member State level shows a fair degree of internal coherence, overall. The Directive provisions work well together, offering a good standard of consumer protection. There is, however, a degree of incoherence with respect to the second objective of the Directive, i.e. fostering an internal credit market in the EU. As a broad-scope objective, it is difficult for the Directive to achieve it on its own merits. In addition, the breadth of certain provisions has indeed contributed to their diverse application across Member States.

Overall, Member States' transposition of the Directive is coherent with the obligations stemming from the Directive. Nevertheless, several Member States have implemented some provisions of the Directive in very different ways making use of different regulatory choices (as allowed by the Directive) and/or have introduced provisions going beyond those foreseen in the Directive – typically to address specific national problems. This legal fragmentation has led to a lack of harmonisation and has undermined the internal market objective of the Directive.

The Directive is largely coherent and complementary with other EU-level consumer policy and legislation, although some elements could be better aligned. Greater alignment e.g. as regards approaches to responsible lending with the Mortgage Credit Directive

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<sup>328</sup> A fixed amount or limit of credit which is established for a consumer by a business or bank. It is the amount of outstanding credit which may not be exceeded at any time.



(2014/17/EU), which however covers on average higher value and more legally complex credit agreements, would foster legal clarity for Member States and credit providers and ensure a consistent approach in protecting consumers against over-indebtedness. The provisions of the Directive and their implementation at national level are generally coherent and compatible with the General Data Protection Regulation, however better clarity could be achieved in relation to the amount and categories of data to be used for the creditworthiness assessment.

## **Relevance**

The evaluation clearly showed the continued relevance of the objective to achieve higher consumer protection standards. This is reflected, for instance, in the way that most Member States have transposed and implemented the Directive, often going beyond the requirements laid down by the Directive to ensure better consumer protection (e.g. standard information requirements to be included in advertising).

Ten years on, the Directive covers some of the current consumer needs, although this evaluation suggests that the Directive is not sufficiently addressing irresponsible lending. Digitalisation has modified the decision-making process and overall habits of consumers, whose behaviours and preferences have evolved, as shown by recent studies<sup>329</sup>. These aspects are not necessarily reflected in the Directive, which is still anchored to the old pre-contractual ‘information paradigm’.

The objective on the fostering the internal market for consumer credit also remains relevant, although the Directive provisions only partially support its achievement. The adoption of the Directive has led to a certain degree of legal harmonisation, and as such a certain level playing field for providers. While the expected level of overall harmonisation did not materialise, the evaluation pointed to the ongoing relevance of a specialised framework that takes account of the functioning of consumer credit. As regards the cross-border credit market, still limited mostly because of external regulatory and natural barriers, there are indications that it may develop in the future.

The scope and thresholds of the Directive appear to be somewhat unadjusted with respect to the objectives and current context of the Directive. For example, the Directive excludes certain specific products, some of which have generated concern, such as some zero-interest loans, some overdraft facilities, leasing agreements that do not impose an obligation to purchase, and agreements with pawnshops. The thresholds (from EUR 200 to EUR 75,000) are noted as only partially relevant to the Directive’s objectives. The distinction between credit based on amount rather than on typology is artificial in light of the findings of the evaluation, in so far as it does not consider the risks linked to high-cost, short-term loans and revolving credit. Finally, most of the definitions in the Directive remain relevant to the current market situation. However, there are uncertainties as to whether the relevant definitions are entirely fit for purpose to address new forms of lending (e.g. peer-to-peer lending).

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<sup>329</sup> See London Economics, “Behavioural study on the digitalisation of the marketing and distance selling of retail financial services”, 2019.

## **EU added value**

The added value of the Directive emerged clearly from the evaluation and primarily lies in its contribution to increasing consumer protection. The introduction of harmonised provisions clearly contributes to a high level of consumer protection across the EU. In some Member States, a framework for the protection of consumers was already in place at the time of transposition, while for others it represented a significant change to their regulatory landscape. Variations between Member States have been observed not only in the impact of the Directive but also in how it was transposed. In some instances, transposition went beyond the requirements of the Directive, contributing to the fragmented landscape of consumer credit regulation in the EU. Were the Directive to be withdrawn, however, further fragmentation would be likely, which could lead to vastly different standards of protection over time and negatively impact consumers in those jurisdictions where standards would likely fall.

The lending sector is progressively getting digitalised with an increasing number of consumer credit contracted online. This digitalisation could help breaking down certain practical barriers to the cross-border provision of credit, thus increasing the number of consumers obtaining credit in another Member State. There is indeed a growing interest among consumers for cross-border credit offers: 29% of the respondents to the consumer survey conducted for the evaluation supporting study said they had sought for a credit from a creditor located in another EU country. In such a context, the EU added value of the Directive is likely to increase, given that the Directive provides for a similar set of rights and obligations for consumers and creditors across the EU. A harmonised regulatory framework at EU level facilitating the development of a more transparent and efficient credit market can benefit both businesses and consumers. On the one hand, industry does not need to face high compliance costs to meet different national rules and can offer more products to more people, possibly at better conditions, through the achievement of economies of scale. On the other hand, increased competition leads to a wider and cheaper selection of credit products for consumers. However, the Directive needs to be adapted to market changes (changing consumption patterns, unfair lending, new market players – see EQ15) that are likely to intensify because of digitalisation.

## **Annex 1: Procedural information**

### **LEAD DG, DECIDE PLANNING/CWP REFERENCES**

- LEAD DG: DG JUSTICE AND CONSUMERS
- DeCIDE PLANNING: PLAN/2018/3118
- CWP 2019 – ANNEX II (REFIT INITIATIVE N.10)<sup>330</sup>

### **ORGANISATION AND TIMING**

The evaluation took place between June 2018 and November 2019 and was announced in the 2019 Commission Work Programme, also following the commitment established in the 2017 REFIT Platform Opinion on Article 4 of the Directive. The evaluation also arises from Article 27(2) of the Directive, which specifies that the Commission should in particular review periodically certain thresholds and monitor the effect of the existence of the regulatory choices therein on the internal market and consumers.

The evaluation was carried out by Unit E1 "Consumer Policy" of the Commission, DG Justice and Consumers.

Representatives from the Secretariat General, the Legal Service, DG Financial Stability, Financial Services and Capital Markets Union (FISMA), DG Competition (COMP), DG Internal Market, Industry, Entrepreneurship and SMEs (GROW) and DG Communications Networks, Content and Technology (CNECT) were appointed to the Steering Group.

The Inter-Service Steering Group met 7 times between July 2018 and December 2019.

### **EXCEPTIONS TO THE BETTER REGULATION GUIDELINES**

The Better Regulation Guidelines and Tools were followed without any exception.

### **CONSULTATION OF THE REGULATORY SCRUTINY BOARD**

The evaluation was selected for scrutiny by the Regulatory Scrutiny Board ('the Board'). The RSB received the draft version of the evaluation Staff Working Document on 20 December 2019. Following the hearing which took place on 29 January 2020, the Board issued a positive opinion on the Evaluation.

In its opinion, the Board finds the Evaluation report (i.e. the Staff Working Document) to be comprehensive, informative and reader-friendly. Nonetheless it considers that it should further improve with respect to several aspects.

The evaluation Staff Working Document was modified to address the Board's recommendations. The main conclusions have been redrafted to draw lessons that emerge from the analysis. Limitations, including those linked to data collection, and uncertainties of the analysis have been better explained. Moreover, the significance of low levels of

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<sup>330</sup> [https://ec.europa.eu/info/sites/info/files/cwp\\_2019\\_publication\\_en\\_0.pdf](https://ec.europa.eu/info/sites/info/files/cwp_2019_publication_en_0.pdf)

cross border consumer credits and obstacles for the internal market have been better explained, as well as the need for EU level measures.

For more details, see the below table.

<b>Recommendations of the Board</b>	<b>How the recommendations were reflected in the Staff Working Document</b>
<p>1. The conclusions and executive summary should better bring out key insights and lessons learned from the evaluation exercise. The report (i.e. the Staff Working Document) should focus attention on core elements of the Directive and on areas where findings raise issues for policy makers and future political choices. It should draw clearer conclusions with regard to issues raised in the REFIT platform opinion. The report could also conclude more prominently on its findings on creditworthiness assessments. It could be more consistent in evaluating its double role in providing access to foreign credit markets and protecting consumers from over-borrowing.</p>	<p>Both the conclusions (Section 6) and the executive summary (standalone document) have been redrafted in order to show and highlight the key issues identified, that will possibly need addressing in the context of the Directive's review.</p> <ul style="list-style-type: none"> <li>- The conclusions (section 6) now focus on the areas where the Consumer Credit Directive (CCD) is still fit for purpose and areas which where findings raise issues for future political choices, including with regards to issues raised in the REFIT platform opinion and creditworthiness assessment.</li> <li>- The executive summary (standalone document) was restructured in order to present the main findings of the evaluation in a simple manner, bringing out lessons learned on different issues.</li> </ul>
<p>2. The evaluation provides evidence that there has been little progress towards achieving the internal market objective. It attributes this failure to obstacles outside the scope of the Directive. The report should more clearly set out the problems that the absence of an internal market in consumer credit causes, and why EU action is more appropriate than national regulation to</p>	<p>The text was redrafted in various parts, so as to illustrate the little progress towards a cross-border market for consumer credit and the partial achievement of a level playing field. The appropriateness of EU action have now been more elaborated upon.</p> <p>In particular, see under:</p> <ul style="list-style-type: none"> <li>- EQ1 on facilitating the emergence of a well-functioning internal market;</li> </ul>

address these problems.	<ul style="list-style-type: none"> <li>- EQ2 on legal clarity;</li> <li>- EQ15 on the relevance of the CCD's objectives;</li> <li>- EQ17 &amp; EQ 18 on the EU added value of the CCD;</li> <li>- The conclusions.</li> </ul>
3. The report should better describe the current state of the market for consumer credit in different EU Member States. It could also distinguish more clearly between banks and non-bank providers. The report would benefit from more data (on types of products, market volumes, interest rates, consumer complaints, etc.) at Member State level to improve the market description and to qualify findings, including on the potential for cross border credit.	<p>We recognise fully the merit of this recommendation of the Regulatory Scrutiny Board. While we attempted to collect more data on various issues throughout the evaluation stage, it proved very difficult to gather some of them (as explained in the section on 'limitations').</p> <p>It proved particularly hard to collect systematic and verifiable data on credit provision from non-banks: in the framework of the supporting study, data on non-bank credit providers were not available as readily as on banks (e.g. from banking supervisory authorities); the creditor survey was also targeting non-banks, but their response rate was very low.</p> <p>We attempted to gather other data e.g. on complaints and enforcement at Member State level too, through the consultants performing the supporting study, but the evaluation did not obtain comprehensive evidence.</p>
4. The report should be more transparent about limitations and uncertainties of the data and analysis. It should better explain how it arrived at quantitative estimates of the benefits, and indicate how reliable those estimates are.	<p>The Staff Working Document now clearly refers to its limitations and uncertainties of its data and analysis in multiple parts, namely under:</p> <ul style="list-style-type: none"> <li>- Section 4 "Method / Limitations and Robustness of findings";</li> <li>- EQ8 on the costs and benefits;</li> <li>- Annex 3 on methods and analytical models used in preparing the evaluation.</li> </ul> <p>With regard to the reliability of the estimates referred to in the evaluation,</p>

	the Staff Working Document now clearly mentions the source of the quantitative analysis, explains the developed methodology and how it was tested in a geographically balanced sample of countries.
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## Annex 2: Stakeholder consultation – Synopsis Report

### INTRODUCTION & CONSULTATION STRATEGY

The goal of the consultation strategy was to ensure that, across a series of consultation activities, all relevant stakeholders were given an opportunity to express their views on the functioning of the Consumer Credit Directive (hereinafter, the “Directive”, or “CCD”).

The primary stakeholders of the Directive are consumers and creditors across the EU. However, besides these two, other stakeholders are indirectly or potentially impacted, alongside actors in charge of implementing these provisions. As such, the following stakeholder categories were targeted as part of the consultation strategy:

- Consumers;
- Creditors/Providers (be it “banks” or “non-banks”);
- Credit intermediaries (who act as intermediaries between the consumers and the creditors, this could include brokers, comparison website etc);
- Credit registers (who collect and provide information to creditors on the creditworthiness of consumers);
- Trade, business and other professional associations representing credit providers, credit registers and intermediaries;
- Consumer organisations;
- Non-governmental associations, platforms and networks;
- Research and academia;
- National public authorities, in charge of supervising and enforcing consumer credit rules;
- EU-level supervisory authorities and international organisations;
- Commission expert groups.

The consultation strategy relied on a mix of methods and tools to ensure a comprehensive and representative collection of views and experience with the functioning of the Directive.

### CONSULTATION ACTIVITIES AND TOOLS

The following table summarises the range of stakeholders consulted as part of the evaluation, in line with the consultation strategy.

*Table 1. Summary interviews and surveys (planned and conducted)*

Stakeholder type	Data collection method	Consultations through the supporting study	Replies to the Open Public Consultation
Member States	Interview or survey and Open Public Consultation	19	24



Enforcement bodies	Interview or survey and Open Public Consultation	24	
National level consumer associations	Interview or survey (national) and interview (EU) and Open Public Consultation	17	12
National level industry representatives	Interview or survey (national) and interview (EU) and Open Public Consultation	33	37
Creditors/businesses	Creditor survey and Open Public Consultation	51	35
Consumers/Citizens	Consumer survey and Open Public Consultation	3,886	108
Others	Interviews and Open Public Consultation	2	18
<b>Total</b>		<b>4,032</b>	<b>234</b>

- The **Open Public Consultation** ran from January 2019 until early April 2019. The questionnaire was tailored to two main categories of stakeholders, with a 1<sup>st</sup> section aimed at the general public (i.e. consumers) and a 2<sup>nd</sup> section geared towards stakeholders who are involved in the implementation of the Directive or who have detailed knowledge of the functioning of the consumer credit market.
- The **survey and interviews** carried out by the contractor lasted from February to May 2019 on the basis of targeted questionnaires. Specific follow-up consultations took place over the period June-August.
- The **consumer survey** received 3,886 responses from the EU-28. To ensure a representative sample of EU consumers, the survey response rates are based on the size of the Member State and the incidence rate of consumer credit in a given Member State. Consumers were surveyed in 24 official languages. The results of the consumer survey were weighted according to the population size of the Member States.
- The **online creditors' survey** received responses from 51 financial service providers, out of a total reach of approximately 900 to 1000 creditors which were approached via different channels<sup>331</sup>.

<sup>331</sup> Around 600 creditors were contacted directly, others were reached via European and national representatives, such as national banking associations and other stakeholders who were in a position to contact their members.

- A **full-day conference** “Protecting consumers taking credit in the digital era” was organised by the Commission in collaboration with the think-tank CEPS on Tuesday 18 June 2019. It comprised panels on a) the role of consumer credit in the economy; b) the scope of application of existing rules; c) the effectiveness of information disclosure; and d) the model of responsible lending in the digital era. The event gathered a wide range of 140 relevant stakeholders, such as EU and national high-level officials, senior practitioners, academics and research organisations, and representatives of consumer associations and banks.
- The **European Economic and Social Committee (EESC)** contributed to the evaluation of the Directive by way of an information report in July 2019. The report is based on consultations with 30 civil society organisations (CSOs) and national institutions. Data was collected through fact-finding missions, a questionnaire, position papers and an extended study group.
- The contractor of the evaluation also made use of the outcomes and position papers produced by relevant Commission expert groups, most notably the **Financial Services User Group (FSUG)** and the **Member State experts’ group on the implementation of the CCD**.
- **Other inputs** were received by way of specific ad-hoc reports, data and contributions from consumer associations, industry representatives and researchers.

The evidence collection for the Staff Working Document (SWD) is also based on the Commission’s experience in monitoring and implementing the Directive.

The evidence findings of an external support study prepared by ICF (Support study for the evaluation of Directive 2008/48/EC) fed into the analysis of this SWD. The study was carried out under close guidance of DG JUST. As such, the content of this SWD does not deviate from the support study but only synthesize its main findings to fit with the length requirements of evaluation SWDs.

#### **EVIDENCE, SOURCES AND QUALITY**

The **roadmap** on the CCD Evaluation was published on the Commission’s website on 30 June 2018 for a 4-week consultation period. It gathered 21 replies, coming from citizens (2), consumer associations (4), Member States (3), industry representatives (7) and other entities (5).

#### **Methodology and tools used to process the data**

The surveys of creditors and consumers were carried out on an anonymous basis and their results were processed and comprehensively analysed. The stakeholder interviews and surveys were organised on the basis of specifically drafted semi-structured questionnaires (interviews) and an online questionnaire (survey). Stakeholders were selected based on their role and relevance to the evaluation as per the consultation strategy. Careful attention was given to ensure a balanced representation between

Member States represented and between stakeholder categories (consumer representatives, creditors and other relevant business representatives, Member States authorities). EU-level consumer and creditor associations were also asked for input as well as assistance in reaching out to their members. Follow-up interviews were carried out to clarify some input received through the stakeholder surveys. Replies to the Open Public Consultation were analysed separately and a separate report was published as a result<sup>332</sup>, however both the quantitative and qualitative dimension of the Open Public Consultation replies were taken into account in the overall evaluation.

### **Main stakeholder feedback**

The results of the consultation activities were used according to the evaluation framework. For each of the evaluation questions, the evaluation framework clarified which of the consultation activities would be relevant for data collection. Main stakeholder feedback results are presented below by consultation strands, concisely describing how they fed into the evaluation. The feeding of the consultation results into the evaluation is then presented in greater detail in part 1.4 of the present Synopsis Report, depending on the evaluation criteria (effectiveness, efficiency, relevance, coherence and EU added value):

#### Open Public Consultation

Almost all individual respondents had obtained credit in the Member State where they reside and had not tried to obtain credit in a different Member State. Contribution from individuals showed a rather high level of familiarity with the main provisions of the Directive.

Overall, a majority of respondents (among both individuals and stakeholders responding to the Open Public Consultation) considered the Directive to be effective in relation to its main features. They were overall very positive about the different provisions of the Directive, with the vast majority finding the provisions of the Directive somewhat beneficial or even very beneficial.

A great majority of respondents assessed positively the relevance of the Directive, albeit with certain nuances (the scope of the Directive and the provisions dealing with information disclosure were considered somewhat a bit less relevant than the others).

The main benefits of the Directive highlighted by stakeholders are the higher standard of consumer protection it introduced in key areas (rights of early repayment and withdrawal for instance). Respondents in majority thought that benefits of the Directive outweighed the costs.

The Directive perceived as coherent with the main relevant pieces of EU legislation by a majority of stakeholders.

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<sup>332</sup>See: [https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-3472049/public-consultation\\_en](https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-3472049/public-consultation_en)

The overall perception of stakeholders is that the added value of the Directive lies in the increase of the level of consumer protection and should remain regulated at EU-level.

#### “Protecting consumers taking credit in the digital era” 18<sup>th</sup> June 2019 event

The Directive event highlighted a number of different views, though the Directive is perceived as relevant and that consumers need a high level of protection. There was discussion on the scope of the Directive and the fact that it did not cover certain problematic credits. Stakeholders stressed the need to apply the same regulation to the same activity, since banks and non-banks are often supervised differently in Member States.

The effectiveness of the Directive’s provisions on information disclosure was challenged: they are perceived by the industry as a burden for creditors (especially in the case of advertising) whilst for consumers, they are considered to focus too much on the quantity rather than the quality of the information. They also do not sufficiently take into account the impact of digitalisation.

Concerning responsible lending, some speakers stressed the need to ban certain products (particularly pay-day loans) that are considered toxic, whereas some other stakeholders (creditors, credit registers) advocated for some flexibility in how creditworthiness assessment should be carried out. From their side, consumer representatives stressed that this exercise should be more “borrower-focused” and therefore more clearly spelled-out in the Directive.

#### Targeted stakeholder consultations

Consumer associations were most critical of creditworthiness assessment (CWA) and Annual Percentage Rate of charge (APR). Their suggestions for improving the Directive effectiveness mainly were to cap interest rates, removing the EUR 200 threshold to also cover lower credits and peer-to-peer lending. Tighter rules or banning were put forward on the provision of credits in spite of a negative CWA, revolving credit and selling of credit products to vulnerable consumers. Better enforcement, harmonising sanctions and clearer rules on advertising and pre-contractual information were also suggested as action points.

Industry representatives considered the Directive effective in protecting consumers, although they believed the advertising rules to be ineffective, due to information overload.

A majority of national authorities (and enforcement bodies) argued that the Directive has been effective in ensuring a high level of consumer protection. While most provisions of the Directive were deemed effective, CWA generated some concerns.

A large majority of respondents across the board also praised the introduction of the Directive as it resolved issues thanks to new provisions/standards. Several respondents criticised the room given for Member State interpretation of Directive provisions.

#### EESC information report

This report concluded that the directive's implementation and enforcement is considered to be insufficient, also because of the fact that national supervisory authorities lack sufficient resources and have ineffective sanctions. The report supported the expansion of the scope of the Directive to credits below EUR 200, coupled with the inclusion of all types of credit and new forms of credit. Concerns were expressed about the Directive not ensuring a level playing field, due to consumer credit activities being confined to national borders and digitalisation having a limited impact on the way consumer credit is currently provided. Regarding pre-contractual information and advertising provisions, it was noted that information given to consumers often lacks clarity, with consumers finding it too complex or long. Also according to the report, CWAs are not always properly conducted because data used to assess the consumer's creditworthiness is sometimes irrelevant, outdated, or comes from unreliable providers. Moreover, the assessment criteria were found not to be transparent or uniform and, at times, to be discriminatory. Finally, it was noted that more should be done from Member States in terms of financial education.

#### FSUG opinion and recommendations

The FSUG recommendations are along the lines of establishing a well-functioning EU consumer credit market in which creditors and intermediaries act responsibly and treat consumers fairly, and preventing excessive debt levels and over-indebtedness. Regarding the scope of the Directive, the FSUG supports its extension to credits below EUR 200. A review of the list of credit products which are currently exempted from the Directive scope is deemed necessary, so as to ensure that there are as few exemptions as possible. Peer-to-peer lending should be included in the scope of the directive. Other recommendations include: the introduction of rules on product oversight and governance for credit manufacturers and distributors; to ensure that credit advertising are effective; to align the Directive rules related to assessment of the consumer's creditworthiness with provisions of the Mortgage Credit Directive; to introduce obligations for creditors to detect vulnerable consumers as early as possible; to define what is an acceptable default rate within a risk pool for all credit providers and to ensure that national competent authorities are well-equipped.

#### Roadmap

Attention was drawn to the fact that an increasingly digitalised market undergoing continuous innovation creates both opportunities and risks for creditors and consumers. In this context, it was deemed necessary to evaluate whether the Directive rules are fit for purpose. Replies received from stakeholders included a good mix of consumers & consumer associations, industry representatives and Member States. Stakeholders mainly provided their opinion in relation to three aspects covered by the Evaluation of the Directive: scope, pre-contractual information and creditworthiness.

### **FEEDING THE CONSULTATION RESULTS INTO THE EVALUATION BY APPLIED CRITERIA**

#### **Effectiveness**

Consumer associations consider the APR a well-known tool, useful for comparison purposes. The majority of consumers surveyed are aware of the APR and its implications and have found it either helpful or very helpful when choosing their credit. However, consumers struggle to understand what it includes under the ‘final cost’ element. Most associations argued that the way in which the APR is presented by some creditors prevents effective comparison. They pointed to advertising in which consumers are misled about the final price, or when ‘representative examples’ are calculated in an ‘optimistic’ way.

Industry representatives argued that the definition of the APR is confusing for both consumers and creditors. They pointed out that the formula is based on a yearly period, thus does not apply very well to short-term loans and can be difficult to interpret. Finally, the APR does not include default charges.

Enforcement bodies similarly agreed on the complexity of APR calculation for consumers. A majority of national authorities argued that the introduction of the APR has facilitated consumers’ understanding of the offers and allowed for easier comparisons. They did, however, agree that certain areas could be improved, in particular the exclusion of ancillary services and consumer understanding of what the APR includes.

Consumer associations stated that credit providers are - generally - providing the standard information required by the Directive. They identified several issues, however. For advertising, the main concerns are: information not provided in a clear and prominent way, standard information (e.g. total amount or duration) missing and information (e.g. representative example) presented in a misleading manner. Several consumer associations also pointed out that credit advertisements are increasingly targeted at vulnerable consumers, thus promoting overall consumption while neglecting the possible impact of such products. For pre-contractual information, the main issues are: late provision of the information (at the moment of signing or right before) and information not clear or concise enough to maximise understanding of the most relevant conditions.

The adoption of the Directive is seen by consumer associations as having increased the amount of information provided in advertisements across the EU (especially the APR) and established the obligation to provide standard pre-contractual information through the Standard European Consumer Credit Information (SECCI), which did not exist in some countries. The effectiveness of the relevant consumer protection obligations of the Directive is considered questionable, especially in relation to pre-contractual information. Even those who believe it has been effective agree that there is room for improvement. Consumer associations argued that there is a need to ensure clearer information, presented in a more reader-friendly way (including by focusing only on the most relevant information), and clearer explanations by the credit provider. Limiting advertisements of consumer credit is also seen as necessary by some consumer associations.

Industry stakeholders argued that credit providers generally comply with the requirements established by the Directive. However, many noted that advertising requirements are not adapted to some media channels and pre-contractual information

requirements are similarly ill-suited to the digital era. Excessive information is, according to them, provided at both advertising and pre-contractual stage, which does not allow consumers to identify and retain the key relevant aspects. Lack of flexibility of the overall framework, imposing the same obligations on most consumer credit, regardless of the type and amount (and thus risk) was also flagged as an issue. The creditors' survey revealed that around 70% of the respondents were provided the standard information required by the Directive at the advertisement stage. Over half of the creditors reported having increased the information provided to consumers in their advertising since 2008, namely the APR and total costs. Around 40% of the creditors reported facing obstacles in complying with the obligation to provide the standard information.

Enforcement authorities reported issues of compliance with the obligations to provide information, especially in advertising and marketing. The main issue relates to the failure to provide the standard information in a clear and prominent manner in advertisements, especially in the representative examples. Issues with the provision of pre-contractual information vary, with some enforcement bodies reporting that information is not provided in a timely manner, while others complain about the failure of credit providers to provide adequate explanations, or to provide such information at all. Overall, national authorities held that credit providers are generally complying with their obligation to provide standard information at advertising and pre-contractual stage. However, many mentioned that key information is often not prominently displayed, resulting in misleading advertisements, especially in relation to fees and charges applied. Pre-contractual information is often not provided in a timely manner. Pre-contractual information is also, in their opinion, not sufficiently clear to ensure that consumers understand the key elements and conditions, especially in relation to fees and risks. Opinions are divided on whether the provision of pre-contractual information is always the adequate tool to protect consumers. Many called for a reduction in the amount of information and more reader-friendly presentation. Some national authorities also called for stricter rules on targeted advertising.

In the consumer survey, respondents had a positive overall opinion about the information provided at the advertising and pre-contractual stage. They reported that advertisements mostly correspond to the offer and that the information provided before signing the contract is useful, timely and easy to understand, allowing them to compare different credit offers. However, awareness of the SECCI is low among consumers (33%). The majority of those who are aware of its existence were provided with the form before signing the contract, but in most cases, this was done either the day before or on the day of the signing. Nevertheless, SECCI is seen as a useful tool to inform their choice. There is a low level of satisfaction with the information provided in advertisements, with only one-quarter believing it to be sufficient.

Most consumer associations found that the right of withdrawal is nearly always or often respected in their Member State. A large majority of industry representatives agreed. National authorities and enforcement bodies reported few issues, with some noting that

the right of withdrawal from linked credit agreements was unclear. According to the majority of creditors, less than 1% of consumers make use of the right of withdrawal. This is confirmed by the findings of the consumer survey. Most were aware of their right of withdrawal and were informed by the creditor before signing the credit contract, although less than half knew that the deadline for withdrawal was 14 days. The majority of consumers did not report any issues in exercising their right of withdrawal, although approximately one-third of those who tried to withdraw the contract indicated that the creditor had made it difficult for them to withdraw from the contract.

Similarly, the majority of consumer associations found that the right of early repayment was always or very often respected by creditors in their Member State. According to several industry representatives, all aspects need to be considered when calculating the maximum level of early repayment fees, and they noted particular difficulties with re-financing. Several stakeholders argued that more proportionality is needed in early repayment fees, due to the large scope of the Directive. Enforcement bodies argued that undue fees were charged for early repayment, or that the fees charged were excessive. For national authorities, the right of early repayment was found to function well across Member States, apart from some issues with the correct calculation of the fees. The consumer survey pointed out that around one-quarter of consumers had tried to repay their credit early. Consumers are highly aware of their right of early repayment, with most receiving relevant information before contracting the credit. In around one-third of cases, consumers indicated that their current loan had a penalty fee for repaying the loan earlier than agreed. However, close to half stated that there was no penalty fee. In the majority of cases, consumers did not encounter any difficulties when trying to exercise their right of early repayment.

Most consumer associations were doubtful that credit providers in their country consistently carry out creditworthiness assessment before concluding a credit agreement. Although they believe that CWA is effective in providing consumers with the credit most appropriate for them and combating irresponsible lending and over-indebtedness, consumers are often dissatisfied with the way CWA is performed. Key issues are the lack of transparency in scoring systems and the data they are based on, the lack of both positive and negative databases, and their poor quality. In their opinion, the Directive would need to include more detail on how CWA should be performed and the data that should be used, as well as imposing an obligation to refuse credit to consumers scoring poorly.

Industry representatives had mixed views on the CWA. Roughly half of respondents did not see any issues with the need to perform CWA, and the majority did not consider the differences in approach between Member States to be an issue - in fact, they saw this flexibility as a positive element. Those that took issue with these differences mentioned difficulties in enforcing the provision, establishing jurisdiction in case of complaints, the purpose of databases in different Member States (i.e. the use of either 'positive' or



‘negative’ data), variation in the type of information used in such databases, and difficulties in accessing this information from other Member States.

The majority of enforcement bodies identified issues with CWAs. They noted the lack of (or limited) compliance with the requirement to collect ‘sufficient information’ (including relying on publicly available information as opposed to information provided directly by the consumer) and the focus on assessing ability to repay ongoing costs rather than the total amount borrowed. According to them, the wording of the relevant Directive provision has created a lack of clarity with respect to CWA.

National authorities were evenly divided, with half arguing that the obligation to carry out a CWA is in itself effective in ensuring that consumers obtain appropriate credit and another half highlighting as an issue the different approaches to CWA.

Most of the creditors surveyed underlined that creditworthiness was checked by the creditor and this was further confirmed by the consumer survey. Creditworthiness was checked mainly through income, professional status and household composition. More rarely, it was checked through outstanding household credits, household expenses and spouse’s income.

Stakeholder opinions varied considerably on the functioning of the cross-border market. Opinions on whether the Directive has facilitated cross-border access to credit are divided. Some argue that it has indeed facilitated access, claiming that it allows for easier comparison of offers. Others disagree, stating that the consumer credit market remains markedly local and that the Directive has not managed to harmonise legal disparities.

According to consumer associations, the main obstacles to the functioning of the cross-border consumer credit market are language barriers, lack of harmonisation of insolvency/settlement rules, the requirements imposed by creditors (e.g. residence, documentation, employment) and the fact that the local offer is often sufficient. Industry representatives often argued that the cross-border market for consumer credit is not sufficiently developed. The fragmentation of legislation across the EU was blamed for preventing creditors from providing credit cross-border, with uneven implementation of the Directive and a lack of harmonisation of other rules relevant for creditors (e.g. fiscal and civil law, CWA rules, legal framework for debt recovery, and anti-money laundering obligations). Other important obstacles highlighted were difficulties in assessing the creditworthiness of foreign consumers (due to data access challenges), different consumption habits, lack of demand for cross-border credit, the need to acquire licences in every Member State, and language barriers. Responses from the creditor survey pointed at the same obstacles.

Two enforcement authorities highlighted issues with the provision of credit online, although these were not exclusively related to credit providers established in another Member State (i.e. national or international credit providers were also implicated). Only three Member State authorities considered there to have been an increase in the number of cross-border operations (or increased appetite for them) since the adoption of the Directive. Language barriers and a lack of harmonisation were the main obstacles

highlighted. A lack of incentives to provide credit cross-border (due to a low demand) was also mentioned.

The consumer survey pointed out that the majority of consumers do not look for credit abroad.

Consumer associations argue that the Directive has contributed to increasing competition in the consumer credit market at national, with a smaller majority observing an impact at EU level. There were very limited views expressed on whether increased competition had led to improved consumer welfare, with only one noting lower prices. By contrast, another stakeholder mentioned an increase in aggressive marketing as a negative result for consumers. A small majority of industry stakeholders argued that the Directive has had no impact on competition at national level, while a much bigger majority believes that impact at EU level is positive. A majority of respondents believe that the Directive has had an impact on the credit market, particularly in respect of increased competition, greater supervision and greater cost transparency.

### **Efficiency**

Consumers associations generally argued that the costs generated by the Directive are proportionate to the benefits or that benefits outweighed costs, a view shared by national authorities. Both categories of stakeholders did not, however, express views on specific benefits or costs on each of the provisions. Industry stakeholders pointed to the fact that the implementation of the Directive implied additional costs (administrative burden, compliance costs of elements such as information requirements, the right of withdrawal, the right of early repayment and the CWA) for them. Most industry stakeholders argued that the information requirements have added substantial costs to advertisements to no effect, as they overloaded consumers with excessive information in certain sectors.

Over half of the creditors responding to the survey did not have an opinion on whether the costs outweigh the benefits of the Directive. Those with an opinion, however, tended to believe that the costs are greater than the benefits. However, no evidence was provided as part of these consultations as to the extent of the costs incurred, or whether they were directly linked with the implementation of the Directive itself.

Consumer organisations' opinions on whether the Directive should be simplified were divided. Some argued that a simplification of the legislation (particularly in relation to the provision of information) would enable consumers to better understand the information, as well as their rights. Others do not believe this is necessary and warn that any simplification should be careful not to lower consumer protection standards. Room for simplification was identified by most industry representatives interviewed. Examples related to further harmonisation of rules to avoid legal fragmentation across the EU and introducing a proportionality element allowing the level of detail of the information to be adapted to the potential risks of the credit product at hand. Most national authorities believe that the Directive has not created any unnecessary burden and that there is no need for further simplification of the legislation.

## **Coherence**

Relatively few views were expressed by interviewed stakeholders in regard to coherence of the Directive with its provisions and objectives, and in regards to other legislation. A few stakeholders (mainly national authorities and consumer associations) pointed out at the different wording and standards in the Directive compared to other legislation, in particular the MCD. They pointed out that better alignment of the provisions could improve the implementation of both Directives, as it would improve legal clarity for Member States and credit providers and ensure a consistent approach to protection of consumers against over-indebtedness. Some respondents, essentially consumer associations, also argued that adding data to credit databases is not done in accordance with the GDPR and the equivalent transposition measure in that Member State. Internal coherence issues were mentioned by several enforcement bodies. One pointed to risks with overrunning in overdrafts compared to revolving credit, arguing that overdrafts are subject to a light regime under the Directive, whereas revolving credit is not.

## **Relevance**

Overall, consumer associations believe that the Directive is not entirely adapted to current market needs. They made particular mention of the Directive thresholds, especially the minimum one (EUR 200) as inadequate. Consumer associations also underlined the need to cover new market players (such as fintech companies, P2PL platforms etc.), leasing contracts, overdrafts and agreements with pawnshops. They frequently criticised exemptions, in particular some types of credit falling outside of the scope of the Directive (i.e. zero-interest loans and overdraft facilities). In addition, they argued that credit intermediaries should be bound by the same rules as credit providers, at least as far as pre-contractual information and data collection is concerned. They also noted the need to adapt to the changes in consumer behaviour.

Feedback on the relevance of the Directive is more positive among industry representatives than among other stakeholder groups. Most negative views stem from the belief that the scope and definitions should be updated to ensure that all credit providers are subject to the same rules, including the newly emerged players (e.g. P2PL, payday loan providers). Opinions of industry representatives on whether the Directive addresses current needs are divided, although there is overall consensus that it is not adapted to future challenges and needs (e.g. emergence of new business practices and market players, changes in consumer behaviour).

The only enforcement authorities to comment on the scope of application advocated for a broader scope to cover zero-interest rate loans, short-term credit and P2PL platforms and wider digital solutions, and potentially other credits that do not exist yet. Most national authorities believe that the scope of the Directive is not adapted to current needs, especially the minimum threshold. Issues were identified in relation to the cross-selling of a payment protection insurance (PPI), with consumers often nudged to purchase it when obtaining credit. PPIs can entail disguised high costs which are not included in the calculation of the APR. One group of national authorities advocated for an overall

revision of the scope to ensure that only justifiable exemptions apply. The majority of national authorities believe that the Directive addresses current but not future challenges. The main shortcomings highlighted relate to the developments in the market as a result of digitalisation. Other issues to address in the future concern the establishment of stricter rules on CWA and the APR.

Specifically in terms of definitions, consumer associations deemed the definitions of credit, credit agreement, credit intermediary and total amount of credit to be relevant. However, some associations believe that the definition of creditor and credit intermediary should be broadened to include entities not currently explicitly covered by the Directive. Similar to the consumer associations, most industry representatives consider the definitions to be relevant and sufficient, with a small group pointed out that the definitions of creditor and credit intermediaries should be slightly modified or clarified. For most national authorities, the definitions of creditor, credit agreement, credit intermediary and total amount of credit were argued to be relevant and adapted to current needs. A few national authorities also indicated that the definition of ‘total cost of the credit to the consumer’ does not clearly stipulate the charges that need to be taken into account. Further clarification of other terms were requested by individual national authorities, such as ‘linked credit agreement’, ‘free of charge’, ‘overdraft facility or overrunning’, ‘in good time’, ‘means of distant communication’, ‘consumer’, ‘goods-linked credit’, and ‘ancillary services’.

### **EU added value**

Most consumer associations agreed that taking EU-level action has contributed to creating a level playing field among EU Member States as it harmonised rules for consumers and creditors, which, in turn, reduced the disparities between countries. A lack of equally effective supervision was mentioned as one of the reasons behind the lack of harmonisation across the EU. Nearly all consumer associations agreed that, overall, there was added value in enacting EU-level legislation in the field of consumer credit. This added value was identified as stronger consumer protection, a varied credit offer and a (more) harmonised market. Industry representatives likewise generally agreed that there is added value in adopting legislation at EU level, citing harmonised procedures and rules, establishing a level playing field, greater consumer protection, a possible increase in cross-border trade and more transparency for consumers.

A majority of industry stakeholders did not give an opinion on whether EU level legislation has helped to create a level playing field. Those that argued for the absence of a level playing field pointed to the lack of harmonisation in civil law, lack of a cross-border market, and room for interpretation in implementing the Directive.

Almost all enforcement bodies agreed that EU-level action contributes to a level playing field because companies are required to comply with the same basic requirements. Similarly, the majority of national authorities held that taking EU-level action contributed to creating a level playing field among EU Member States in the field of consumer credit either to a great or to some extent. A small number of respondents

identified better functioning of the internal market as an added value delivered by the Directive. The majority of enforcement bodies argued there is added value in enacting legislation in this area as it helps to provide redress to consumers who, ultimately, face similar issues across the EU. They went on to argue that harmonised rules foster competition and close legislative gaps in certain Member States. Most national authorities agreed that there is added value in adopting EU-level legislation in the area of consumer credit, citing better consumer protection and improved competition.

### **Annex 3: Methods and Analytical models used in preparing the evaluation**

This annex provides a description of the approach followed to quantify the main benefits and costs to consumers, financial providers and public authorities that can be attributed to the Consumer Credit Directive ('CCD' or 'the Directive') since its introduction in 2008.

#### **Benefits**

According to its two main objectives the Directive should bring the following benefits:

- Ensure a better protection of the EU consumers which in turn leads to a lower consumer detriment (possible due to a lower incidence rate of problems and a lower magnitude) and to an increase in demand for consumer credit;
- Enhancing a level playing field potentially leading to an increase in cross-border transaction of consumer credit.

Our research shows that the Directive had an impact on increasing consumer protection. On the other hand, the evaluation did not find hard evidence that changes in the demand or supply of consumer credit products can be directly attributed to Directive (including cross-border activities). Consequently, only the impact of the Directive on the reduction of consumer personal detriment was quantified.

#### **Reduction of personal detriment**

Personal detriment refers to loss of welfare experienced by individuals due to problems that occur after the purchase and that were not expected (based on reasonable expectations). Personal detriment includes financial and non-financial losses (e.g., time losses, psychological detriment).

Due to various factors, the consumer detriment was reduced in most of the EU28 Member States since 2010. It is assumed, based on deductive reasoning with the team of internal experts, that 22.5% of that change was due to Directive (i.e., incremental effect of Directive). This is done by taking into account the key factors that have played a role in reducing consumer detriment since 2008 and considering their weight:

- Development and trends of the credit sector itself: 25%
- More stringent legislation in some MS, and improved enforcement (so government-induced): 15%
- Increase in sector compliance over time: 10%
- Increase in financial literacy among consumers: 5%
- Increase in consumer awareness of APR, SECCI and contractual terms in terms of consumer credit (as unchanged for 10 years now): 10%
- National-level campaigns in boosting consumer awareness: 5%
- Other legislation and other factors: 7.5%

There were no indications of the weight of the Directive in the reduction of personal detriment (the benefit). The results have been based on expert judgement, and considering the likely weight of different factors in the reduction of personal detriment. The figures for calculating personal detriment are based on the CIVIC study<sup>333</sup> (see below) and are very robust. The estimate of the detriment that can be attributed to the Directive is, as indicated, based on deduction and in itself moderately robust. The first element in assessing the weight included listing the factors that played a role in reducing detriment. The second element was a qualitative assessment (narrative, description) and quantitative assessment (rating) of its importance. On this basis, the above percentages were derived by ranking these factors. The data is, nonetheless, moderately robust because there is a fairly high probability that a Directive in a policy area is never the only or deciding factor for attribution of change, and therefore the weighting would not be considered to exceed 30-40%. At the same time, the pace of changes in the sector (supply) and demand-driven changes have further reduced the unique role of the Directive. It was also derived to be unlikely for the value of the attribution to the Directive to be below 10-15% following the qualitative and quantitative assessment of the key elements above (and confirmed by stakeholder consultations, which led to the conclusion that the Directive has a non-negligible attribution, rated to be above 15-20% as a result). In any case, any attribution of 20% to 30% all generated positive consumer detriment. The initial consideration of a range of benefit of 20% to 30% show this. For the Final Report this was specified to be a conservative estimate of 22.5% (at the lower end of this range), consistently showing benefits to be similar to or outweigh costs across the entire range of 20-30%.

Below the approach followed to calculate the variation in consumer detriment and the incremental effect of the Directive (assuming beginning of 2010 as baseline) since its transposition is described.

*Step 1. Estimate the average magnitude of consumer personal financial detriment per problem.*

The estimation of the average magnitude of the consumer of personal financial detriment suffered by an individual due to a problem (i.e., magnitude of the financial detriment) considered the data reported in the CIVIC (2017) for the consumer detriment for “Loans, credit and credit cards” in the year 2017 for the following countries: UK, Poland, France and Italy. This was extrapolated for each of the other EU28 countries as described below.

*Table 1 - Magnitude of financial detriment*

Country	Magnitude (post- redress, €, prices 2017)	Used to estimate EU countries in the following regions
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<sup>333</sup> Civic Consulting (for the European Commission), “Study on Measuring Consumer Detriment in the European Union”, 2017.

France	108	Western Europe
Italy	187	Southern Europe
Poland	176	Eastern Europe
UK	144	Northern Europe

The magnitude of the financial detriment in the period 2010-2018 was adjusted based on the Consumer Markets Scoreboard data on “Extent of detriment suffered as a result of problems experienced with products/services or supplier/retailer”<sup>334</sup>.

*Table 2 - Severity of consumer problems in the period 2010-2017 (scale 0-10, where 0 is low severity and 10 high severity)*

	2010	2011	2012	2013	2014	2015	2016	2017	2018
Austria	9.37	8.60	7.88	7.23	6.63	6.07	5.57	5.07	4.61
Belgium	9.20	8.46	7.77	7.14	6.56	6.03	5.54	5.05	4.61
Bulgaria	5.33	5.50	5.66	5.83	6.01	6.19	6.38	6.57	6.76
Croatia	6.71	6.54	6.38	6.22	6.06	5.91	5.77	5.62	5.48
Cyprus	10.94	10.09	9.32	8.60	7.93	7.32	6.76	6.19	5.68
Czech Republic	7.64	7.35	7.07	6.80	6.54	6.30	6.06	5.82	5.59
Denmark	7.00	6.62	6.27	5.94	5.62	5.33	5.04	4.76	4.49
Estonia	24.31	17.72	12.91	9.41	6.85	5.00	3.64	2.28	1.43
Finland	3.71	3.70	3.70	3.69	3.68	3.68	3.67	3.66	3.65
France	8.30	8.00	7.71	7.43	7.16	6.90	6.64	6.39	6.15
Germany	9.76	9.09	8.46	7.87	7.33	6.82	6.35	5.87	5.44
Greece	9.88	9.22	8.60	8.02	7.49	6.98	6.52	6.05	5.61
Hungary	7.18	7.01	6.85	6.69	6.54	6.39	6.24	6.09	5.95
Ireland	6.47	6.20	5.94	5.69	5.45	5.22	5.00	4.78	4.56
Italy	4.06	4.22	4.39	4.56	4.74	4.93	5.13	5.32	5.52
Latvia	6.93	6.78	6.63	6.48	6.34	6.20	6.06	5.92	5.79
Lithuania	2.12	2.49	2.91	3.42	4.00	4.69	5.50	6.31	7.24
Luxembourg	10.43	9.76	9.13	8.54	7.99	7.47	6.99	6.51	6.06
Malta	2.16	2.58	3.09	3.69	4.42	5.29	6.33	7.36	8.57
Netherlands	3.73	3.81	3.89	3.98	4.06	4.15	4.24	4.33	4.42
Poland	6.55	6.42	6.30	6.17	6.05	5.93	5.82	5.70	5.58
Portugal	8.34	7.90	7.48	7.09	6.72	6.36	6.03	5.69	5.38
Romania	4.78	5.02	5.29	5.56	5.85	6.15	6.47	6.79	7.13
Slovakia	10.30	9.16	8.15	7.25	6.45	5.73	5.10	4.47	3.91

<sup>334</sup> By assuming that the magnitude changed proportionally to the extent of detriment



Slovenia	7.75	7.31	6.90	6.51	6.15	5.80	5.48	5.15	4.85
Spain	6.22	6.25	6.27	6.29	6.32	6.34	6.37	6.39	6.42
Sweden	0.88	1.06	1.28	1.55	1.87	2.26	2.74	3.21	3.76
United Kingdom	5.69	5.61	5.54	5.46	5.39	5.31	5.24	5.17	5.10

*Source: extrapolation based on Consumer Markets Scoreboard - \*a liner regression was used to estimate the value for 2018, as the data for 2017 is the latest available*

The magnitude of the financial detriment for each EU MS is presented below.

*Table 3 - Magnitude of financial detriment 2010-2018 (euros at prices 2017)*

	2010	2011	2012	2013	2014	2015	2016	2017	2018
Austria	122.82	119.68	116.62	113.64	110.73	107.90	105.14	102.38	99.70
Belgium	166.50	152.67	139.98	128.35	117.68	107.90	98.93	89.97	81.81
Bulgaria	269.04	247.24	227.19	208.78	191.85	176.30	162.01	147.72	134.69
Croatia	160.96	165.85	170.88	176.06	181.40	186.90	192.57	198.24	204.07
Cyprus	211.89	206.64	201.52	196.52	191.65	186.90	182.27	177.63	173.12
Czech Republic	263.33	243.02	224.29	206.99	191.03	176.30	162.71	149.11	136.65
Denmark	175.32	168.64	162.23	156.05	150.11	144.40	138.90	133.41	128.13
Estonia	189.69	179.62	170.08	161.05	152.50	144.40	136.73	129.07	121.83
Finland	702.78	512.12	373.18	271.94	198.16	144.40	105.22	66.05	41.46
France	108.93	108.72	108.51	108.31	108.10	107.90	107.70	107.49	107.29
Germany	129.85	125.13	120.58	116.20	111.97	107.90	103.98	100.05	96.28
Greece	267.58	249.05	231.80	215.75	200.81	186.90	173.96	161.01	149.03
Hungary	249.36	232.66	217.07	202.53	188.96	176.30	164.49	152.68	141.71
Ireland	162.32	158.57	154.90	151.32	147.82	144.40	141.06	137.72	134.46
Italy	231.92	222.12	212.74	203.75	195.14	186.90	179.00	171.11	163.56
Latvia	118.83	123.55	128.46	133.57	138.88	144.40	150.14	155.88	161.84
Lithuania	161.48	157.91	154.42	151.00	147.66	144.40	141.21	138.02	134.90
Luxembourg	48.75	57.14	66.98	78.52	92.05	107.90	126.49	145.07	166.39
Malta	260.76	243.95	228.24	213.53	199.77	186.90	174.86	162.82	151.60
Netherlands	44.02	52.66	63.01	75.38	90.19	107.90	129.09	150.28	174.96
Poland	158.30	161.74	165.27	168.87	172.54	176.30	180.14	183.98	187.90
Portugal	206.46	202.39	198.40	194.49	190.66	186.90	183.22	179.53	175.92
Romania	230.95	218.81	207.31	196.41	186.08	176.30	167.03	157.76	149.01
Slovakia	136.80	143.92	151.41	159.29	167.58	176.30	185.48	194.65	204.28
Slovenia	335.61	298.53	265.55	236.21	210.11	186.90	166.25	145.60	127.52
Spain	249.47	235.47	222.26	209.79	198.01	186.90	176.41	165.92	156.06
Sweden	141.69	142.23	142.77	143.31	143.85	144.40	144.95	145.50	146.05

United Kingdom	55.87	67.55	81.68	98.76	119.42	144.40	174.60	204.81	240.23
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*Source: own calculations based on MMS and Civic (2017)*

*Step 2. Estimate the average time loss per problem*

The estimation of the time loss per problem (see below) was done based on the data reported in CIVIC (2017). The number of hours for the period 2010-2018 was extrapolated using the data from Consumer Markets Scoreboard on “Extent of detriment suffered as a result of problems experienced with products/services or supplier/retailer”<sup>335</sup>.

The estimation of time losses and the monetisation of time losses (i.e., by using hourly earnings for monetising time losses) followed the methodology for measuring consumer detriment developed by CIVIC (2017) for DG JUST – “(...) a detailed step-by-step operational guidance to guide scientifically sound and resource efficient assessments of personal consumer detriment in markets across the EU”. The methodologies covers financial detriment, time loss and psychological detriment.

According to the CIVIC study, time losses for 2016 were estimated based on statements from consumers collected through surveys to consumers. In the Consumer Credit Directive evaluation supporting study, those time losses were extrapolated to other years based on the data on incidence rates of consumer complaints from the “markets scoreboards”. The underlying assumption was that time losses are proportional to the incidence rate of problems.

There are alternative ways to monetise the “value of time” (e.g., using stated preferences”), all with limitations. The CIVIC study discusses those approaches and respective limitations thoroughly and ends up proposing the use of average earnings (highlighting that, for example, one limitation might be that people may value their leisure time and working time differently).

*Table 4 - Time losses 2010-2018 (number of hours per problem)*

	2010	2011	2012	2013	2014	2015	2016	2017	2018
<b>EU28</b>	<b>7.42</b>	<b>6.94</b>	<b>6.55</b>	<b>6.24</b>	<b>5.99</b>	<b>5.80</b>	<b>5.65</b>	<b>5.5</b>	<b>5.40</b>
Austria	9.46	8.68	7.96	7.29	6.69	6.13	5.62	5.1	4.6
Belgium	9.29	8.54	7.85	7.21	6.63	6.09	5.59	5.1	4.7
Bulgaria	5.39	5.55	5.72	5.89	6.07	6.25	6.44	6.6	6.8
Croatia	6.77	6.60	6.44	6.28	6.12	5.97	5.82	5.7	5.5
Cyprus	11.04	10.19	9.40	8.68	8.01	7.39	6.82	6.3	5.7
Czech Republic	7.72	7.42	7.14	6.87	6.61	6.36	6.11	5.9	5.6

<sup>335</sup> By assuming that the time losses changed proportionally to the extent of detriment.

Denmark	7.06	6.69	6.33	6.00	5.68	5.38	5.09	4.8	4.5
Estonia	24.54	17.88	13.03	9.50	6.92	5.04	3.67	2.3	1.4
Finland	3.75	3.74	3.73	3.72	3.72	3.71	3.70	3.7	3.7
France	8.38	8.07	7.78	7.50	7.22	6.96	6.71	6.5	6.2
Germany	9.86	9.17	8.54	7.95	7.40	6.88	6.41	5.9	5.5
Greece	9.97	9.31	8.68	8.10	7.56	7.05	6.58	6.1	5.7
Hungary	7.25	7.08	6.91	6.75	6.60	6.45	6.30	6.1	6.0
Ireland	6.53	6.26	5.99	5.74	5.50	5.27	5.04	4.8	4.6
Italy	4.09	4.26	4.43	4.60	4.79	4.98	5.17	5.4	5.6
Latvia	7.00	6.84	6.69	6.54	6.40	6.26	6.12	6.0	5.8
Lithuania	2.14	2.51	2.94	3.45	4.04	4.74	5.56	6.4	7.3
Luxembourg	10.53	9.85	9.21	8.62	8.07	7.55	7.06	6.6	6.1
Malta	2.18	2.61	3.12	3.73	4.46	5.34	6.39	7.4	8.7
Netherlands	3.76	3.84	3.93	4.01	4.10	4.19	4.28	4.4	4.5
Poland	6.62	6.49	6.36	6.23	6.11	5.99	5.87	5.8	5.6
Portugal	8.41	7.97	7.55	7.16	6.78	6.42	6.09	5.7	5.4
Romania	4.82	5.07	5.34	5.61	5.91	6.21	6.54	6.9	7.2
Slovakia	10.39	9.25	8.22	7.32	6.51	5.79	5.15	4.5	3.9
Slovenia	7.82	7.38	6.97	6.58	6.21	5.86	5.53	5.2	4.9
Spain	6.28	6.31	6.33	6.35	6.38	6.40	6.43	6.5	6.5
Sweden	0.88	1.07	1.29	1.56	1.89	2.28	2.76	3.2	3.8
United Kingdom	5.74	5.66	5.59	5.51	5.44	5.36	5.29	5.2	5.1

The consumer detriment resulting from time losses was monetised using the mean hourly earnings for each country in 2010<sup>336</sup> (see below).

*Table 5 - Monetised time losses per country (million of euros, 2010 prices)*

MS	2010	2011	2012	2013	2014	2015	2016	2017	2018
<b>EU</b>	<b>69.58</b>	<b>65.72</b>	<b>62.39</b>	<b>59.53</b>	<b>57.07</b>	<b>54.98</b>	<b>53.24</b>	<b>51.50</b>	<b>50.11</b>
Austria	122.65	112.45	103.11	94.54	86.68	79.48	72.87	66.27	60.26
Belgium	152.55	140.19	128.82	118.38	108.78	99.96	91.86	83.76	76.37
Bulgaria	8.19	8.43	8.69	8.95	9.22	9.50	9.79	10.08	10.38
Croatia	32.90	32.08	31.29	30.51	29.76	29.02	28.30	27.58	26.88
Cyprus	101.47	93.64	86.42	79.76	73.61	67.93	62.69	57.46	52.66

<sup>336</sup> Eurostat dataset: earn\_ses\_pub2s.

Czech Republic	35.42	34.07	32.77	31.53	30.33	29.17	28.06	26.95	25.89
Denmark	174.52	165.25	156.48	148.17	140.30	132.85	125.80	118.74	112.08
Estonia	100.38	73.15	53.30	38.84	28.30	20.62	15.03	9.43	5.92
Finland	59.79	59.67	59.56	59.45	59.34	59.22	59.11	59.00	58.89
France	115.10	110.91	106.88	102.99	99.25	95.64	92.16	88.69	85.34
Germany	151.69	141.18	131.40	122.30	113.83	105.95	98.61	91.27	84.48
Greece	90.36	84.31	78.66	73.39	68.47	63.88	59.60	55.33	51.35
Hungary	24.35	23.78	23.23	22.70	22.17	21.66	21.16	20.66	20.17
Ireland	119.25	114.21	109.39	104.77	100.34	96.10	92.04	87.98	84.10
Italy	48.61	50.54	52.55	54.64	56.81	59.07	61.41	63.76	66.20
Latvia	19.94	19.50	19.07	18.65	18.24	17.83	17.44	17.04	16.66
Lithuania	5.76	6.75	7.91	9.28	10.88	12.75	14.95	17.14	19.66
Luxembourg	187.70	175.60	164.29	153.70	143.80	134.53	125.87	117.20	109.13
Malta	16.25	19.44	23.25	27.82	33.28	39.82	47.64	55.46	64.57
Netherlands	58.06	59.32	60.61	61.93	63.28	64.66	66.07	67.47	68.91
Poland	26.60	26.07	25.56	25.05	24.56	24.08	23.60	23.13	22.66
Portugal	42.58	40.34	38.22	36.21	34.31	32.50	30.79	29.08	27.47
Romania	9.35	9.84	10.35	10.89	11.46	12.05	12.68	13.31	13.97
Slovakia	40.85	36.34	32.32	28.75	25.57	22.75	20.24	17.72	15.52
Slovenia	56.30	53.14	50.16	47.34	44.69	42.18	39.81	37.45	35.22
Spain	59.12	59.35	59.57	59.80	60.03	60.25	60.48	60.71	60.94
Sweden	14.08	17.03	20.59	24.90	30.10	36.40	44.01	51.63	60.56
United Kingdom	74.59	73.58	72.58	71.60	70.64	69.68	68.74	67.80	66.87

### *Step 3. Estimate rate of problems per purchase*

The calculation of the problem rate was based on the Consumer Markets Scoreboard data on “Percentage of people who experienced at least one problem” for the period 2010-2017. The extrapolation for 2018 was done based on a linear regression. See results below.

*Table 6 - Rate of problems 2010-2018*

	2010	2011	2012	2013	2014	2015	2016	2017	2018
Austria	16%	11%	11%	7%	6%	4%	4%	5%	5%
Belgium	13%	11%	10%	8%	7%	6%	6%	7%	7%
Bulgaria	20%	20%	21%	19%	17%	15%	15%	15%	14%
Croatia	18%	18%	18%	18%	16%	14%	12%	10%	8%

Cyprus	9%	2%	-2%	5%	8%	12%	12%	12%	13%
Czech Republic	14%	13%	15%	12%	12%	11%	13%	14%	16%
Denmark	11%	9%	8%	8%	8%	8%	8%	8%	8%
Estonia	11%	10%	9%	7%	5%	3%	2%	1%	0%
Finland	10%	5%	4%	7%	6%	6%	5%	4%	3%
France	8%	11%	9%	6%	4%	2%	2%	2%	2%
Germany	10%	12%	13%	9%	7%	5%	4%	4%	3%
Greece	19%	22%	17%	12%	10%	8%	9%	10%	11%
Hungary	42%	40%	44%	33%	24%	14%	11%	7%	5%
Ireland	28%	15%	18%	16%	13%	11%	9%	7%	6%
Italy	11%	11%	8%	7%	7%	7%	7%	7%	7%
Latvia	11%	10%	5%	8%	8%	8%	6%	5%	4%
Lithuania	24%	26%	22%	16%	12%	8%	7%	6%	5%
Luxembourg	10%	8%	9%	8%	7%	5%	4%	3%	2%
Malta	4%	-3%	-4%	3%	6%	8%	8%	7%	7%
Netherlands	15%	9%	11%	8%	6%	4%	4%	4%	3%
Poland	23%	20%	22%	19%	16%	13%	12%	11%	9%
Portugal	17%	17%	23%	13%	10%	7%	8%	9%	11%
Romania	28%	24%	24%	19%	15%	12%	12%	12%	11%
Slovakia	15%	12%	9%	10%	11%	12%	12%	12%	12%
Slovenia	11%	13%	13%	9%	7%	5%	4%	4%	3%
Spain	25%	26%	30%	26%	24%	22%	21%	20%	18%
Sweden	6%	5%	5%	6%	6%	6%	6%	6%	5%
United Kingdom	35%	19%	17%	13%	10%	8%	7%	7%	7%

*Step 4. Estimate the market penetration.*

The number of purchases of consumer credit products was estimated based on the Eurobarometer data (2003, 2011, 2016) on the percentage of respondents that have purchased at least one loan, credit or credit card (see below).

*Table 7 - Market penetration of consumer credit 2010-2018*

	2010	2011	2012	2013	2014	2015	2016	2017	2018
Austria	40%	40%	40%	40%	56%	72%	66%	60%	55%
Belgium	31%	31%	31%	31%	34%	37%	33%	28%	25%
Bulgaria	25%	25%	25%	25%	29%	33%	29%	25%	22%
Croatia	38%	38%	38%	38%	36%	33%	33%	33%	33%
Cyprus	39%	39%	39%	39%	42%	45%	38%	30%	25%

Czech Republic	20%	20%	20%	20%	33%	45%	36%	27%	22%
Denmark	34%	34%	34%	34%	33%	31%	29%	27%	25%
Estonia	29%	29%	29%	29%	33%	37%	35%	33%	31%
Finland	42%	42%	42%	42%	47%	52%	42%	32%	26%
France	40%	40%	40%	40%	53%	66%	66%	66%	66%
Germany	47%	47%	47%	47%	58%	68%	63%	58%	54%
Greece	29%	29%	29%	29%	28%	27%	29%	31%	33%
Hungary	18%	18%	18%	18%	19%	20%	19%	17%	16%
Ireland	38%	38%	38%	38%	43%	48%	39%	30%	24%
Italy	33%	33%	33%	33%	37%	41%	38%	35%	32%
Latvia	26%	26%	26%	26%	29%	31%	31%	30%	30%
Lithuania	26%	26%	26%	26%	28%	30%	26%	22%	19%
Luxembourg	56%	56%	56%	56%	65%	73%	66%	58%	52%
Malta	43%	43%	43%	43%	35%	26%	27%	27%	28%
Netherlands	25%	25%	25%	25%	34%	43%	37%	30%	25%
Poland	26%	26%	26%	26%	30%	34%	28%	22%	18%
Portugal	23%	23%	23%	23%	26%	28%	26%	23%	21%
Romania	26%	26%	26%	26%	31%	35%	31%	27%	24%
Slovakia	25%	25%	25%	25%	30%	34%	29%	24%	20%
Slovenia	26%	26%	26%	26%	30%	33%	29%	24%	21%
Spain	25%	25%	25%	25%	30%	34%	30%	25%	22%
Sweden	33%	33%	33%	33%	43%	52%	43%	33%	27%
United Kingdom	31%	31%	31%	31%	37%	42%	38%	33%	29%

The total number of purchases of consumer credit per country was obtained by multiplying the market penetration by the population of each EU28 country.

*Step 5. Calculate the personal consumer detriment (financial and time loss) for the period 2010-2018*

To calculate the financial consumer detriment, the rate of problems was multiplied by the total number of purchases and by the magnitude of a problem for each country. The results are presented below.

*Table 8 - Consumer financial detriment (million euros, 2010 prices)*

	2010	2011	2012	2013	2014	2015	2016	2017	2018
EU-28	3,116	2,891	2,805	2,206	2,166	2,011	1,702	1,420	1,236
Austria	46	31	32	21	22	20	19	18	17

Belgium	50	42	35	24	21	19	16	14	12
Bulgaria	81	73	70	56	54	51	40	31	24
Croatia	36	37	37	38	33	28	24	20	17
Cyprus	5	1	0	2	4	6	5	4	4
Czech Republic	58	51	55	40	59	74	61	46	37
Denmark	25	21	17	17	15	14	13	12	10
Estonia	5	5	4	3	2	1	1	0	0
Finland	109	45	25	29	23	19	9	3	1
France	159	225	180	116	107	74	74	74	75
Germany	392	433	443	313	278	212	171	134	106
Greece	127	137	100	62	47	35	39	42	47
Hungary	128	113	119	83	59	35	23	13	8
Ireland	57	30	36	31	29	25	17	11	7
Italy	382	349	260	220	235	243	221	200	181
Latvia	6	5	2	4	5	6	4	3	3
Lithuania	24	24	20	14	11	8	5	4	3
Luxembourg	1	1	1	1	2	2	1	1	1
Malta	1	0	0	1	1	1	1	1	1
Netherlands	19	14	20	17	22	23	23	21	20
Poland	262	232	271	239	239	228	172	122	91
Portugal	65	64	82	46	38	28	30	30	31
Romania	227	187	176	129	118	102	82	66	53
Slovakia	20	17	13	16	22	28	26	22	20
Slovenia	14	16	14	9	7	5	3	2	1
Spain	546	553	590	490	496	488	379	286	222
Sweden	20	17	16	19	26	34	27	20	16
United Kingdom	251	168	187	166	191	202	216	220	228

To calculate the total cost with time losses the monetised time losses were multiplied per problem by the total number of problems (i.e., rate of problems by the total number of purchases) for each country (see below)

*Table 9 - Total time losses (million euros, prices 2010)*

	2010	2011	2012	2013	2014	2015	2016	2017	2018
<b>EU</b>	<b>1,685</b>	<b>1,537</b>	<b>1,447</b>	<b>1,061</b>	<b>999</b>	<b>863</b>	<b>732</b>	<b>613</b>	<b>527</b>
Austria	52.10	32.89	32.67	19.57	19.61	16.54	14.96	13.19	11.70
Belgium	51.49	43.20	36.89	24.68	22.30	19.73	17.16	14.42	12.36

Bulgaria	2.58	2.62	2.82	2.53	2.75	2.91	2.55	2.19	1.92
Croatia	7.94	7.72	7.38	7.24	5.96	4.72	3.85	3.04	2.38
Cyprus	2.32	0.47	0	0.98	1.72	2.41	1.91	1.45	1.15
Czech Republic	8.38	7.62	8.59	6.46	9.92	13.01	11.16	8.87	7.52
Denmark	27.13	21.96	17.72	17.27	15.70	14.25	12.67	11.15	9.85
Estonia	3.39	2.24	1.45	0.87	0.51	0.25	0.10	0.02	0.00
Finland	10.38	5.83	4.57	7.07	7.89	8.70	5.75	3.41	2.14
France	182.2 2	249.62	192.86	119.66	106.43	71.00	68.80	66.61	64.48
Germany	497.3 3	529.97	523.41	357.42	306.38	226.08	176.38	133.00	100.9 2
Greece	45.12	48.85	35.82	22.42	17.00	12.47	13.95	15.33	16.91
Hungary	14.70	13.59	15.03	10.89	8.10	5.05	3.45	2.09	1.28
Ireland	43.01	22.24	26.14	22.12	19.98	17.10	11.44	7.02	4.54
Italy	87.74	87.01	70.44	64.83	75.07	84.35	83.25	81.59	80.43
Latvia	1.04	0.90	0.38	0.67	0.70	0.73	0.55	0.39	0.27
Lithuania	0.93	1.12	1.12	0.96	0.90	0.75	0.64	0.50	0.40
Luxembourg	4.14	3.18	3.28	2.99	2.69	2.26	1.50	0.89	0.53
Malta	0.09	0	0	0.12	0.23	0.31	0.37	0.43	0.50
Netherlands	28.09	17.54	21.45	15.69	16.89	15.43	12.78	10.23	8.46
Poland	48.59	41.28	46.30	39.21	37.65	34.37	24.89	16.97	12.11
Portugal	14.58	14.02	17.23	9.47	7.50	5.28	5.43	5.36	5.36
Romania	10.98	10.04	10.52	8.54	8.72	8.32	7.49	6.61	5.93
Slovakia	6.67	4.71	3.13	3.17	3.62	4.01	3.05	2.21	1.66
Slovenia	2.62	3.08	2.91	1.95	1.57	1.11	0.81	0.57	0.41
Spain	139.8 9	150.66	170.82	151.00	162.61	170.10	140.47	113.20	93.54
Sweden	2.12	2.16	2.39	3.60	5.90	9.17	8.71	7.63	7.03
United Kingdom	389.6 9	213.00	192.81	139.72	131.21	113.26	98.74	84.68	73.64

*Step 6. Calculate the net benefit of the Directive in terms of personal consumer detriment.*

The net benefit of the Directive in a given year was considered to be 22.5% of the difference between the financial detriment on that year and the financial detriment at the baseline (beginning of 2010)<sup>337</sup>. See below.

<sup>337</sup> The impact of the Directive was assumed to be zero if the consumer detriment increased (instead of decreasing). This is reasonable as evidence does show that the Directive did not have a negative impact in the consumer detriment.



*Table 10 - Reduction of financial consumer detriment due to the Directive 2011-2018 (million euros, prices 2017)*

	2011	2012	2013	2014	2015	2016	2017	2018	NPV (@4%)
<b>Total EU28</b>	80	102	205	216	258	322	382	424	1,542
Austria	3	3	6	5	6	6	6	6	33
Belgium	2	3	6	6	7	8	8	9	38
Bulgaria	2	2	6	6	7	9	11	13	43
Croatia	0	0	0	1	2	3	4	4	9
Cyprus	1	1	1	0	0	0	0	0	3
Czech Republic	2	1	4	0	0	0	3	5	11
Denmark	1	2	2	2	2	3	3	3	15
Estonia	0	0	1	1	1	1	1	1	5
Finland	14	19	18	19	20	22	24	24	128
France	0	0	10	12	19	19	19	19	75
Germany	0	0	18	26	41	50	58	64	194
Greece	0	6	14	18	21	20	19	18	90
Hungary	3	2	10	16	21	24	26	27	99
Ireland	6	5	6	6	7	9	10	11	48
Italy	7	27	36	33	31	36	41	45	203
Latvia	0	1	0	0	0	0	1	1	2
Lithuania	0	1	2	3	4	4	4	5	17
Luxembourg	0	0	0	0	0	0	0	0	0
Malta	1	1	0	0	0	0	0	0	1
Netherlands	1	0	0	0	0	0	0	0	1
Poland	7	0	5	5	8	20	31	38	86
Portugal	0	0	4	6	8	8	8	7	32
Romania	9	11	22	24	28	32	36	39	158
Slovakia	1	2	1	0	0	0	0	0	3
Slovenia	0	0	1	2	2	3	3	3	10
Spain	0	0	13	11	13	38	58	73	153
Sweden	1	1	0	0	0	0	0	1	2
United Kingdom	19	15	19	14	11	8	7	5	81

The net benefits of the Directive in terms of savings in time losses was considered to be 22.5% reduction of the total monetised time losses (i.e., monetised time losses per

problem multiplied by the number of problems) in the period 2011-2018 (i.e., difference between the values for a given year and the baseline). See below.

*Table 11 - Total savings in time losses (million euros, prices 2010)*

	2011	2012	2013	2014	2015	2016	2017	2018	NPV @4%
EU	<b>59</b>	<b>70</b>	<b>143</b>	<b>161</b>	<b>194</b>	<b>217</b>	<b>243</b>	<b>262</b>	<b>1051</b>
Austria	4	4	7	7	8	8	9	9	<b>46</b>
Belgium	2	3	6	7	7	8	8	9	<b>39</b>
Bulgaria	0	0	0	0	0	0	0	0	<b>0</b>
Croatia	0	0	0	0	1	1	1	1	<b>4</b>
Cyprus	0	1	0	0	0	0	0	0	<b>2</b>
Czech Republic	0	0	0	0	0	0	0	0	<b>1</b>
Denmark	1	2	2	3	3	3	4	4	<b>17</b>
Estonia	0	0	1	1	1	1	1	1	<b>4</b>
Finland	1	1	1	1	0	1	2	2	<b>7</b>
France	0	0	14	17	25	26	26	26	<b>103</b>
Germany	0	0	31	43	61	72	82	89	<b>288</b>
Greece	0	2	5	6	7	7	7	6	<b>32</b>
Hungary	0	0	1	1	2	3	3	3	<b>10</b>
Ireland	5	4	5	5	6	7	8	9	<b>38</b>
Italy	0	4	5	3	1	1	1	2	<b>14</b>
Latvia	0	0	0	0	0	0	0	0	<b>1</b>
Lithuania	0	0	0	0	0	0	0	0	<b>0</b>
Luxembourg	0	0	0	0	0	1	1	1	<b>3</b>
Malta	0	0	0	0	0	0	0	0	<b>0</b>
Netherlands	2	1	3	3	3	3	4	4	<b>19</b>
Poland	2	1	2	2	3	5	7	8	<b>23</b>
Portugal	0	0	1	2	2	2	2	2	<b>9</b>
Romania	0	0	1	1	1	1	1	1	<b>4</b>
Slovakia	0	1	1	1	1	1	1	1	<b>5</b>
Slovenia	0	0	0	0	0	0	0	0	<b>2</b>
Spain	0	0	0	0	0	0	6	10	<b>12</b>
Sweden	0	0	0	0	0	0	0	0	<b>0</b>
United Kingdom	40	44	56	58	62	65	69	71	<b>371</b>

The total benefits of the Directive in terms of reduction of consumer detriment (financial and non-financial) are summarised below. The net present value of the savings in consumer detriment due to the introduction of the Directive are € 2.593 millions (prices of 2010).

*Table 12 - Net benefits of the Directive 2011-2018 (million euros, prices 2010)*

c	2011	2012	2013	2014	2015	2016	2017	2018	NPV @4%
Consumer financial detriment	80	102	205	216	258	322	382	424	<b>1,542</b>
Time losses (monetised)	59	70	143	161	194	217	243	262	<b>1,051</b>
<b>Total EU28</b>	<b>139</b>	<b>172</b>	<b>348</b>	<b>376</b>	<b>453</b>	<b>539</b>	<b>625</b>	<b>685</b>	<b>2,593</b>

## Costs

The costs of the Directive for providers and public administrators are related to compliance, monitoring and enforcement and can be subdivided into one-off costs and ongoing costs. The one-off costs relate to costs that credit providers and public administrators had when the Directive was implemented but that are not recurrent. Ongoing costs are cost that providers and public administrators have recurrently.

The methodology proposed to estimate the costs for providers and public administrators was based on the Economics (2007)<sup>338</sup>.

### Costs for public administrations

The one-off costs of public administrations related to the implementation of the Directive were related to the need to transpose the Directive into national law.

*Table 13 - Approach to calculate one-off costs for public administrations*

Methodology	Assumptions
Unit cost = No. of days per person X Average daily wages for the public sector X No. of persons involved	<ul style="list-style-type: none"> <li>• 2 officials per Member State</li> <li>• 5-10 days per month during 6 months</li> </ul>
Total cost = Unit cost X 28 Member States	<ul style="list-style-type: none"> <li>• Average daily wage for the public sector per country from Eurostat</li> </ul>

The recurrent costs of public administrations related to the implementation of the Directive are related to the monitoring of compliance of credit providers with the

<sup>338</sup> Economics, E., 2007. An analysis of the issue of consumer detriment and the most appropriate methodologies to estimate it. DG SANCO. URL: [http://ec.europa.eu/consumers/strategy/docs/study\\_consumer\\_detriment.pdf](http://ec.europa.eu/consumers/strategy/docs/study_consumer_detriment.pdf).

Directive, reporting the EU and enforcing the Directive (e.g. sweeps, investigations). The methodology and assumptions followed to calculate these costs are summarised below.

*Table 14 - Approach to recurrent costs of public administrations*

Recurrent cost	Methodology	Assumptions
Monitoring	Unit cost = No. of days per person X Average daily wages for the public sector X No. of persons involved  Total cost = Unit cost X 28 Member States  Total cost = Unit cost X 28 Member States	<ul style="list-style-type: none"> <li>• 1 official per MS</li> <li>• 1 to 2 days per official per month to monitor compliance (e.g. scanning websites of banks)</li> <li>• Average daily wage for the public sector per country from Eurostat</li> </ul>
Enforcement	Unit cost = No. of days per person X Average daily wages for the public sector X No. of persons involved  Total cost = Unit cost X 28 Member States	<ul style="list-style-type: none"> <li>• 2 official per MS</li> <li>• 1 to 2 days per official per month</li> <li>• Average daily wage for the public sector per country from Eurostat</li> </ul>
Reporting	Unit cost = No. of days per person X Average daily wages for the public sector X No. of persons involved  Total cost = Unit cost X 28 Member States	<ul style="list-style-type: none"> <li>• 1 official per MS</li> <li>• 2 to 3 days per official per year</li> <li>• Average daily wage for the public sector per country from Eurostat</li> </ul>
Maintaining database	Unit cost = No. of days per person X Average daily wages for the public sector X No. of persons involved  Total cost = Unit cost X 28 Member States	<ul style="list-style-type: none"> <li>• 1 official per MS</li> <li>• 1 to 2 days per month</li> <li>• Average daily wage for the public sector per country from Eurostat</li> </ul>

### **Costs for financial providers**

The one-off cost of credit providers related to the implementation of the Directive were considered to be the following:

- Time spent by legal department to familiarise with new legislative requirements (including time to understand the exemptions, concepts, etc.)
- Cost of updating/adapting internal IT systems to the following key requirements of the Directive:
  - Pre-contractual information/SECCI requirements
  - Credit worthiness assessment requirements

- Calculation of the APR
- Internal communications/ initial staff training on the following key requirements of the Directive:
  - Advertisement requirements
  - Pre-contractual information/SECCI requirements
  - Calculation of the APR
- Updating website with required information and functionalities
- Time spent by legal department to adapt contractual documentation
- The methodology and assumptions followed to calculate these costs are described below. It is important to highlight that, similarly to the approach followed in the quantification of the benefits, some on-off costs of credit providers were adjusted considering what can be attributed to the implementation of the Directive (per key provision) and the level of compliance with the Directive (per key provision).

*Table 15 - Approach to one-off costs of credit providers*

One-off cost	Methodology	Assumptions
Familiarisation with the Directive	Unit cost = No. of days per person X Average daily wages for the financial sector X No. of persons involved Total cost = Unit cost X No. of credit institutions undertaking activity	<ul style="list-style-type: none"> <li>• 2 staff member per credit institution would be involved in this exercise</li> <li>• S/he will devote 5 to 7 days</li> </ul>
Cost of updating/adapting IT systems to pre-contractual information requirements	Unit cost X No. of credit institutions Total cost = Unit cost X Number of Financial Institutions X Share of Financial Institutions that adapted their systems to this requirement	<ul style="list-style-type: none"> <li>• € 10,000 to €15,000 per institution</li> <li>• Number of financial institutions form ECB</li> <li>• Values for attribution and compliance estimated based on expert judgment</li> </ul>
Cost of updating/adapting IT systems to Credit worthiness assessment requirements	Unit cost = Average cost of updating/adapting one IT system Total cost = Unit cost X Number of Financial Institutions X Share of Financial Institutions that adapted their systems to this requirement	<ul style="list-style-type: none"> <li>• € 10,000 to €15,000 per institution</li> <li>• Number of financial institutions form ECB</li> <li>• Values for attribution and compliance estimated based on expert judgment</li> </ul>
Cost of updating/adapting IT systems to Calculation of the APR	Unit cost = Average cost of updating/adapting one IT system	<ul style="list-style-type: none"> <li>• € 10,000 to €15,000 per institution</li> <li>• Number of financial</li> </ul>

	<p>Total cost = Unit cost X Number of Financial Institutions X Share of Financial Institutions that adapted their systems to this requirement</p>	<p>institutions form ECB</p> <ul style="list-style-type: none"> <li>• Values for attribution and compliance estimated based on expert judgment</li> </ul>
Staff training on pre-contractual information	<p>Unit cost = No. of people involved X No. of days per person X Average daily wages for the financial sector</p> <p>Total cost = Unit cost X Number of Financial Institutions X Share of Financial Institutions that needed to adapt to this requirement</p>	<ul style="list-style-type: none"> <li>• 0.125 to 0.25 days per person</li> <li>• All front office employees will have to spend some time on familiarising themselves with new requirements –</li> <li>• assumed to be 20% of workforce</li> <li>• Average daily wage for the financial sector per country from Eurostat</li> <li>• Number of financial institutions form ECB</li> <li>• Values for attribution and compliance estimated based on expert judgment</li> </ul>
Staff training on Advertisement requirements	<p>Unit cost = No. of people involved X No. of days per person X Average daily wages for the financial sector</p> <p>Total cost = Unit cost X Number of Financial Institutions X Share of Financial Institutions that needed to adapt to this requirement</p>	<ul style="list-style-type: none"> <li>• 0.125 to 0.25 days per person</li> <li>• All marketing employees will have to spend some time on familiarising themselves with new requirements –</li> <li>• assumed to be 5% of workforce</li> <li>• Average daily wage for the financial sector per country from Eurostat</li> <li>• Number of financial institutions form ECB</li> <li>• Values for attribution and compliance estimated based on expert judgment</li> </ul>
Staff training on Calculation of the APR	<p>Unit cost = No. of people involved X No. of days per person X Average daily wages for the financial sector</p> <p>Total cost = Unit cost X Number of Financial Institutions X Share of Financial Institutions that</p>	<ul style="list-style-type: none"> <li>• 0.075 to 0.125 days per person</li> <li>• All front office employees will have to spend some time on familiarising themselves with new requirements –</li> </ul>

	needed to adapt to this requirement	<ul style="list-style-type: none"> <li>assumed to be 20% of workforce</li> <li>Average daily wage for the financial sector per country from Eurostat</li> <li>Number of financial institutions form ECB</li> <li>Values for attribution and compliance estimated based on expert judgment</li> </ul>
Updating the website	<p>Unit cost = Average cost of updating website</p> <p>Total cost = Unit cost X Number of Financial Institutions X Share of Financial Institutions that adapted their websites</p>	<ul style="list-style-type: none"> <li>Unit cost = € 400 to €600 per bankNumber of financial institutions form ECB</li> <li>Values for attribution and compliance estimated based on expert judgment</li> <li>Values for attribution and compliance estimated based on expert judgment</li> </ul>
Updating contractual documentation	<p>Unit cost = No. of people involved X No. of days per person X Average daily wages for the financial sector</p> <p>Total cost = Unit cost X Number of Financial Institutions X Share of Financial Institutions that needed to adapt to this requirement</p>	<ul style="list-style-type: none"> <li>member of the legal team per bank</li> <li>1 to 2 day per person</li> <li>Average daily wage for the financial sector per country from Eurostat</li> <li>Number of financial institutions form ECB</li> <li>Values for attribution and compliance estimated based on expert judgment</li> </ul>

The recurrent costs of the financial providers related to the need to comply with the Directive depend on their level of compliance with the Directive and their need to adjust their operations to the Directive (which in some cases was not necessary as the credit providers were already operating in line with the key requirements of the Directive). See below for a description of the approach followed to calculate these costs.

*Table 16 - Approach to calculate recurrent costs of financial providers*

Recurrent cost	Methodology	Assumptions
Compliance with advertisement requirements	<p>Unit cost = Extra cost of advertisement x number of advertisements per year</p> <p>Total costs = Unit cost x Number of credit institutions</p>	<ul style="list-style-type: none"> <li>Extra cost per advertisement = €5 - €10</li> <li>Number of advertisements per year = 365</li> </ul>

Compliance with Pre-contractual information/SECCI requirements	<p>Unit cost = No. of days per person X Average daily wages for the financial sector X No. of persons involved</p> <p>Total cost = Unit cost X No. of credit requests X percentage of credit request done in person</p>	<ul style="list-style-type: none"> <li>• 1 member of the front desk</li> <li>• 0.1 hours per person</li> </ul>
Compliance with credit worthiness assessment requirements	<p>Unit costs = No. of days per person X Average daily wages for the financial sector X No. of persons involved (the unit cost depends on the level of burden)</p> <p>Total cost = Unit cost X No. of credit requests for which a credit worthiness would not been done in the absence of CCD</p>	<ul style="list-style-type: none"> <li>• For 15% of the credit request a creditworthiness was not done before CCD and due to CCD this was reduced to 10%</li> <li>• 1 staff member</li> <li>• 0.05-0.10 days per request in countries depending on their level of burden</li> </ul>

## Consumers affected

Table 17 - Overview of the number of consumers affected

Provision	Consumers affected in given year 2010-2018	Rationale
<b>Types of credit</b>		
<b>Linked credit:</b> number of consumers affected	Up to 20 thousand	Based on 1% of consumers exercising their right of withdrawal, maximum 50% of new agreements being linked credit, 16% of those consumers reporting problems, of which 41% are major problems
<b>Revolving credit:</b> number of consumers affected facing problems with their credit card in terms of unrequested extensions of the credit line	Up to 25 million	Based on estimated 44% share of consumers with a credit card (2018), <sup>339</sup> 12% share of consumers with problems <sup>340</sup>
<b>Credit intermediaries:</b> Estimated number of consumers experiencing problems with credit intermediaries	Between 600,000 and 4.3 million	Based on share of consumers taking out a loan through a credit intermediary at 11% (ICF survey) and 1.5% (OPC survey), and a problem incidence rate of 65% (2013 Commission study).
<b>Understanding credit offers and information provision</b>		

<sup>339</sup> Eurobarometer 443 figures at 43%, indexed for 2018.

<sup>340</sup> Based on UK figures and extrapolated for the EU.



<b>Understanding of credit offers:</b> estimated number of consumers that considered credit offers complicated or very complicated to understand	11.4 million	Based on share of consumers marking understanding as complicated or very complicated in ICF survey (19%).
<b>APR:</b> number of consumers where credit institution did not inform consumer of the value of the APR	Up to 6 million	Based on 10% of consumers not having been informed <sup>341</sup>
<b>APR:</b> consumers who have not heard about the APR	Up to 5.4 million	Based on ICF survey
<b>APR:</b> estimated number of consumers who have heard about the APR but do not know the annual rate of charge	Up to 19 million	Based on ICF survey
<b>Right of withdrawal:</b> consumers unaware of the right to withdraw	Between 17 and 24 million	Based on between 28% and 40% of consumers reporting not aware of this right based on ICF survey
<b>Right of early repayment:</b> consumers unaware of the right to repay early	Between 9 and 11 million	Based on between 12% and 15% of consumers reporting not aware of this right based on ICF survey
<b>SECCI:</b> number of consumers that did not receive SECCI	Up to 11 million	Based on 18% of consumers reporting not having been provided with SECCI <sup>342</sup>
<b>SECCI:</b> number of consumers that found SECCI unhelpful or very unhelpful	Up to 3 million	Based on share of consumers finding SECCI unhelpful (4%) or very unhelpful (1%) based on ICF survey
<b>Understanding offer:</b> estimated number of consumers that disagreed or strongly disagreed with understanding the offer	Up to 9 million	Based on ICF consumer survey with 15% that disagreed or strongly disagreed that offer was easy to understand.
<b>Key rights</b>		
<b>Down payments:</b> consumers asked to pay a down payments	Up to 16 million	Based on share of consumers asked to pay a down payment (27%) in ICF survey.
<b>Right of withdrawal:</b> estimated number of consumers facing difficulty in exercising the right	Up to 238,000	Based on 1% of consumers exercising their right of withdrawal, and 56.5% being unsuccessful, of which a subset was aware of the correct timeframe <sup>343</sup>
<b>Right of early repayment:</b> estimated number of consumers facing difficulty in exercising the	Up to 2.5 million	Based on 25% seeking to repay early, 14% that were not successful <sup>344</sup>

<sup>341</sup> ICF survey, Q10a.

<sup>342</sup> ICF survey, Q13

<sup>343</sup> London Economics, 2013; consumer survey.

<sup>344</sup> London Economics, 2013.

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<b>Cross-selling:</b> estimated number of consumers affected by lender trying to sell additional products	Up to 25 million	Based on 42% of consumers whom indicated this been asked them in writing or orally when purchasing a loan. <sup>345</sup> Note: low sample size.
<b>Creditworthiness assessment:</b> consumers whose ability to pay was not verified	Up to 6 million	Based on 10% of consumers who indicated that their ability to pay was not verified in ICF survey.
<b>Advertisement:</b> share of consumers that considered advertisement not to match actual offer	Between 8 and 11 million	Based on weighted and unweighted share of 14% and 18% of consumers that considered advertisement not to match loan offer, ICF survey
<b>Consumer perceptions: elements not part of the credit offer</b>		
Monthly instalments	Up to 20 million	Based on shares indicated in ICF survey
Total amount of credit	Up to 22 million	Based on shares indicated in ICF survey
Borrowing rates	Up to 23 million	Based on shares indicated in ICF survey
Duration of credit agreement	Up to 25 million	Based on shares indicated in ICF survey
Type of credit	Up to 27 million	Based on shares indicated in ICF survey
APR	Up to 29 million	Based on shares indicated in ICF survey
Other conditions set	Up to 43 million	Based on shares indicated in ICF survey
Rights as a consumer	Up to 45 million	Based on shares indicated in ICF survey
<b>None of the above</b>	Up to 59 million	Based on shares indicated in ICF survey

<sup>345</sup> London Economics, 2013.

## **Annex 4: Key concepts and definitions**

Ancillary service - means a service offered to the consumer in conjunction with the credit agreement.<sup>346</sup>

Annual percentage rate of charge (APR) - the total cost of the credit to the consumer, expressed as an annual percentage of the total amount of credit, where applicable including the costs referred to in Article 19(2) of the Directive;<sup>347</sup>

Automated decision-making - the process of making a decision by automated means without any human involvement. These decisions can be based on factual data, as well as on digitally created profiles or inferred data.<sup>348</sup>

Bank - A financial institution one of whose principal activities is to take deposits and borrow with the objective of lending and investing and which is within the scope of banking or similar legislation.<sup>349</sup>

Borrower - a person, firm or institution that obtains a loan from a lender in order to finance consumption or investment.<sup>350</sup>

Borrowing rate - the interest rate expressed as a fixed or variable percentage applied on an annual basis to the amount of credit drawn down;<sup>351</sup>

Consumer - a natural person who, in transactions covered by the Directive, is acting for purposes which are outside his trade, business or profession;<sup>352</sup>

Consumer detriment - a measure of harm that consumers may experience when market outcomes fall short of their potential, result in welfare losses for consumers. Consumer detriment can be structural or personal<sup>353</sup>.

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<sup>346</sup> Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property, Article 4(4).

<sup>347</sup> Consumer Credit Directive, Article 19.

<sup>348</sup> ICO, Guide to the General Data Protection Regulation (GDPR) - Automated decision-making and profiling

<sup>349</sup> IASCF, Key term list; Commission Regulation (EC) No 1126/2008 (international accounting standards)

<sup>350</sup> Collins Dictionary of Economics, 4th ed. 2005.

<sup>351</sup> Consumer Credit Directive, Article 3(j).

<sup>352</sup> Consumer Credit Directive, Article 3(a).

<sup>353</sup> See definition in European Commission Study on measuring consumer detriment in the European Union (COVID, 2017).

Creditor - a natural or legal person who grants or promises to grant credit in the course of his trade, business, or profession;<sup>354</sup>

Credit Agreement - an agreement whereby a creditor grants or promises to grant to a consumer credit in the form of a deferred payment, loan or other similar financial accommodation, except for agreements for the provision on a continuing basis of services or for the supply of goods of the same kind, where the consumer pays for such services or goods for the duration of their provision by means of instalments;<sup>355</sup>

Credit Card - A card entitling the owner to use funds from the issuing company up to a certain limit. The holder of a credit card may use it to buy a good or service. When one does this, the issuing company effectively gives the card holder a loan for the amount of the good or service, which the holder is expected to repay.<sup>356</sup>

Credit intermediary - a natural or legal person who is not acting as a creditor and who, in the course of his trade, business or profession, for a fee, which may take a pecuniary form or any other agreed form of financial consideration:

- presents or offers credit agreements to consumers;
- assists consumers by undertaking preparatory work in respect of credit agreements other than as referred to in (I); or
- concludes credit agreements with consumers on behalf of the creditor;<sup>357</sup>

Credit institution - an undertaking the business of which is to take deposits or other repayable funds from the public and to grant credits for its own account;<sup>358</sup>

Credit line - a fixed amount or limit of credit which is established for a consumer by a business or bank. It is the amount of outstanding credit which may not be exceeded at any time;<sup>359</sup>

Credit provider – see Lender

Creditworthiness assessment - evaluation of the prospect for the debt obligation resulting from the credit agreement to be met<sup>360</sup>

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<sup>354</sup> Consumer Credit Directive, Article 3(b).

<sup>355</sup> Consumer Credit Directive, Article 3 (c).

<sup>356</sup> Farlex Financial Dictionary, 2012

<sup>357</sup> Consumer Credit Directive, Article 3(f).

<sup>358</sup> Regulation (EU) no 575/2013 of the European parliament and of the council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012

<sup>359</sup> Webster; Collin & Joliffe, Dict. of Accounting, Collin Publ., 1992

Credit rollover – extending the loan’s due date by paying an additional fee. Loan rollover is common with short-term payday loans.

Cross-selling practice - offering of an investment service together with another service or product as part of a package or as a condition for the same agreement or package.<sup>361</sup>

Crowdfunding service - means the matching of business funding interest of investors and project owners through the use of a crowdfunding platform and which consist of any of the following: (i) the facilitation of granting of loans; (ii) the placing without firm commitment, as referred to in point 7 of Section A of Annex I to Directive 2014/65/EU, of transferable securities issued by project owners and the reception and transmission of client orders, as referred to in point 1 of Section A to Annex I to Directive 2014/65, with regard to those transferable securities.<sup>362</sup>

Crowdfunding platform - means an electronic information system operated or managed by a crowdfunding service provider.<sup>363</sup>

Dynamic pricing - a customer or user billing mode in which the price for a product frequently rotates based on market demand, growth, and other trends.<sup>364</sup>

Durable medium - any instrument which enables the consumer to store information addressed personally to him in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;<sup>365</sup>

Financial literacy - a combination of awareness, knowledge, skill, attitude and behaviour necessary to make sound financial decisions and ultimately achieve individual financial wellbeing<sup>366</sup>.

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<sup>360</sup> Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property

<sup>361</sup> Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU

<sup>362</sup> Definition in Proposal for a Regulation of the European Parliament and of the Council on European Crowdfunding Service Providers (ECSP) for Business, COM(2018) 113 final, 2018/0048 (COD). This proposal does not apply to those services provided to project owners qualifying as consumers as defined in Article 3(a) of Directive 2008/48/EC.

<sup>363</sup> Ibid.

<sup>364</sup> Techopedia Dictionary, <https://www.techopedia.com/definition/29600/dynamic-pricing>

<sup>365</sup> Consumer Credit Directive, Article 3(m).

<sup>366</sup> See in Atkinson, A. and F. Messy (2012), "Measuring Financial Literacy: Results of the OECD / International Network on Financial Education (INFE) Pilot Study", OECD Working Papers on Finance, Insurance and Private Pensions, No. 15, OECD Publishing, Paris, <https://doi.org/10.1787/5k9csfs90fr4-en>

Fintech - technologically enabled financial innovation that could result in new business models, applications, processes, or products with an associated material effect on financial markets and institutions and the provision of financial services.<sup>367</sup>

Full harmonisation (maximum harmonisation) - In the case of full harmonisation Member States must implement the EU measures but may not enact or retain any rules which depart from them.<sup>368,369</sup>

Household - group of persons who share the same living accommodation, who pool some, or all, of their income and wealth and who consume certain types of goods and services collectively, mainly housing and food.<sup>370</sup>

Implementation - the process of making sure that the provisions of EU legislation can be fully applied. For EU Directives, this is done via transposition of its requirements into national law, for other EU interventions such as Regulations or Decisions other measures may be necessary (e.g. in the case of Regulations, aligning other legislation that is not directly touched upon but affected indirectly by the Regulation with the definitions and requirement of the Regulation). Whilst EU legislation must be transposed correctly it must also be applied appropriately to deliver the desired policy objectives.<sup>371</sup>

Interest rate cap or Ceiling - The maximum interest rate that may be charged on a contract or agreement.<sup>372</sup>

Lender - individual, group or financial institution that makes funds or other assets available to another with the expectation that they will be returned, in addition to any interest and/or fees.<sup>373</sup>

Linked credit agreement - a credit agreement where

- the credit in question serves exclusively to finance an agreement for the supply of specific goods or the provision of a specific service, and

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<sup>367</sup> European Banking Authority, Glossary for financial innovation

<sup>368</sup> European Parliamentary Research Service, 2015, Competence in private law - The Treaty framework for a European private law and challenges for coherence

<sup>369</sup> “the objective pursued [by Directive 2008/48], which, as can be seen from recitals 7 and 9 to that directive, consists in providing, as regards consumer credit, full and mandatory harmonisation in a number of key areas, which is regarded as necessary in order to ensure that all consumers in the European Union enjoy a high and equivalent level of protection of their interests and to facilitate the emergence of a well-functioning internal market in consumer credit.” Judgment of the Court of 21 April 2016, Radlinger, C-377/14, EU:C:2016:283.

<sup>370</sup> Eurostat's Concepts and Definitions Database (CODED)

<sup>371</sup> European Commission (2017), Better Regulation Guidelines, Glossary

<sup>372</sup> Farlex Financial Dictionary, 2012

<sup>373</sup> Investopedia, 2019, Adam Barone, <http://www.investopedia.com/terms/l/lender.asp>

- those two agreements form, from an objective point of view, a commercial unit; a commercial unit shall be deemed to exist where the supplier or service provider himself finances the credit for the consumer or, if it is financed by a third party, where the creditor uses the services of the supplier or service provider in connection with the conclusion or preparation of the credit agreement, or where the specific goods or the provision of a specific service are explicitly specified in the credit agreement.<sup>374</sup>

Mortgage loan - – a credit agreement which is secured either by a mortgage or by another comparable security commonly used in a Member State on residential immovable property or secured by a right related to residential immovable property, or credit agreements the purpose of which is to acquire or retain property rights in land or in an existing or projected building.

Mystery shopping - 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.<sup>375</sup>

Non-banks – in general, these are non-monetary financial corporations. More specifically, they include insurance corporations and pension funds, financial auxiliaries, and other financial intermediaries.<sup>376</sup>

Non-credit institution - any creditor that is not a credit institution.<sup>377</sup>

Overdraft facility - an explicit credit agreement whereby a creditor makes available to a consumer funds which exceed the current balance in the consumer's current account.<sup>378</sup>

Overrunning - means a tacitly accepted overdraft whereby a creditor makes available to a consumer funds which exceed the current balance in the consumer's current account or the agreed overdraft facility;<sup>379</sup>

P2P lending - enables individuals to obtain loans directly from other individuals, cutting out the financial institution as the middleman. P2P lending is also known as social lending or crowdlending.<sup>380</sup>

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<sup>374</sup> Consumer Credit Directive

<sup>375</sup> Cambridge Business English Dictionary, 2011

<sup>376</sup> European Central Bank, 2016, Bank lending survey for the euro area, Glossary

<sup>377</sup> Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property

<sup>378</sup> Consumer Credit Directive, Article 3(d).

<sup>379</sup> Consumer Credit Directive, Article 3(e).

<sup>380</sup> Investopedia, 2019, Julia Kagan, <https://www.investopedia.com/terms/p/peer-to-peer-lending.asp>

Payday loan - A short-term loan expected to be repaid before the consumer's next pay day.<sup>381</sup>

Payment Protection Insurance (PPI) - An insurance policy that makes loan payments on behalf of the policyholder in the event of financial hardship.<sup>382</sup>

Personal loan - credit granted to a private person for non-commercial purposes solely on the basis of that person's creditworthiness, income, and financial circumstances.<sup>383</sup>

Product bundling or Bundling practice - the offering or the selling of a credit agreement in a package with other distinct financial products or services where the credit agreement is also made available to the consumer separately but not necessarily on the same terms or conditions as when offered bundled with the ancillary services.<sup>384</sup>

Revolving credit - credit that is automatically renewed as debts are paid off.<sup>385</sup>

Right of withdrawal - consumer's right to terminate a contract without reason within a specified time period, provided certain conditions are fulfilled.<sup>386</sup>

SECCI (Standard European Consumer Credit Information) - a standardised form designed to show exactly what a finance agreement contains. The form will include key details such as type of credit, Annual Percentage Rate (APR), number and frequency of payments, and total amount owed.<sup>387</sup>

Stakeholder - any individual citizen or an entity impacted, addressed, or otherwise concerned by an EU intervention.<sup>388</sup>

Stakeholder consultation - a formal process of collecting input and views from citizens and stakeholders on new initiatives or evaluations/ fitness checks, based on specific questions and/or consultation background documents or Commission documents launching a consultation process or Green Papers. When consulting, the Commission proactively seeks evidence (facts, views, opinions) on a specific issue.<sup>389</sup>

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<sup>381</sup> Farlex Financial Dictionary, 2012

<sup>382</sup> Farlex Financial Dictionary, 2012

<sup>383</sup> Dictionary of Banking, UBS 1998 - 2019

<sup>384</sup> Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property

<sup>385</sup> Oxford Dictionary of English, Oxford University Press 2018

<sup>386</sup> IATE EU terminology database, COM-Terminology Coordination, based on: European Commission > Rights & principles applicable when you buy goods or services online

<sup>387</sup> Credit Plus, 2019, Glossary, available at <https://www.creditplus.co.uk/car-finance-glossary/secci/>

<sup>388</sup> European Commission (2017), Better Regulation Guidelines, Glossary

<sup>389</sup> European Commission (2017), Better Regulation Guidelines, Glossary



Sweeps - – means concerted investigations of consumer markets through simultaneous coordinated control actions to check compliance with, or to detect infringements of, Union laws that protect consumers' interests.<sup>390</sup>

Transposition - describes the process of incorporating the rights and obligations set out in an EU Directive into national legislation, thereby giving legal force to the provisions of the Directive. The Commission may take action if a Member State fails to transpose EU legislation and/or to communicate to the Commission what measures it has taken. In case of no or partial transposition, the Commission can open formal infringement proceedings and eventually refer the Member State to the Court of Justice of the EU.<sup>391</sup>

Tying practice - the offering or the selling of a credit agreement in a package with other distinct financial products or services where the credit agreement is not made available to the consumer separately.<sup>392</sup>

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<sup>390</sup> See Article 3(16) of Regulation (EU) 2017/2394 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004 (the CPC Regulation).

<sup>391</sup> European Commission (2017), Better Regulation Guidelines, Glossary

<sup>392</sup> Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property

## Annex 5: Overview of the implementation of the Directive

The Directive has been fully transposed in all Member States, with differences emerging from the use of regulatory choices. The support study for the evaluation of the Directive analysed the state of transposition (p. 38), including whether Member States went beyond the Directive by applying more stringent measures in certain areas or made use of the regulatory choices foreseen in several articles.

The 2014 implementation report showed that a sizeable number of Member States (16)<sup>393</sup> did not meet the deadline of complying with the Directive and notifying the Commission by 11 June 2010, leading to infringement proceedings. Four Member States initially failed to ensure timely entry into force of the legislation. In the years thereafter all Member States complied and infringements cases were closed.

The analysis of both the transposition and the implementation of the Directive shows that the Directive triggered substantial reform of the consumer credit environment in most Member States. Irrespective of whether or not Member States have had to develop and set up an entire legal framework applicable to the credit market or simply amend their existing legislation, all countries have undergone significant changes to successfully transpose and implement the Directive.

As a full harmonisation Directive, the Directive was transposed (in due course or with delay, depending on the country) in all Member States, with a view to achieving maximum harmonisation. Cyprus, Estonia and Greece appear to have opted for a rather literal transposition of the Directive, applying every single provision *verbatim*. In other cases, Member States transposed them in an array of substantially different ways<sup>394</sup>.

As per the specificities of a full harmonisation Directive, Member States had to maintain or lay down provisions that could not be more or less restrictive than those of the Directive in the fully harmonised areas. In other words, as the principle of full harmonisation pertains to the whole Directive, Member States were left with little room for manoeuvre to transpose the EU instrument. Flexibility was nevertheless given to national lawmakers for nine optional provisions under Article 27(2), offering the possibility for Member States to make use of particular regulatory choices. In addition, some provisions of the Directive set clear objectives but do not clearly specify the result to be achieved. This gave Member States some additional discretionary power.

In addition to making use of regulatory choices, some Member States<sup>395</sup> went beyond the Directive in areas not covered by the Directive (and where the restrictions in respect of a full harmonisation Directive do not apply). This mainly includes interest rate caps in at least 23 Member States.<sup>396</sup>

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<sup>393</sup> BE; CY; DK; EE; ES; FI; FR; IT; LT; LU; LV; NL; PL; SI; SE and UK.

<sup>394</sup> See Annex 5 of the study supporting the evaluation for more details.

<sup>395</sup> AT, BE, BG, CZ, DK, DE, EE, ES, FI, FR, HR, HU, IE, IT, LV, LT, LU, MT, NL, PL, PT, RO, SI, SK, SE, UK

<sup>396</sup> BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, HR, HU, FR, IE, IT, LT, MT, NL, PT, SE, SI, SK, UK.

## Annex 6: Coherence with other EU pieces of legislation

*Table 1 - Regulation of the key aspects covered by the Consumer Credit Directive (CCD) and the Mortgage Credit Directive (MCD)*

Key aspect	Furthest reaching Directive	Regulation under the CCD and MCD
Advertising	MCD	Both Directives establish similar standard information to be included in advertising (Article 4 CCD and Article 11 MCD). The MCD also provides that any advertising and marketing communication must be “fair, clear and not misleading” (Article 2), prohibiting the use of wording that may create false expectations (Article 10).
Pre-contractual information	MCD	The standard information to be disclosed by credit providers is relatively similar under the CCD (Article 5) and the MCD (Article 14). The MCD also includes specific information duties for credit intermediaries, who are obliged to disclose at least the general information contained in Article 15.
Explanations and standards for advisory services	MCD	Both Directives establish the obligation for credit providers and credit intermediaries to provide adequate explanations to consumers (Article 5(6) CCD and Article 16 MCD). The MCD further includes the minimum explanations to be provided. It also establishes the obligation for credit providers to inform the consumer if advisory services can be provided and lays down certain standards for such services, including the obligation to recommend a suitable credit agreement and conditions on the use of the term ‘independent advice’ (Article 22 MCD).
Knowledge and competence requirements for staff	MCD	The MCD includes an obligation for credit providers and intermediaries to ensure an appropriate knowledge and competence in relation to the manufacturing, offering and granting of credit agreements among their staff members (Article 9 and Annex III MCD).
APR	Same	Both Directives establish a common formula for the calculation of the APR(C) (Article 19 CCD and Article 17 MCD).
CWA	MCD	The CCD and the MCD establish that credit providers must conduct CWAs based on sufficient information (Article 8 CCD and Article 18 MCD). The MCD further specifies the type of information that shall be considered (Article 20 MCD) and the obligation for credit providers to reject the credit application where the outcome of the CWA is negative (Article 18 MCD).
Access to databases	Same	Both Directives provide that Member States shall ensure access to the national databases for credit providers from other Member States and that the conditions of access to credit databases shall be non-discriminatory (Article 9 CCD and Article 21 MCD).
Right of withdrawal	CCD	The right of withdrawal is mandatory under the CCD (Article 14), while the MCD leaves this to the discretion of Member States to provide either a right of withdrawal, a reflection period or a combination of the two before the conclusion of the credit agreement (Article 14 ).
Right of early repayment	Same	Both Directives set out the right of consumers to repay their debt early (Article 16 CCD and Article 25 MCD).
Conduct of business rules	MCD*	The CCD does not establish any conduct of business obligations for credit providers, while the MCD requires them to act honestly, fairly, transparently and professionally when designing, manufacturing and selling credit products (Article 7). The MCD also prohibits tying practices (Article 12).
Financial education	MCD*	The CCD does not include any provision on financial education, while the MCD requires Member States to promote measures that support the education of consumers in relation to responsible borrowing and debt management, especially in relation to mortgage and credit agreements (Article 6).
Arrears and foreclosure	MCD*	The CCD does not include any provisions on arrears and foreclosure. The MCD foresees several measures in the event of arrears and foreclosures (Article 28).

Foreign currencies and variable rate credits	MCD	The CCD does not include any provision on these aspects. The MCD requires that any indexes or reference rate used to calculate the borrowing rate be clear, accessible, objective and verifiable by the parties and competent authorities. Historical records of these indexes must also be kept (Article 24). It also lays down certain rights for consumers of loans in foreign currencies (Article 23).
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*\* This aspect is only regulated in the Mortgage Credit Directive.*

*Table 2 - Coherence and complementarity between the CCD and other key pieces of legislation*

Legislation	CCD key aspects	Interactions	Potential inconsistencies, gaps, synergies
Unfair Contract Terms Directive (UCTD) <sup>397</sup>	Contractual information, right of early repayment, right of withdrawal	The UCTD applies to all business-to-consumer contracts and concerns contractual terms that have not been individually negotiated in advance (e.g. general conditions of the credit agreement).	<p>Credit providers are bound by the UCTD. Unfair credit agreement terms are therefore not binding on consumers. The UCTD complements the CCD, as the latter does not cover unfair contract terms.</p> <p>There is extensive CJEU jurisprudence on the fairness of the terms in financial service business-to-consumer contracts. The issue of lack of transparency (e.g. not providing sufficient information to the consumer) is also covered by UCTD (Articles 4(2) and 5). Major issues referenced payment acceleration and terms that fixed the interest payable upon default.</p> <p>Note that guidance on the interpretation and application of UCTD was published in July 2019.<sup>398</sup></p>
e-Commerce (ECD) <sup>399</sup>	Directive Precontractual information, cross-border market	<p>The ECD was introduced to promote eCommerce across EEA countries and remove barriers to trade by setting up a “Country of Origin” principle. It applies to services provided at a distance by electronic means. Credit providers are not explicitly excluded from its scope of application, meaning that it covers in principle credit providers selling credit online.</p> <p>Together with the DMFSD, it contributed to creating a legal framework for the online provision of financial services.</p>	<p>The ECD regulates the provision of information on the identity, geographical address and details of the service provider, as well as information on public registers. The CCD regulates aspects of advertising and pre-contractual information with specific reference to pre-contractual and contractual information to be provided to the consumer, while the ECD provides for more general provisions on unsolicited commercial communications (Article 7) and on the compliance with the consumer protection legislation including the CCD, as mentioned by Article 1(3) and Recital 11 ECD.</p> <p>There is no evidence of overlap between the ECD and CCD.</p> <p>Article 3(3), read in conjunction with the Annex, of the ECD expressly provides that Article 3(1) and (2) do not apply to the emission of electronic money by institutions in respect of which Member States have applied one of the derogations provided for in Article 8(1) of Directive 2000/46/EC (3), which concerns issuers of electronic money. In</p>

<sup>397</sup> European Council, 2011.

<sup>398</sup> C(2019) 5325 final.

<sup>399</sup> Directive 2000/31/EC.

			addition, Article 20 CCD provides for the supervision of creditors by a supervisory authority when they are non-banking institutions already supervised by the competent supervisory authority.
			No major discrepancies were found between the two Directives.
Distance Marketing of Consumer Services (DMFSD) <sup>400</sup>	Financial Directive	Pre-contractual information, right of withdrawal, cross-border market, ban of unsolicited services and communications	<p>The DMFSD aims to ensure the free movement of financial services in the single market by harmonising consumer protection rules. The Directive sets out a list of information concerning the financial service and its provider that the consumer should receive before the distance contract is concluded. It also establishes the right of consumers to withdraw from the contract within a 14-day period.</p> <p>There are no major discrepancies between the CCD and the DMFSD, although there are some small differences.</p> <p>The pre-contractual information required by the DMFSD is more general than that in the product-specific CCD, as it applies to all financial services in general. CCD is specific and it constitutes a <i>lex specialis</i> applicable to consumer credit contracts. The DMFSD foresees the provision of information on redress at pre-contractual stage, which under the CCD is only provided at contract stage.</p> <p>The conditions to exercise the right of withdrawal under the CCD are mostly aligned with those in the DMFSD, although the DMFSD foresees a reinforced protection of consumers by establishing that the supplier may not require the consumer to pay any amount unless they can prove that the consumer was duly informed. Moreover, the DMFSD explicitly provides that “The right of withdrawal shall not apply to: [...] (c) contracts whose performance has been fully completed by both parties at the consumer’s express request before the consumer exercises his right of withdrawal” (Article 6(2)).</p>
e-Privacy Directive (EPD) <sup>401</sup>		Advertising of consumer credit, pre-contractual information, CWA	<p>The EPD seeks to protect the right to privacy and confidentiality with respect to the processing of personal data in the electronic communication sector and to ensure free movement of such data. It can be relevant, for instance, where consumers are targeted by online advertisements or where communications between credit providers and consumers are made electronically.</p> <p>The Directive is under revision to be aligned with the GDPR.<sup>402</sup></p> <p>There are no inconsistencies between the CCD and the EPD. Better alignment could be ensured by explicitly indicating that credit providers may be bound by the EPD (or the future ePrivacy Regulation) when collecting, sharing, processing and storing consumer data electronically.</p>
Unfair Commercial Practices Directive (UCPD) <sup>403</sup>		Advertising of consumer credit, pre-contractual information	<p>The UCPD protects consumers against unfair, misleading or aggressive advertising practices, prohibiting behaviours contrary to the requirements of professional diligence that materially distort (or are likely to) the economic behaviour with regard to the product of the average consumer it reaches or to whom it is addressed. The CCD contains specific</p> <p>As explained by the Guidance to UCPD, since a robust set of EU sector-specific legislation exists in this sector, the ‘safety net’ character of the UCPD is particularly apparent, ensuring that a high common level of consumer protection against unfair commercial practices can be maintained in all sectors. The provisions of the CCD on information to be</p>

<sup>400</sup> Directive 2002/65/EC.

<sup>401</sup> Directive 2002/58/EC.

<sup>402</sup> COM/2017/010 final - 2017/03 (COD).

<sup>403</sup> Directive 2005/29/EC.

		provisions on the advertising of credit agreements and standardises the information to be provided.	provided to consumers are to be regarded as “material” under Article 7(5) UCPD.  In 2016, the European Commission issued guidance on the application of the UCPD. According to Article 3(4) UCPD, <sup>f</sup> provisions of sector-specific EU law apply and conflict with provisions of the UCPD, the provisions of the <i>lex specialis</i> prevail. The UCPD continues nonetheless to remain relevant to assess other possible aspects of the commercial practice not covered by the sector-specific provisions.
Anti-Money Laundering Directive (AMLD) <sup>404</sup>	CWA, cross-border market	The CCD only requires that CWAs be carried out. The AMLD obliges entities to apply customer due diligence requirements when entering into a business relationship (i.e. identify and verify the identity of clients, monitor transactions and report).	Credit providers are bound by AMLD requirements. There are no inconsistencies between the CCD and the AMLD, but some Member States have imposed specific anti-money laundering requirements when transposing the Directive that may constitute an obstacle to cross-border activity (e.g. face-to-face ID verification), despite the European Union’s Electronic Identification and Trust Services Regulation (eIDAS) Regulation.
Payment Services Directive (PSD2) <sup>405</sup>	Scope of application	The PSD2 aims to drive increased competition, innovation and transparency in the internal payments market. It also foresees the possibility for payment institutions to grant credit, namely the granting of credit lines and the issuing of credit cards, only where it is closely linked to payment services (Article 18(4)).	Although there is some overlap between the two Directives in relation to payment service providers granting credit, they regulate different aspects.  The definition of “credit agreement” should clarify whether certain payment instruments are included in the CCD. According to Article 18(4)(b) PSD2 credit lines can be provided by payment service provider only if they are granted in connection with a payment and shall be repaid within a short period which shall in no case exceed 12 months.
Benchmark Regulation <sup>406</sup>	Pre-contractual information, the APR	The Benchmark Regulation introduced rules to ensure the accuracy and integrity of indices used as benchmarks in financial instruments and financial contracts. The Regulation amended Article 5 of the CCD (pre-contractual information) to ensure that when a benchmark is referenced in the credit agreement, adequate information is provided by creditors or credit intermediaries at pre-contractual stage (in an annex to the SECCI).	There are no inconsistencies between the Benchmark Regulation and the CCD. The Benchmark Regulation acknowledges that while consumers are able to enter into consumer credit contracts that refer to benchmarks, the unequal bargaining power and use of standard terms mean that they have a limited choice about the benchmark used (Recital 71). It therefore amended the CCD to ensure that consumers are correctly informed in these cases.  The Regulation also refers to the CCD in several instances when defining terms used, ensuring consistency of terms between both texts.
Insurance Distribution Directive <sup>407</sup>	Cross-selling of insurance policies	The IDD lays down rules concerning the taking up and pursuit of activities of insurance	Credit providers that sell insurance policies to

<sup>404</sup> Directive (EU) 2015/849.

<sup>405</sup> Directive (EU) 2015/2366.

<sup>406</sup> Regulation (EU) 2016/1011.

		and reinsurance distribution. It establishes conduct of business and transparency rules, procedures and rules for cross-border activity, and rules for supervision and administrative sanctions or other measures applicable to infringements of the national provisions implementing the IDD.	consumers as part of a package are acting as insurance distributors within the meaning of the IDD and are bound by IDD requirements. This includes Article 24(3) IDD, which obliges insurance distributors selling insurance policies ancillary to consumer credit (as part of the same package) to offer the consumer the possibility to acquire the credit and the insurance separately, even if the insurance policy is mandatory.
Geo-blocking Regulation <sup>408</sup>	Cross-border market	The Geo-blocking Regulation prohibits discrimination against customers based on their nationality, place of residence or establishment when they buy goods or services. However, there is no interaction between the CCD and this Regulation, as financial services are excluded from the Regulation.	No specific issues were identified because financial services do not fall under the scope of the Geo-blocking Regulation. The Regulation addresses certain unjustified on line sales discrimination based on customers' nationality, place of residence or place of establishment within the internal market. Geoblocking is mainly relevant for e-commerce and for removing barriers to use of electronic payment systems cross-border. However, it does not directly relate to consumer credit.

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<sup>407</sup> Directive (EU) 2016/97.

<sup>408</sup> Regulation (EU) 2018/302.

## Annex 7: Selected bibliography

Author	Year	Title	Reference
<i>Legislative and policy documents</i>			
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Council of the European Union	2011	Directive on unfair terms in consumer contracts - Council Directive 93/13/EEC	Council, 2011
European Parliament/Council	1998	Directive 98/7/EC of the European Parliament and of the Council of 16 February 1998 amending Directive 87/102/EEC for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit	Directive 98/7/EC
European Parliament/Council	2000	Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce')	Directive 2000/31/EC
European Parliament/Council	2002	Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC	Directive 2002/65/EC
European Parliament/Council	2002	Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications)	Directive 2002/58/EC
European Parliament/Council	2003	Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce')	Directive 2000/31/EC
European Commission	2002	Proposal for a Directive of the European Parliament and of the Council on the harmonisation of the laws, regulations and administrative provisions of the Member States concerning credit for consumers (COM (2002) 443 final)	COM (2002) 443 final
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European Commission	2008	European Commission's Green Paper on retail financial services: better products, more choice, and greater opportunities for consumers and businesses (COM/2015/0630 final)	COM (2015) 0603 final
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European Parliament/Council	2014	Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010	Directive 2014/17/EU
European Parliament/Council	2014	Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC.	Regulation (EU) No 910/2014
European Parliament/Council	2015	Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (Text with EEA relevance)	Directive (EU) 2015/2366
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European Parliament/Council	2016	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, and repealing Directive 95/46/EC (General Data Protection Regulation).	Regulation (EU) 2016/679
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(recast)Text with EEA relevance			
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European Parliament/Council	2017	Proposal for a Regulation of the European Parliament and of the Council concerning the respect for private life and the protection of personal data in electronic communications and repealing Directive 2002/58/EC (Regulation on Privacy and Electronic Communications) (COM(2017) 10 final).	COM/2017/010 final - 2017/03 (COD)
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ES – Asociacion General de Consumidores (ASGECO)	2015	Analisis cualitativo prestamos rapidos de entidad no financieras	ASGECO [ES], 2015a
ES – Asociacion General de Consumidores (ASGECO)	2015	Los problemas express que vienen con los créditos rápidos	ASGECO [ES], 2015b
ES – Boletín Oficial Del Estado (BOE)	2015	Disposiciones generales jefatura del Estado - Ley 5/2015, de 27 de abril, de fomento de la financiación empresarial	BOE, 2015
ES – Banco de España - Eurosistema	2017	Memoria De Reclamaciones	Banco de España [ES], 2017
ES – Banco de España - Eurosistema	2018	Memoria De Reclamaciones	Banco de España [ES], 2018
ES – Banco de España - Eurosistema	2018	Encuesta sobre Préstamos Bancarios en España: abril de 2018	Banco de España [ES], 2018
ES – Banco de España - Eurosistema	2019	Encuesta sobre Préstamos Bancarios en España: Julio de 2019	Banco de España [ES], 2019a
ES – Banco de España - Eurosistema	2019	Informe De Estabilidad Financiera	Banco de España [es], 2019b
FI – Office of the data protection ombudsman	2019	The Data Protection Ombudsman ordered Svea Ekonomi to correct its practices in the processing of personal data	Office of the data protection ombudsman [FI], 2019
FR – Que choisir	2008	Directive crédit à la consommation	Que choisir [FR], 2008
FR - Ministère de l'économie	2011	Note d'information n°2011-73	Ministère de



et des finances - République française			l'économie et des finances [FR], 2011
FR - Economie	2016	Rapport Annuel 2016 (Direction Générale De L'inspection Économique)	Economie [FR], 2016
FR - Economie	2017	Rapport Annuel 2017 (Direction Générale De L'inspection Économique)	Economie [FR], 2017
FR - Economie	2018	Crédit à la consommation : loyauté de l'information précontractuelle	Economie [FR], 2018
FR – Eurogroup Consulting	2018	Etude Crédit Consommation France	Eurogroup [FR], 2018
FR - Autorité de contrôle prudentiel et de résolution (ACPR)	2019	Financement participatif	ACPR, 2019
IT - Università degli Studi di Ferrara	2013	Il collegamento negoziale nel credito al consumo alla luce della direttiva 2008/48/CE	Università degli Studi di Ferrara [IT], 2013
NL - Netherlands Authority for the Financial Markets (AFM)	2018	Klantbelang Dashboard 2018: Kredietaanbieders kunnen meer doen om problematische last te voorkomen	AFM, 2018
NL - Vereniging van Financieringsondernemingen (VFN)	2018	Past Gedragscode aan ter bevordering verantwoorde kredietverlening	VFN, 2018
UK - Department for Business Innovation & Skills (BIS)	2010	Guidance on the Regulations Implementing the Consumer Credit Directive Updated for EU Commission Directive 2011/90/EU (Effective 1 January 2013)	BIS [UK], 2010
UK - Department for Business Innovation & Skills (BIS)	2011	A New Approach to Financial Regulation: Summary of Responses to Consultation on Reforming the Consumer Credit Regime	UK BIS, 2011a
UK - Department for Business Innovation & Skills (BIS)	2011	Consumer Credit and Personal Insolvency Review: Formal Response on Consumer Credit	UK BIS, 2011b
UK - Department for Business Innovation & Skills (BIS)	2011	Consumer Credit and Personal Insolvency Review: Summary of Responses on Consumer Credit and Formal Response on Personal Insolvency	UK BIS, 2011c
UK - Financial Conduct Authority (FCA)	2014	Consumer Credit and Consumers in Vulnerable Circumstances	UK FCA, 2014
UK - Consumer Credit Association (CCA)	2017	Response to the European Commission's Green Paper on Retail Financial Services (COM (2015) 630 final)	CCA [UK], 2017
UK - Financial Conduct Authority (FCA)	2017	From advert to action: behavioural insights into the advertising of financial products	UK FCA, 2017
UK - Financial Conduct Authority (FCA)	2018	Assessing creditworthiness in consumer credit – Feedback on CP17/27 and final rules and guidance (Policy Statement)	UK FCA, 2018 a
UK - Financial Conduct Authority (FCA)	2018	The financial lives of consumers across the UK	UK FCA, 2018b
UK – Shawbrook Bank	2018	Are consumers being misled by Representative APRs? Research into the UK personal loans market and lenders' use of Representative APR in advertising	UK Shawbrook Bank, 2018
UK - Financial Conduct Authority (FCA)	2019	Credit Information Market Study	UK FCA, 2019
<b>Official positions</b>			
<b>Feedback on the European Commission's Evaluation Roadmap of the Consumer Credit Directive</b>			
Autorité de régulation professionnelle de la publicité (ARPP)	2018	Feedback from the Autorité de régulation professionnelle de la publicité (ARPP) (FR) on the European Commission's Evaluation Roadmap of the Consumer Credit Directive	ARPP, 2018

Association of Consumer Credit Information Suppliers (ACCIS)	2018	Feedback from the Association of Consumer Credit Information Suppliers (BE) on the European Commission's Evaluation Roadmap of the Consumer Credit Directive	ACCIS, 2018c
Association of European Radios (AER)	2018	Feedback from the Association of European Radios (BE) on the European Commission's Evaluation Roadmap of the Consumer Credit Directive	AER, 2018
Association of Sparda-Banks	2018	Feedback from the Association of Sparda-Banks on the European Commission's Evaluation Roadmap of the Consumer Credit Directive	Association of Sparda-Banks, 2018
European Banking Federation (EBF)	2018	Feedback from the European Banking Federation (BE) on the European Commission's Evaluation Roadmap of the Consumer Credit Directive	EBF, 2018
European Economic and Social Committee (EESC)	2019	INT/884 Consumer Credit Directive (evaluation)	EESC, 2019
European Federation of Insurance Intermediaries (BIPAR)	2018	Feedback from BIPAR (BE) on the European Commission's Evaluation Roadmap of the Consumer Credit Directive	BIPAR, 2018
Eurofinas	2018	Feedback from Eurofinas (BE) on the European Commission's Evaluation Roadmap of the Consumer Credit Directive	Eurofinas, 2018b
Eurofinas	2018	Eurofinas response to the European Commission's public consultation on the Consumer Credit Directive	Eurofinas, 2018c
Finance Watch	2018	Feedback from Finance Watch (BE) on the European Commission's Evaluation Roadmap of the Consumer Credit Directive	Finance Watch, 2018
Finance Watch	2019	Feedback from Finance Watch (BE) on the European Commission's Evaluation Roadmap of the Consumer Credit Directive	Finance Watch, 2019
Financial Conduct Authority (FCA)	2018	High-Cost Credit Review: Overdrafts consultation paper and policy statement	FCA, 2018c
Financial Services User Group	2019	What makes credit so risky? A consumer perspective	FUSG, 2019
German Banking Industry Committee (GBIC)	2018	Feedback from the German Banking Industry Committee (GBIC) (DE) on the European Commission's Evaluation Roadmap of the Consumer Credit Directive	GBIC, 2018
Verbraucherzentrale Bundesverband (vzbv)	2018	Feedback from Verbraucherzentrale Bundesverband (vzbv) (DE) on the European Commission's Evaluation Roadmap of the Consumer Credit Directive	Vzbv, 2018
<b>Other feedback</b>			
Eurofinas	2009	Eurofinas's Response to the European Commission's Consultation on Responsible Lending and Borrowing in The EU	Eurofinas, 2009
Eurofinas	2015	Eurofinas Response to the European Banking Authority's Draft Guidelines on Creditworthiness Assessment Draft Guidelines on Arrears and Foreclosure	Eurofinas, 2015a
European Association of Co-operative Banks (EACB)	2013	EACB Comments on Preliminary Findings of The Civic Consulting Study on Over-Indebtedness (OI) Of European Households	EACB, 2013
European Banking Industry Committee (EBIC)	2010	EBIC Comments on The CCD Benchmark Study	EBIC, 2010
The European Consumer Organisation (BEUC)	2019	Review of the Consumer Credit Directive – BEUC Position	BEUC, 2019
<b>Other sources of information</b>			

DE – Spiegel online	2019	So schützen Sie sich vor den Tricks der Vergleichsportale	Spiegel [DE], 2019
ES- El Confidencial	2018	Bancos españoles - El crédito al consumo es un 70% más caro en España que en Europa	El Confidencial [ES], 2018
ES- El Economistas	2019	Los préstamos al consumo son una herramienta clave para la economía	El Economistas [ES], 2019
ES- El Pais - Economía	2019	La usura de las tarjetas 'revolving' estalla en los tribunales	El Pais [ES], 2019
ES- Expansion	2018	Vuelve el préstamo irresponsable, pero ahora al consumo	Expansion [ES], 2018
ES- Observatorio Cetelem	2018	Ecommerce Report: La Revolucion de la tienda online	Observatorio Cetelem [ES], 2018
ES - Organización de Consumidores y Usuarios (OCU)	2019	Los españoles pagan caro el crédito al consumo	OCU [ES], 2019a
ES - Organización de Consumidores y Usuarios (OCU)	2019	Crowdfunding: colaborando con micromecenazgo	OCU [ES], 2019b
ES - Organización de Consumidores y Usuarios (OCU)	2019	Deudas y morosos al mejor postor	OCU [ES], 2019c
ES - Organización de Consumidores y Usuarios (OCU)	2019	Minicréditos = maxiabusos	OCU [ES], 2019d
ES - Organización de Consumidores y Usuarios (OCU)	2019	Qué hacer si necesitas dinero	OCU [ES], 2019e
FR – Que choisir	2011	Crédit conso. Nouvelle protection en demi-teinte	Que choisir [FR], 2011
FR- Economie (France)	2015	Le crédit à la consommation	Economie [FR], 2015
FR – IFOP	2016	Perception des mentions légales à la radio	IFOP [FR], 2016
FR – Que choisir	2015	Crédit à la consommation (infographie)	Que choisir [FR], 2015
FR - UFC-Que Choisir, Service des études	2018	Financement participatif. Face aux dérives persistantes, une regulation s'impose!	Que choisir [FR], 2018
FR - UFC-Que Choisir, Service des études	2019	Leasing, a Massive Degradation of Borrowers Rights	Que Choisir [FR], 2019a
FR - UFC-Que Choisir, Service des études	2019	Loa/Lld: Une Degradation Massive Des Droits Des Emprunteurs	Que Choisir [FR], 2019b
FR - UFC-Que Choisir, Service des études	2019	Overdraft Facility: Excessively Expensive Credits	Que Choisir [FR], 2019c
FR - UFC-Que Choisir, Service des études	2019	Le découvert bancaire: les excès, la norme. Des Crédits Excessivement Chers	Que Choisir [FR], 2019d
FR – Que choisir	2019	Plafonnement des sanctions en cas d'erreur ou de défaut de TAEG	Que choisir [FR], 2019e
IT – Banca d'Italia	-	Bank of Italy Guides – Consumer credit made easy	Banca d'Italia [IT]
IT - Crowd-funding	-	Normativa dell'equity-based crowdfunding in Italia	Crowd-funding [IT]
IT - ResearchGate	2008	La direttiva sul credito ai consumatori: alcune implicazioni giuridiche ed economiche	ResearchGate [IT], 2008
IT - Opinioni. Credito al Consumo	2010	Trasparenza (e non) nella nuova direttiva sul credito al consumo alla vigilia del recepimento	Opinioni. Credito al consumo [IT], 2010
NL - Autoriteit Financiële	2014	Markt voor flitskrediet verder opgedroogd <a href="https://www.afm.nl/nl-nl/nieuws/2014/feb/markt-">https://www.afm.nl/nl-nl/nieuws/2014/feb/markt-</a>	AFM [NL], 2014

Markten (AFM)		flitskrediet]	
NL – Pricewise	2019	Nederlanders betalen flinke rentes over hun leningen [ <a href="https://www.pricewise.nl/blog/onderzoek-rentepercentages-afbetalen-leningen/">https://www.pricewise.nl/blog/onderzoek-rentepercentages-afbetalen-leningen/</a> ]	Pricewise [NL], 2019
UK – Citizens advise	2017	Credit card companies pushing credit on millions of people who can't pay	Citizens advise [UK], 2017
UK - Oswald Stoll. Business and Technology Blog	2019	Big And Small Differences In Payday Loans In Europe	Oswald Stoll [UK], 2019
Association of Consumer Credit Information Suppliers (ACCIS)	2018	Draft new Spanish Data Protection Law	ACCIS, 2018d
Behavioural Insights Team	2019	Best practice guide – Improving consumer understanding of contractual terms and privacy policies: evidence-based actions for businesses	Behavioural Insights Team, 2019
BIS	2018	Les marchés du crédit fintech à travers le monde: taille, moteurs et enjeux de politique publique	BIS, 2018
DGCCRF	2018	Crédit à la consommation : loyauté de l'information précontractuelle	DGCCRF, 2018
EUROFINAS	2012	Key Facts and Figures 2012	EUROFINAS, 2012
EUROFINAS	2013	Key Facts and Figures 2013	EUROFINAS, 2013
EUROFINAS	2014	Key Facts and Figures 2014	EUROFINAS, 2014
EUROFINAS	2015	Key Facts and Figures 2015	EUROFINAS, 2015b
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EXPERIAN	2017	The Future of Credit Information	EXPERIAN, 2017
Irby, L.	2019	Things you should know about credit bureaus [ <a href="https://www.thebalance.com/credit-bureau-facts-960693">https://www.thebalance.com/credit-bureau-facts-960693</a> ]	Irby, L., 2019
New Statesman	2014	The History of Payday Loans	New Statesman, 2014
Panoptykon Foundation	2019	The right to explanation of creditworthiness assessment – first such law in Europe	Panoptykon Foundation, 2019
Radiocentre	2016	Financial terms and conditions and consumer protection	Radiocentre, 2016
Service Public Wallonie	2019	Le devoir d'information en crédit à la consommation	Service Public Wallonie, 2019
TransUnion	2018	FinTechs Continue to Drive Personal Loan Growth	TransUnion, 2018
Which?	2019	Cheap 'teaser' loan rates costing borrowers £194m	Which? [UK], 2019a
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## **Annex 8: Evaluation Questions**

### Effectiveness

- EQ1 - To what extent has the Directive achieved its objectives? What are the main benefits and drawbacks of the Directive?
- EQ2 - To what extent has the Directive led to legal clarity? What is the level of compliance of businesses and their enforcement?
- EQ3 - Is the Directive – through advertising requirements, pre-contractual information (including Standardised European Consumer Credit Information “SECCI” and Annual Percentage Rate of Charge “APR”) and other additional information – ensuring that consumers are effectively provided with accurate, clear, concise, timely and comprehensive information free-of-charge?
- EQ4 - How have the provisions relating to creditworthiness assessments (CWA) worked in practice? To what extent have the provision of the Annual Percentage Rate of Charge (APR) and the performance of a CWA contributed to helping consumers find the credit best suited to their needs and avoid over-indebtedness?
- EQ5 - To what extent do the conditions of access to credit databases on cross-border basis vary across the EU?
- EQ6 - How have the provisions relating to the rights of withdrawal and early repayment worked in practice? How frequently are consumers making use of them?
- EQ7 - Have the scope of application and the definitions used in the Directive succeeded in ensuring a high level of consumer protection and performance of the internal market for consumer credit?

### Efficiency

- EQ8 - What are the costs and benefits (including any reduction in consumer detriment) associated with the Directive and what are they influenced by? Can they be considered proportionate?
- EQ9 - To what extent are the provisions of the Directive cost-effective? Are there any provisions particularly hampering the maximisation of the benefits?
- EQ10 - Is there scope for simplification and burden reduction? What provisions or areas of the Directive could be simplified to reduce the burden on stakeholders without undermining the effectiveness of the Directive?

### Coherence

- EQ11 - To what extent is the Directive internally coherent?

- EQ12 - To what extent is the Directive coherent with other national-level consumer policy and legislation (including legislation going beyond the scope of the Directive or relevant for consumer credit)?
- EQ13 - To what extent is the Directive coherent and complementary with other relevant EU-level legislation?
- EQ14 - To what extent are the provisions of the Directive and their implementation at national level coherent with national and EU-level data protection legislation?

#### Relevance

- EQ15 - Are the objectives of the Directive still relevant? Does the Directive address current and anticipated future needs and challenges (e.g. market developments, consumer behaviour and needs), including those of consumers and providers?
- EQ16 - How relevant and adapted are the scope, thresholds and definitions in the Directive to the current market situation?

#### EU added value

- EQ17 - Where does the EU added value of the Directive lie? Would the benefits delivered by the Directive have been achieved in the absence of EU-level intervention?
- EQ18 - What would be the most likely consequence of withdrawing the Directive? In the absence of EU-level action, to what extent would Member States have the ability or possibility to enact appropriate measures?