

Finance Watch full response to the European Commission Open Public Consultation on the Evaluation of Directive 2008/48/EC (Consumer Credit Directive - CCD) – 8th April 2019

Part II. Questionnaire for other stakeholders

Questions on relevance

Relevance looks at the relationship between the needs and problems in society and the objectives of the Directive. It also requires a consideration of how the objectives of Directive correspond to wider EU policy goals and priorities.

Note that some Member States have adopted more regulation on consumer credit than only CCD. Harmonization towards a minimum consumer protection is not desirable.

Same for Belgium (see note § 1 et 2)

Question 1. Do you consider that the following developments have changed the provision of consumer credit since 2008?

Finance Watch agrees with the identified elements that have impacted consumer credit provision.

Other important aspects to consider are:

- Change in the market share of the banking and non-banking credit market (for example: P2P, crowd-funding, FinTech, FAANG,...)
- Increased role of credit intermediaries and impact on responsible lending practices
- Complex and unclear binding products (insurance + credit) to avoid proper use of APR as comparison tool for consumer choice
- The financial crisis, the corresponding repayment problems of households and the reaction of governments, Central Bank and the like

Automated decision making based on the use of big data and algorithms for consumer credit risk assessment
P2P lending platforms are a very different business model compared to traditional bank lending business as they are spreading all risks to platform users and take themselves no credit risk. There are no disclosure standards concerning NPL ratios, no standards for calculation of APRs; both the platforms and the borrower have some incentive not to be too critical concerning the risks. The platform generates its income through a fee which usually corresponds to a certain percentage of the transaction volume. This payment model provides a steady incentive to stimulate the platform's transaction volume by exaggerating the investment opportunities and profit chances while the risks of investment projects are rather played down or concealed.

Evidence from national level: Bulgaria – This focuses only on the main changes to the Civil Procedure Code (CPC) of Bulgaria, which have fully affected and defended debtors' rights. In the first place, from the CPC was removed the vicious Article 417 of CPC. Only the rights of commercial banks, according this article were protected. The banks had the right to convict insolvent debtors, who couldn't defend themselves. At least for 5 years a number of public organizations express their opinion that this article must be removed from the CPC. Finally it was erased from the CPC in 2017. As a result of the application of this Article 417 from the Civil Procedure Code, many citizens lost their real estate and very often it was their unique home.

Guarantees were introduced to the summoners to actually seek out the debtors. When the defendant cannot

be found for one month at the address mentioned in the case and no person is found to be in receipt of the message, the service provider shall affix a notice to the door or to the mailbox to the front door or a prominent place around it. In order to proceed with service by sticking the message, the attendants must now make at least three visits, each of which in a period of at least one week and at least one of the visits should be on a non-working day.

One of the most important breakthroughs was achieved in the rules on the sale of real estate and movable property. In the case of movable property, the starting price from which the open bidding auction or the public sale of movable property began increased from 75% to 85% of the value of the chattel. An obligation was imposed on the contractor to appoint an expert to determine the price of the movable property worth more than BGN 5,000 (2500 EUR), motor vehicles, ships and aircraft, as well as the restriction that the sale price is not lower than the insurance price value of the item, if any.

This changed and impacted the distribution of the market share of banks and non-banks. This increase the responsible lending practices, although the credit institutions dominate the market. There are still practices of unclear binding product (the charges for servicing the credit are transferred to the principal of the credit) and it is not clear for the bank client.

Question 2. How relevant do you consider the following provisions of the Directive in light of its objectives?

Scope:

A larger scope is required: all credit used by consumers should be regulated by the CCD without exception (amount / duration / interest rate ...). Too many times, payday lenders have entered a national market because of restrictions in the scope.

The CCD should also address new business models which do not fall within the scope of the CCD, but can cause major consumer detriment. For instance, the Fintech "Afterpay" proposes a short term 0% APR credit, to be repaid in 4 instalments over 2 months. However, it seems that their business model relies at least partially on late payment fees, which are more likely to harm the most vulnerable consumers. <https://help.afterpay.com/hc/en-us/articles/360016052892-What-happens-if-I-can-t-make-a-payment->

The same applies to overdraft fees which are extremely detrimental to consumers.

National level evidence from Bulgaria: There are different kinds of credit outside of the scope of the CCD (under 200EUR or even up to this sum) that are delivered by a non-bank credit firm. There are a number of financial houses which are providers of small fast credit with tremendous interest rate and functioning under unclear procedures. Here we can take into consideration that there is no questionnaire, or checking of the financial capacity of the client. Aggressive methods can be applied when collecting the debts from defaulted debtors. The credit augments because of the rise of the interest rate of the non-performing credit and it becomes unbearable for the debtor.

National evidence from Belgium: Indeed, in 2011 in Belgium, we saw a boom in the micro-credit or mini-credit provided by Ferratum and PayDay.be. These companies offered loans for relatively small amounts and for very short periods, which the consumer could contract via the Internet or by SMS. The amounts proposed ranged from €50 to €200 for a duration of 15 to 30 days. The interest rate was 0%. A godsend at first sight... But these loans came with additional fees. And not the least!

At Ferratum, the consumer paid €10.60 in fees for a 15-day loan of €50. For a loan of €200 for one month, the consumer had to repay a total of €249.99. This is equivalent to an annual percentage rate of charge (APR) of 300%!

At PayDay.be, loans were granted for a period of 21 days. For a loan of €100, the consumer had to repay €120. For every €200 borrowed, it was €240 to be repaid, or the equivalent of 347%!

Belgian legislation, which at the time provided that interest-free loans with a term of up to two months and costs of less than €50 per year were not regulated, was amended to fight these usurious loans. It now provides that only interest-free credit agreements of less than 2 months and whose fees do not exceed €4.17/month are not regulated

There are also products which are not credit in the strict juridical sense, yet put an obligatory burden on the household budget. Like private leases for cars. Increasingly in these cases these kinds of credit are presented “as a service”, not as a product. Examples include food boxes, renting consumer durables, etc. This has been identified as a specific issue in Belgium

For small loans (< e 1000) in the Netherlands and (<200) in Belgium the checking of income does not have to be as tight as for larger loans. This bears inside the risk of piling up small debts. Another example of credit that are not regulated (in Belgium and Netherland for example) would be Government loans, such as those used to pay for academic studies.

Peer-to-peer lending (consumer crowd funding) should also be covered by the CCD. In core Europe (ex UK) consumer lending-based crowd funding has a higher share than business lending-based crowd funding and makes up around 35% of the total crowd funding market. The current EU Commission proposal on the regulation of European Crowdfunding Service Providers (ECSP) for Business excludes P2P-lending. Therefore it needs to be explicitly included in the CCD.

Month-end refundable credit cards (VISA type with "deferred debit"). These credits are not currently regulated, although they are sources of over-indebtedness.

Example in Belgium: In the classic scheme, the deferred debit visa card is linked to a bank account. The credit will be automatically refunded at the end of the month by deducting it from the bank account. Facing financial difficulties (following a loss of employment, a divorce for example), the consumer will very often use the entire amount of the reserve granted to him and thus find himself in a situation of overdraft on his account. This can be repeated several months in a row. The mechanism itself will give him the false impression that he still has the same “purchasing power”. Withdrawals are not suspended even though the consumer is in payment difficulty and the overdraft on his account will increase.

Ireland¹: While legal moneylenders (also known as doorstep lenders) comes under the CCD, there seems to be wide variety in terms of the interest rate cap. Ireland for example allows moneylenders to charge up to 187% APR (not including collection charges). Recent report written by the Centre for Co-operative Studies advocates for an interest rate cap to be introduced on moneylending credit.

Payday is not currently in operation in Ireland

However, CCD does not cover two other types of products which have become very prevalent in Ireland.

1. Flexirent Ireland

Flexirent, is an Australian consumer leasing service of business and consumer electronics and is the primary product of FlexiGroup. Its focus is on technology products. Works on the basis of monthly repayments and balloon payment in the end. Not regulated by the Central Bank. Regarded as hire purchase but one significant difference is that the monthly repayments do not add up to the full equity of the product and still have to make a balloon payment at the end or upgrade onto a new product or give the product back and forgo the payments made already. With Flexi you pay €248 ‘interest’ (or charges!) on €1,000 which by proportion implies 48.3% (if the €248 is all interest).

2. PCPs

1 - Review of Regulation of Personal Contract Plans. Commissioned by Minister for Finance, Michal G. Tutty, September 2018: <https://www.finance.gov.ie/wp-content/uploads/2018/11/Review-of-Regulation-of-Personal-Contract-Plans-final.pdf>.

- CCPC (2017), Announcement on ‘CCPC study of PCP car finance’. Available from: <https://www.ccpc.ie/consumers/2017/07/17/ccpc-study-pcp-car-finance/>

- Sherman, M., T. Heffernan and B. Cullen¹ (2018) Economic Letter An Overview of the Irish PCP Market Vol 2018, No.2, Central Bank of Ireland.

In Ireland, as PCPs are a form of hire purchase, these contracts are not regulated by the Central Bank. A PCP involves paying between 10 to 30% of the value of the car at the start of the contract. Then monthly repayments are made at a relatively low rate and after 3 to 5 years a balloon payment is required to purchase the car. Where the PCP scheme differs from normal hire purchase schemes is that the GMFV is typically set in the range of 85 per cent to 95 per cent of the vehicle’s expected value at the end of the contract. That way the customer has the option to either make this final payment and own the car outright, or Use the difference between the car’s actual value and the GMFV to support a deposit for their next PCP deal, driving off in another new car. In the UK, 80 per cent of PCP buyers roll over their contracts and take another new car. A third option is to give back the car and walk away, writing off your initial deposit and monthly payments as the cost of motoring for three years. The Competition and Consumer Protection Commission (CCPC) launched a study into Irish consumer experiences with PCPs, which now finance an estimated one-in-three new car sales. Last year, 82 per cent of new car finance deals in the UK were defined as PCPs.

Table 2: PCPs advanced by all Irish financial institutions

	Outstanding stock		New lending	
	€ mn	Contracts	€ mn	Contracts
2012	146	14,174	96	6,167
2013	255	25,262	185	10,320
2014	422	40,219	330	17,111
2015	705	62,850	529	24,309
2016	1,183	96,917	892	39,133
2017	1,500	126,249	835	36,087

Sherman, M., T. Heffernan and B. Cullen¹ (2018) Economic Letter ‘An Overview of the Irish PCP Market Vol 2018, No.2, Central Bank of Ireland’.

At the end of 2017, Irish households owned 126,249 contracts related to PCP finance, equivalent to €1.5bn. Outstanding contracts increased from just over 14,000 in 2012 to over 126,000 five years later. On average, 35,000 PCPs are now taken out every year, compared to 6,000 in 2012. The average value of contracts also increased in recent years from circa €15,000 to over €23,000. PCPs are the current driver of growth in bank-related lending to Irish households for non-mortgage purposes and have been the most prevalent source of car finance in the Irish market since April 2016. PCPs now account for 43% of car-related bank debt, up from 25% at the end of 2014. Most PCPs are advanced by Irish resident banks, but 1 in 9 are extended by non-bank entities. As with any type of lending, there are risks involved with PCPs. These relate to falling demand for new and used cars, increasing interest rates and negative equity scenarios

PCP expansion in Ireland

	2012	2017
PCPs issued	6,000	35,000
Outstanding contracts	14,000	126,000

Ce champ d’application n’est pas du tout pertinent d’autant plus avec l’arrivée de nouveaux acteurs proposant des produits financiers à bas prix et donc non couverts par ce champ d’application impliquant donc l’impossible application des dispositions de la directive.

Exemple : United free alliance.

Exemple : les produits financiers proposés par facebook avec un paiement en plusieurs fois via les dispositions de la DSP2

Information to be included in advertising:

General comment: It is important that advertising includes (in a simple and clear way) the information and message that allows interested borrowers to make a demand adequately documented:

What are the conditions/ information required to complete a request?

What are the costs and their impact under different probable scenarios?

What would the concrete impact of the credit on the borrower's budget be and how can this be pre-tested to assess their financial capacity (could an online tool be proposed?)

What are the consequences in the case of financial distress?

One option could be to use nudging measures (behavioural finance) to stimulate consumer's reflection and to counter overconfidence and the optimism bias, reducing the planning fallacy in which people tend to plan the best possible case.

In the Netherlands and in Belgium an obligatory standardized warning exists: "Watch out, borrowing money costs money" with a picture

Let op! Geld lenen kost geld

This has to be placed on all printed material (at the bottom) and on internet pages (at the top of the page), with a minimal font size banners, audio (played at the same loudness, at the same speed). The effectiveness of the warning has not yet proven to be extensive, as to actually change behaviour. However, it does help to ensure that the offer clearly recognizable as an offer of credit.

In the Netherlands and Belgium it is prohibited to advertise the speed at which the credit can be accepted and the money can be transferred as a positive reason to acquire it.

Interest percentage can only be used in advertisements if they show a table including the total costs of the loan (repayment + interest payments).

Borrowing money should not be advertised as being "normal", (=the common way to buy goods). The Financial Market Authority is strictly supervising this.

There is a specific need to ban:

- advertisements that incite over-indebtedness (targeting people in financial difficulty, focus on the ease or speed with which credit can be obtained; encouraging consolidation or centralization of different credit)
- false advertising for a free credit (TAEG = 0 %), which in reality it is only free for the first purchase

It should be noted that without effective supervision and sanctions this will have no effect (see the example of Belgium where several surveys have shown that many consumer credit advertisements do not comply with Belgian legislation²).

While the online loan calculator on a prominent money lenders website outlines the APR, much of the focus in the face-to-face service seems to be on the weekly loan repayment rather than the total cost.

Flexirent – the online reviews of the product would seem to imply a lack of awareness that that the customer does not own the product and that a balloon payment is required at the end. The information on this at the

² Cfr Enquêtes: Service Public Fédéral Economie - Direction générale contrôle et médiation - juin 2004; Test-Achats - Budgets et Droits n° 178 - janvier-février 2005; CRIOC - 21 novembre 2005 - <http://www.oivo-crioc.org/textes/pdf/1518.pdf>.

<http://www.ecosocdoc.be/static/module/bibliographyDocument/document/002/1800.pdf>

time of entering into the agreement would appear to be limited or almost non-existent.

PCP – When this product first went on the market there was a lack of awareness of the balloon payment at the end of the agreement. However, as PCPs are so prevalent now, this awareness has now likely increased.

Il a été reporté qu'en France il y a de nombreux manquements dans les publicités présentées sur les réseaux sociaux. La mise en œuvre de ces informations permettra aux consommateurs une meilleure connaissance des produits et par extension de leur situation personnelle. De plus les différentes réglementations permettront une utilisation correcte et non biaisée du produit.

Pre-contractual obligations:

Transparency on the terms and conditions, the costs;

Qualitative, fair and personalized information and advice to be provided;

Not only the information itself, but also the way it is presented, should be regulated. Behavioural economic studies show that changes in presentation can lead to quite different consumer actions. (See f.e. https://www.nibud.nl/wp-content/uploads/181030-Een-persoonlijke-lening_keuzes-en-ervaringen-van-consumenten.pdf)

See note §6

Standard European Consumer Credit Information (SECCI) is much too long and impossible for a lambda consumer to read.

A lot of credit is granted without any correct information from the consumer. In some stores, credit is still granted at the counter, at the cash desk, while other clients are waiting behind. These conditions do not allow the professional to properly inform the consumer and certainly do not encourage them to be cautious or ask questions.

Pre-contractual information and the SECCI must be communicated "in good time before the consumer is bound by any credit agreement ". In practice, in Belgium, the SECCI is always given at the same time as the contract is signed. This does not achieve the intended objective of: allowing the consumer to compare offers in order to choose the best contract for them. For this, they should receive the SECCI before signing the contract.

De plus la prise en compte de DSP2 pour les *credits assessments* et *creditworthiness* permet d'assurer la vérification de la solvabilité du consommateur sur des éléments réels et non plus déclaratifs (grâce, notamment aux agrégateurs, qui permettent la compilation des informations contenue sur les comptes courants).

Annual Percentage Rate of Charge:

This promising concept has been globally very poorly understood by borrowers. As a matter of fact, it has been too often circumvented by unclear "binding selling". Credit and insurance are champions in this category, with "so called" non-binding insurance products.

This issue should be properly addressed in the future, in order to make APR a real comparative tool for consumers.

For certain types of credit, such as moneylending loans, weekly repayment is better understood than APR.

One possibility would be to impose legal maximum APR at the European level. This has been successfully done in Belgium.

It would be interesting to compare the interest rates applied in the various member countries to see if the application of the APRs has an effect on applied rates. The main argument of those opposed to this measure is that it is unfavourable for consumers (consumers with a good rating may obtain better rates according to them)

In the EU the Bulgarian banks are making the highest profits in Central and Eastern Europe. This means that in Bulgaria bank customers pay the highest interest rates, fees and commissions for credits. For example, la Société Générale offers credit to French clients with an interest rate of 2.5% and in Bulgaria the interest rate is 17% yearly. The difference is astonishing. It is one of the reasons why Bulgaria is not in the euro zone. The foreign banks operating in the internal market are not interested in losing the opportunities for quick and unfair profits from a country with a high percentage of poor people in the population.

Suppose that the bank agrees to give a credit at a certain interest rate. Then you meet its requirements - you pay all the up-front charges, usually ranging from 100 (50EUR) to 300 BGN (150 EUR) - for collateral valuation, document review, and more. It is often the case then that the bank offers a contract in which it appears to be indicated that the interest rate is 1 to 5 points higher than originally agreed. If you refuse to sign the contract, you lose the amounts already paid.

Even if the circumventions of APR are overcome, many consumers do not understand how to calculate an interest rate and it does not help them understand how much they will have to repay. A key document/information in this respect is a clear table which explicitly outlines the repayment plan (month by month, the amount to be repaid), the amount of the loan, and the total cost of the credit at the outset (including any and all fees/charges/insurances etc).

An example that demonstrates how relevant the APR is come from Germany, where there are serious issues with payment protection insurance (PPI). Around one third of all consumer credit include a PPI³. In its distribution pressure is often applied and only if the insurance is a paper condition for a loan it is included in the total interest rate. This kind of insurance often doubles the interest rate. Here a regulation has been proposed by the German government, which should lower the sales commissions, as currently almost two thirds of all credit institutions (which offer this insurance) receive commissions amounting to at least 50% of the RSV premium⁴. The effective interest rate on the other hand often does not fall, which should be expected if somebody is insured⁵. If the insurance is not included in the effective interest rate this also creates competition and comparability issues. A total credit interest rate which includes all products which are in direct relation with the credit should always be provided.

For same evidence in Belgium (see our note § 12 and the report of Belgian Financial Services and Markets Authority - FSMA)⁶.

The main problem seen in Belgium is with the cost of so called "optional" insurance. This kind of insurance is clearly imposed on consumers, but is called optional and its (high) cost is not included in the APR. In the field, we note that very often a so-called "optional" insurance has obviously been imposed on the consumer. A glaring and frequent example in our files: the consumer did not fill in the box "yes, I am taking an insurance" and we see later on that the cost of insurance is nevertheless added in the monthly statements. According to the FPS Economy, for some lenders, the percentage of consumer credits covered by insurance is close to 90%!

- These insurances products are very expensive for the consumer

For some brokers, credit-related insurance can represent 1/5th of the total cost of credit. This ratio varies greatly depending on the duration of the credit and its rate. If we look at what is done among the "specialists" in credit opening, insurance can represent almost 50% of the total cost of credit. In other words, consumers pay a monthly premium almost equal to the interest cost of the credit.

- These insurance contracts provide very high additional income to both lenders and intermediaries

When an insurance is sold, a percentage of the amount of the premium paid by the consumer is paid to the

3 GfK Marktstudie für Bankenfachverband, https://www.bfach.de/media/file/25031.Marktstudie_2018_Restkreditversicherung_BFACH.pdf, p.7

4 BaFin, https://www.bafin.de/SharedDocs/Downloads/DE/Anlage/dl_170620_marktuntersuchung_restschuldversicherungen.html p. 19

5 IFF, https://www.finanzwende.de/fileadmin/user_upload/Kampagnen/Achtung_Kreditfalle/Faire_Kreditvergabe_Layout_final.pdf, p.31

6 <https://www.fsma.be/fr/news/enquete-sur-les-assurances-de-solde-restant-du-proposees-dans-le-cadre-de-credits-la>

credit intermediary and/or lender as a commission.

Example: The 2016 annual accounts published by the Central Balance Sheet Office of the Belgian National Bank show that the relationship between the lender: Beobank and the insurer: North Europe Life Belgium - Nelb (formerly Citibank and Citilife): Nelb is the Belgian life insurance subsidiary of Crédit Mutuel Nord Europe, of which Beobank is a member. 93% of Nelb's insurances guarantee Beobank credits (page 67). It can be seen in the 2016 annual accounts that out of a total amount of 53 million euros in premiums, Nelb retroceded a total of nearly 30 million euros as commission to Beobank (the lender) and intermediaries (Beobank's agencies) (page 38). This does not only concern Beobank, since a recent study by our Belgian supervisory body, the FSMA, showed that "more than half of the premium amount, i.e. 35 million euros or 53%, was allocated to the payment of fees and commissions. Expenses and commissions paid to an insurer represented more than 70% of the premiums paid by policyholders. The remaining 35 % of the premium amount was a profit for the insurance company, excluding any limited premiums it might have to pay to a reinsurer." "The initial findings of the survey also show that the amount of commissions is rarely clearly communicated". The FSMA also notes: "High remuneration may also lead the sellers of these insurances - who in many cases also act as sellers of consumer credit - not to place the interests of customers sufficiently at the centre of attention".

For example, in our debt mediation cases, in addition to the fact that insurance is obviously imposed on consumers, we also regularly see the following practice: The credit is refinanced/repurchased several times in a row from the same lender. Each new credit is accompanied by a unique insurance premium (the amount of which is deducted from the amount of the loan granted to the consumer). Given that the premium covers insurance for the entire duration of the loan, in the event of early repayment (i.e. also in the event of loan repurchase/grouping) part of the insurance should be repaid or adapted for the new loan. Which is not the case.

- Consumers are not compensated after a claim

In our debt mediation cases, we note numerous abuses: insurance covering the risk of disability concluded with consumers who are already disabled, insurance covering the risk of job loss granted to pensioners or disabled people, etc. Moreover, the general conditions are often so restrictive that most of the time the claim is not covered! The above-mentioned FSMA study shows that, "of all claims incurred during the period 2011-2015, insurers paid compensation in only 0.24% of current contracts. During this period, the companies surveyed received an average of approximately €65 million in premiums each year. Only 12% of this amount was used to pay compensation. For one insurer, this percentage was only 1.16%; for other insurers, it was close to 20%."

SECCI:

See comments provided in the pre-contractual information section.

In the study that was commissioned by the IFF (94 test purchases carried out in bank branches) and that is referred to several times, this was not part of the evaluation. However, experience from these tests shows that SECCI is not always made directly available when an offer is made, but only when the contract is concluded. However, the idea of the SECCI was to enable the consumers to compare offers before the conclusion of a contract. Here one option could be to introduce a requirement for mystery shopping exercises by supervisory authorities.

Cette obligation d'informations n'est pas appliquée en France ou largement interprétée de manière dévoyée.

Right of withdrawal:

At least on paper, this is currently one of the most effective tools to counterbalance pressure from credit providers on consumers. It can help to ensure a key element of credit contracts: the capacity for the participant to exert their own free will.

There are sometimes problems with the prepayment penalty, but it is a much bigger issue in the field of real estate loans in Germany.

In Belgium the right of withdrawal is never used by consumers. In addition, at present under Belgian law, when credit is linked to a sale in a shop, the consumer who will retract at the credit level will still remain bound by the purchase order, or the contract that they will have signed. This de facto deprives the consumer of the faculty to change their mind.

Only for distance sales or those concluded outside the premises of the seller (order by internet, telephone, following a canvassing at home) does the right of withdrawal for credit and sale coexist.

In practice, there are several cases where consumers wanted to retract after having ordered living room or bedroom furniture in stores on credit. They had each time been enticed with the promise of a gift (without of course any obligation of purchase), and were convinced by very persuasive sellers.

In Belgium, doorstep lenders are forbidden and the ban has brought some improvements in the capacity of people to exert their own free will (it significantly reduces the selling pressure unexpected contact with a credit broker can lead to).

Interest caps make it too expensive for the lender to use these kinds of labour-intensive approaches.

In Ireland the "it makes sense" loan initiative (<http://itmakesenseloan.ie/>) is provided by the Social Finance Foundation through credit unions. The purpose of which is to provide an alternative to moneylenders. Almost half of the credit unions are involved in the initiative.

Unwanted solicitations from lender and intermediaries:

This is a very important point. The CCD does not regulate these solicitations to the consumer and it should.

There are increasingly frequent cases where vulnerable consumers are victims of aggressive and / or unfair methods.

Example: There are more and more cases⁷ where people have been contacted directly on the telephone by lenders and / or credit intermediaries who offer (even though they have made no request at all) to pool their loans, or to increase their existing line of credit.

They send "proposals" to the consumers - who has not asked for anything – that are pre-filled contracts and sometimes already signed by the lender. In practice, it is sufficient for the consumer to sign this proposal and return it by mail to be granted a new credit a few days later.

Example from Belgium: After signature of this proposal and acceptance by Cofidis this document will become the credit agreement. European legislation, and more specifically the Unfair Commercial Practices Directive (UCPD), in principle already protects consumers against repeated and unwanted solicitations by telephone, fax, e-mail or any other distance communication tools. It also provides that Member States may impose more restrictive or stringent requirements for financial services. However, as this is not properly enforced in practice there is still a need to address the issues that can also be covered by the CCD.

Right of early repayment:

The right of early repayment makes it easy to shop around for a better deal (lower interest...). However, there is an issue with consumers who are locked into credit and who cannot switch, because they cannot get an offer from another lender as they do not pass the acceptance regulations anymore. For example because their income has decreased recently. In the Dutch mortgage regulation, an exception is made for these cases. The regular acceptance criteria with regard to income may be discarded, as long as it leads to lower monthly costs for the consumer (provided the mortgage is not raised and the duration is not increased)

Creditworthiness assessment:

Adequate personal budget analysis (income and expenditures), on-going credit and debts that should lead to an offer adjusted (in amount and in duration) to the needs of the borrower or to a refusal when the financial capacity is not sufficient.

⁷ <https://www.test-achats.be/action/espace-presse/communiqués-de-presse/2017/consumentenkrediet>

Creditworthiness should be reinforced to be effective⁸. This judgment of the Court of Justice of the Union of 18 December 2014 (Consumer Finance) Case 449, states that the obligation to assess the creditworthiness of the consumer can be carried out "from the only information provided by the consumer, provided that such information is sufficient in number and that mere declarations of it are accompanied by supporting documents".

We need to regulate what happens when the result of the creditworthiness assessment is negative. Some people seem to say that the acceptance of credit by consumers is the exclusive responsibility of consumers. The directive should specify that the lender has the duty to refrain from granting credit when the result of the creditworthiness assessment is negative.

The lender should have the obligation to collect and store evidence of the fulfilment of the information and explanation obligations (see Case 449).

The purpose (or aims) of the credit should be noted in the contract.

A clear difference should be defined in the CCD between the creditworthiness assessment and the credit risk assessment and the liability of intermediaries to carry out these assessments (at least, the significant ones in the market, whether or not credit is an accessory activity) should be equivalent to that of credit providers.

This should be a precondition for licensing providers and accompanied by adequate supervision and sanctions.

The remuneration of an intermediary should be designed in a way it does not contradict with responsible lending principles;

Decisions over whether or not to grant credit should be transparent and should allow the consumer to learn what improvements or changes to their budget and budgeting practices could improve their credit access, if the demand has been denied

The creditworthiness assessment is, when properly done, the best way to implement responsible lending. The assessment should not only a) identify the remaining amount (incomes from which the unavoidable expenditures have been deducted) of the budget that can be used for credit repayment, but also b) allow the credit provider to adjust its credit offer in amount, duration and cost in order to be affordable for the customer.

A consumption level set in line with "unavoidable expenditures" is the strict minimum and should only be used when solving debt problems. For the acceptance phase of a credit offer, a higher level of consumption should be taken into account. It should not be assumed that middle class households want to consume at the level of the poverty line when taking out a credit.

Ideally, the creditworthiness assessment is the tool which enables secure and easy access to credit for people that can afford it. It also has a key role for consumers in financial difficulty, by checking the overall all picture of other credit/financial commitments it can limit the risk of providing credit that is likely to default. Contrary to the credit scoring risk assessment, a true creditworthiness assessment not only looks at past data to deny access to defaulted debtors, but also analyses the current contribution capacity of the borrowers' budget. What is too commonly observed in countries where credit registers are widely used is the fact that, as long as your credit history is positive (no default or arrears registered), no negative signal will be sent when the budget limit is reached. This is a major inherent bias of this probabilistic approach.

Adequate personal budget analysis (income and expenditures), which should include credit and debt instalments, is the most appropriate way for the lender to propose an adjusted offer (in amount and in duration) to match the needs of the borrower or to lead to a refusal when the financial capacity is not sufficient; CCD should therefore include a much more precise definition of what is a creditworthiness assessment, and the data needed for it to be done properly (the data that are proportionate and necessary,

⁸ <http://curia.europa.eu/juris/document/document.jsf?docid=160946&>

in light of the GDPR). As such, creditworthiness assessment should be clearly differentiated from credit risk assessment, which currently seems to be the basis for the industry to provide credit. Unfortunately, the probabilistic approach implemented in the credit risk assessment has not demonstrated a capacity to keep the consumer credit market safe. On the contrary, the number of NPLs and arrears in the EU consumer credit market is a major sign of the limits to this approach, which should be addressed. The use of credit registers by credit providers in many countries does not lead to significant reduction of defaulted credit. Therefore, it is key to design an innovative way to assess creditworthiness, which hopefully might be undertaken by aggregators, these new types of third-party providers that will be able to access the information of bank customers' accounts through open application program interfaces (APIs). Algorithms based on such data are the most appropriate way of assessing budget capacity, together with the eliminating the risk of big private data registers that may not comply with several provisions of GDPR or whose business model is incompatible with GDPR (right to data portability incompatible with the secretive and exclusive nature of credit registers), but also on their capacity to guarantee the security of the data against hackers (US case...) and the illegitimate and non-proportionate use of personal / sensitive data.

The P2P-platform's own assessment of credit risk must be complemented by the publication of non-performing loans based on the rating categories. The non-performing loan statistics enable platform users (peers – borrower and lender) to prove the quality of the risk assessment.

All the pre contractual obligations should be applied and amount to a precise investigation of the financial capacity of the client.

The clients (users of credit) are overloaded with leaflets, brochures, and press, radio and television. All of them make advertise of consumer credits and others. They promise reliable conditions based on the customer's attitude, enticing interest rates, increased grace periods, reshaping the loan after its expiring if the conditions became unfavourable for the client. The common element in these "rosy" promises is that they are all financed by the banks themselves. Naturally, they will not declare that they lend on unfavourable terms, charge high interest rates, fees and commissions, and penalize their clients.

Bulgarian banks provide incomplete, inaccurate and misleading information in fact. If the client requests exemplary credit terms in writing, they receive a printout from a computer that does not cover the mandatory disclosure elements of an official document. In a western bank such conditions are given with the signature of the bank inspector. There, if the client decides to make use of their rights, they may use this document. In Bulgaria this is not the case.

Bulgaria has not yet harmonized its financial legislation with that of the EU. There is no law on consumer credit protection, there is no financial ombudsman. The clients of the banks in Bulgaria are in a much less favourable situation compared not only with the other EU countries but also with the applicant countries for EU membership.

In the Netherlands information on income and normative spending, along with individual housing costs combined with the burden of existing credits is available via a white list at the Credit Registration Office.

Discrimination, social profiling in algorithmic processes, the processing of data itself poses less of a risk to users than the decisions made as a result of this. They can have an impact not only on us as individuals in terms of our autonomy and personal rights but also on groups of people in terms of discrimination. So far, however, the use of algorithms has continued largely without any form of social control. The GDPR does not protect consumers from discrimination for the following reasons (see Bertelsmann study):

First, the GDPR's scope of application is too narrow. It prohibits only decisions that are fully automated and have an immediate legal impact or other significant effects. It still allows systems that prepare human-made decisions and recommendations. Fully automated decisions are decisions made without any human involvement – for example, when a software sorts out applicants before a human recruiter has even looked at their documents. However, if a human being makes a final decision and draws on the support of an algorithmic system – for example in granting credit – the GDPR does not apply. And there are also exceptions to the ban – when the person concerned gives their consent, for example. Ultimately, this leads to algorithmic decision-making becoming commonplace in our everyday lives.

Second, the provisions of the GDPR strengthen to some extent the information rights of individual users and, as a result of stricter documentation obligations, foster greater awareness of data subjects' rights among those responsible for data processing. The regulation, however, does not protect against socially relevant risks to principles such as fairness, non-discrimination and social inclusion, which extend beyond the data protection rights of an individual per se. The GDPR's transparency requirements do not have the scope to address systematic errors and the discrimination of entire groups of people.

Ethics of lending (loans do not solve poverty, credit aggravates the problem of poverty) Interest rates and NPL ratios of P2P lending platforms in high risk categories are very high. Regulators have to set limits on NPL-ratios of P2P lenders based on ethical considerations.

In Germany, an actual investigation with 94 credit tests revealed the following⁹: In many cases, the credit assessment was accompanied by major deficiencies. The consultants collect only a few key data such as monthly salary and rent and rely on statistical values for the household analysis without clarifying the real financial situation of the testers. Obvious risks were often only noted, if they were recognized at all. Obviously, there is a large reliance on statistics and the judgement of the credit agencies (which are often not disclosed to consumers) and focuses on the distribution of expensive loans (see problems with PPIs) and not on the interests of the consumers. This can lead to people becoming over-indebted. Here again a requirement for mystery shopping by supervisory authorities could be introduced.

PCPs – some evidence of offering this product to those who would not be able to access a personal loan (Tutty, 2018).

En France et au Luxembourg, cette évaluation se fait sur déclaration du consommateur. Ce n'est pas fiable et cela ne prend pas la situation réelle du client.

Question 3. Are there any issues which the Directive currently does not address but you consider should be addressed?

The directive should take into account the PSD2 and its implications.

Dangerous credit restrictions:

The CCD should provide objective criteria to qualify what make a credit "dangerous" in order to ban them in the EU.

Consumer credit dangers refer to:

Some consumer credit is dangerous by nature. Due to inappropriate design features the business model of such credit transfers too much risk onto consumers. It can be risky for a number of reasons including bad terms and conditions (eg: interest rate related to a currency exchange rate, high cost conditions (usury) - in absolute terms).

Another credit type than can be considered as dangerous by nature is where it remains "profitable" even if the default rate is much higher than the usual/average rate observed on the market. A classic example is short-term costly credit (payday lending) which is used on a regular basis (due to situations of structural financial distress / budget imbalance).

Credit supplies for vulnerable (poor/financially distressed) consumers, who's capacity to challenge and compare consumer credit offers, or capacity to envisage other type of solution (contact debt-advisers, negotiate better prices from their energy/phone providers) are very limited or not available.

⁹ IFF https://www.finanzwende.de/fileadmin/user_upload/Kampagnen/Achtung_Kreditfalle/Faire_Kreditvergabe_Layout_final.pdf

Never ending indebtedness arising from short term credit for “budget imbalances” should be banned. Improvements should be made to the definition of the unfair terms clause to make it more effective;

- Interest caps or other ways to prevent usury rates (rates that keep households locked into credit and in debt) should be introduced.
- Credit consolidation should not be banned but the obligation to assess creditworthiness should be improved (note that in order to organize proper supervision and sanctions the aim of the credit needs to be in the contract).
- In Germany there are problems with credit chains that result in ever more expensive loans and lead consumers deeper and deeper into over-indebtedness. People first get an expensive and inappropriate loan (also because of the inadequate check of creditworthiness). Then they can no longer service it and get even worse credit terms due to previous payment problems.

In view of the specifics of the peer-to-peer lending platform model, it seems questionable whether a separate consideration of the consumer credit problem makes sense. P2P lending has three stakeholders (peer lenders, peer borrowers and the platform), each with specific risks that need to be regulated. It remains questionable whether it makes sense to separate the consumer credit perspective from the retail investor perspective in the CCD. In addition, the specific risks of the platform as a pure intermediary remain completely unresolved. Blind spots are mostly linked to platform-specific risks, for example the situation when platform operations close down remains largely unregulated. Often platforms in countries without dedicated crowdfunding regulation do not need any central authorisation from the national financial regulator to start their business and do not have to fulfil minimum capital requirements or resolution plans that are needed in case the platform collapses. Know-your-client rules for P2P lending platforms are also needed.

Questions on effectiveness

The evaluation criterion of effectiveness considers how successful EU action has been in achieving or progressing towards its objectives, in this case:

- **creating a single market for consumer credit while ensuring a high level of consumer protection and**
- **achieving a level playing field for consumer credit across the EU and enhancing cross-border credit**

When looking at the question of improving the supervision of European banks, operating on other EU countries market several concerns can be raised. In the Bulgarian context there are doubts over whether or not stress tests of the banks in Bulgaria are real. It is hard to see how Italian banks and Deutsche bank had liquidity issues and other problems, whilst at the same time they are making profits in Bulgaria bearing in mind the low interest rate environment. It seems that the full picture of their operative activity is not being disclosed and in particular when it comes to credit provision.

Question 4. How do you rate the effectiveness for consumer protection of the following elements/ features of the Directive?

The CCD is basis of legislation in the Netherlands and in Belgium in this area. Most regulation in the Netherlands and Belgium on consumer protection goes further than the CCD and was already in place at the introduction of the CCD. It is, therefore, hard to rate the effectiveness of the CCD as such.

Questions on efficiency

When deciding to introduce a sector-specific regulation, the EU faces the challenge of balancing the potential benefits of such a regulation against the potential costs

of such a regulation. For the Directive, these costs include direct costs incurred by the credit providers (compliance and administrative costs), national authorities (enforcement costs) as well as other businesses involved in the distribution and granting of consumer credit.

Question 5. How would you rate the costs flowing from the various provisions of the Directive?

There is very little value to be gained from the question being asked, as the cost of these individual provisions is taken completely out of context. Firstly, how will the Commission interpret the responses (high costs, vs. low costs). Are high costs necessarily negative? If so, is the conclusion is that costs should be lowered for some of these provisions? Additionally, there is no question over the cost of non-compliance for society, for consumers, the cost of systemic risk and major crises due to irresponsible lending.

It is difficult to envisage how the responses can be used in a relevant manner as the question would need to be part of a very structured survey where all stakeholders have the ability to present evidence-based information, with the capacity to highlight possible causal effects to be useful. On the contrary, the consultation process is, in this case, a forum to express opinions with possibly very limited added value.

An example would be that the costs of failing creditworthiness assessments and of wrong choices of consumers (and resulting situations of over-indebtedness) are probably quite high (both for households, lenders and society as a whole). This should be part of the balance of costs and values.

See data from l'Observatoire du crédit et de l'endettement

An additional example comes from the Nordic region:

Over-indebtedness, health and loss of production– What are the costs to society?

In the aftermath of the Nordic finance crisis of the early 1990s, many people in Sweden were caught in the debt trap, encompassing debts that they could never become free of. Considering that indebtedness in the country is increasing, the risk of over-indebtedness is also rising. Over-indebtedness causes major personal suffering and considerable costs to society. The longer an individual is in debt, the more difficult the path back will be. Measures aimed at preventing over-indebtedness and quickly rehabilitating heavily indebted individuals are therefore of great importance – from the perspective of both individuals and the national economy. Over-indebtedness entails not only great personal suffering – it is also costly for the national economy.

How much does over-indebtedness cost in terms of medical care services, loss of production and costs within the social insurance/unemployment benefit systems?

There is a major lack of reference data that can be used to calculate the costs to society of over-indebtedness. In order to obtain reference data and thereafter carry out a tentative calculation of the costs to society of over-indebtedness in the form of loss of production and costs within the social insurance benefit systems and medical care services. This chapter is based on a recent cross-sectional health survey measuring mental and physical health in a target group of 725 heavily over-indebted Swedes (Ahlström & Edström, 2014). All participants were considered eligible for legal debt restructuring. Compared to the general, normal population of Sweden, the target group was found suffering from an attenuated level of ill-health both when it comes to mental and physical health. Also, when considering specific medical diagnoses (e.g. Clinical depression, Diabetes and Myocardial infarction) prevalent in the target group, a nine-fold time increase was reported when compared to the general, normal population. Another, striking aspect of the illness panorama in the target group is a pronounced pattern of comorbidity, i.e. illnesses existing simultaneously with, and usually independently of another medical condition (in the same individual).

By utilizing a commonly accepted health-economic device in Sweden, called KKP (The Swedish Association of Local Authorities and Regions) based on ICD-10 i.e. the 10th revision of the International Statistical Classification of Diseases and Related Health Problems (ICD), a medical classification list by the World Health

Organization (WHO), we could estimate an annual cost distribution per person valid for over-indebted individuals as follows: The cost of medical care is estimated to be € 13.500, loss of production € 62.000 and benefits within the social insurance systems and unemployment benefits € 16.000. Taken together, these three sources of costs amount to € 91.500.

The calculation of the annual costs of over-indebtedness per person is a way of illustrating the degree of seriousness of the problem in relation to the measures taken by society. We would like to point out here that more data and further research are necessary to provide a more comprehensive and robust picture of the costs of over-indebtedness.

In summary, the authors note that the macroeconomic and fiscal costs of over-indebtedness – including loss of production, medical care and social insurance system costs – conservatively estimated, probably far exceed the costs of public measures to deal with the problem.

Information to be included in advertising:

Responsible borrowing requires borrowers to access qualitative information that allows them to make the best choice possible. Borrowers should not be faced with ad hoc, but clear, precise information that explains the cost, impact on the budget and the consequences of defaulting on the credit. Ad-hoc information might reduce their capacity to take a proper decision. The most important point is the consumer's capacity to assess if they can afford a new credit reimbursement.

The cost of not receiving this qualitative information should be higher than that of not providing it, from a credit provider perspective.

People do not trust foreign banks as a result of bad practices on the Bulgarian market. However, some banks consider also their clients' interests too. There are some cases of fair and responsible banking when bank officers offer the best credit options to their clients. The problem is that the Bulgarian capital market cannot recover completely after the crisis. People with a financial literacy is trying to invest money in financial instruments, but the banks are those which are offering such possibilities. In order to invest in more profitable financial instruments and to benefit from investments on the international capital market, the banks' customers must invest money in the long term, which is creating problems in the conditions of uncertain economic and political environment.

Pre-contractual information:

Idem.

In relation to PCPs – Tutty (2018) citing research from CCPC and ESRI raises concerns about the ability of consumers to make informed decisions about PCPs because of the complexity of the product.

Annual Percentage Rate of Charge (APR - the total cost of the credit for the consumer, expressed as an annual percentage of the total amount of credit):

How will the Commission be able to properly use the responses collected?

Can we imagine to regulate a market without imposing a requirement on the provider to inform the consumer about the cost of the service? How the industry could afterwards claim that it has responsible lending practices?

Creditworthiness assessment (CWA):

CWA is the tool to assess if, at the time of the credit contract signature, the borrower has the financial capacity to reimburse the credit being offered. This check is the only way to implement responsible lending.

In many cases, this check represents an extra cost for the credit providers that have built their credit decision model on credit scoring methods, which only assess limited and inexpensive (in terms of cost of data) information related to the budget of the borrowers. It means that so far, that credit scoring approach is the least expensive approach and therefore the most relevant for the credit providers to maximize their credit provision activities.

From this basis, any complementary requirements introduced in the pre-contractual phase will be seen by credit providers as creating un-necessary increases in costs.

Does it mean that CWA only benefits borrowers? Yes and no. Yes because at the very least borrowers who receive credit should all be able to reimburse it with no drastic impact on other necessary expenditures. No because some consumers will not access credit because of a lack of financial capacity, which might bring frustration and stress, before being able to find other solutions;

From the creditor's side, are they the only one not to benefit from this measure? Yes and no.

Yes because in a first phase, this new practice will be costly to implement (it has to be seen as an investment), it will modify the decision making process and might lead to an increased level of refusal, compared to the previous approach. This increased level should be adjusted after an interim period, because fundamentally the business model will have only slightly changed (some added costs that are going to be amortized on the long term).

No, as if the credit provider develops the capacity to adjust their credit contracts (in size and duration) to the real financial capability of the borrower (such as reduced amounts of credit compared to some standardized offers, as observed with revolving credit) it might allow an enlarged offer of credit to be extended to some currently excluded people with a limited risk of default and corresponding lower interest rates.

No, because it should significantly reduce administrative costs related to arrears on pre-defaulted credit follow-up by the specific service of the company.

There is some evidence that PCPs are made available to people who would not be able to access a personal loan (Tutty, 2018).

Yes some consumers will not access credit because of their financial incapacity. Examples of fraud and unfair practices also exist. A concrete case from Bulgaria: Unicredit Bulbank Ltd. refused a client a credit card because of their age non taking into consideration that they were still working and with a salary paid to an account at the same bank.

Another example from Bulgaria: A client made a large transfer of money in EUR from Unicredit Bulbank to DSK Ltd (State Saving Cash Desk acquired by Hungary) to their child to repay the balance of their credit and for the cost of the transfer alone and the conversion of EUR into BGN they were charged 600 EUR.

Question 6. How would you rate the benefits flowing from the various provisions of the Directive?

How can there be a proper rating of the provisions as long as no objective indicators have been designed and collected to measure the consumer credit market quality? The key priority is to implement such data collection to monitor the evolution on the credit market. (Please see answer to question number 8).

Ces mesures permettent d'éviter l'octroi inadapté de crédit quand ce dernier est flagrant. Ils posent une barrière à l'entrée du marché, cela assure un meilleur contrôle du crédit, une meilleure vigilance industrielle, empêche aux entreprises non professionnelles de s'engager dans l'industrie. Les acteurs déjà présents dans le marché doivent effectuer des investissements importants pour assurer le respect de ces mesures, ce qui n'est pas toujours à la portée des nouveaux acteurs non spécialisées dans les questions de crédits.

Question 7. Overall, do the benefits of the Directive outweigh its costs?

This question should be investigated and researched with a properly defined methodology. Indeed, the overall picture of expenditures and benefits has to be studied globally at a systemic level: it should question the logic that some economic models of credit providers are highly beneficial, because they lead to high costs for the borrowers that are not currently taken into account (economic and social dimension) and to the other stakeholders, including the public authorities, the health sector... when people are trapped into over-indebtedness.

We have concerns related to the capacity to extract objective and relevant information from this question beyond the opinions of stakeholders.

Benefits and costs cannot only be measured in a purely monetary way. The stress that accompanies financial problems leads to lower welfare and health levels. (See response to question 5)

There are relevant data from the Banque Nationale Belge that could be considered here showing a decrease in the global default rate.

Ces mesures permettent clairement une baisse de surendettement en France malgré l'absence de réelle volonté politique nationale et de mauvaises applications des normes européennes.

Question 8. Are there any areas in the Directive where there is room for simplification or reduction of your costs?

As a regulator, it would make sense to intervene less in the credit provision process, which often leads to unexpected side effects, but to design a regulatory framework focused on societal objectives. Considering the social and economic detriment of over-indebtedness in our society, it would make sense to measure some relevant proxies to monitor the quality of the credit market and to allow policy makers to identify issues when they emerge.

How many EU adults use consumer credit? How many credit contracts (on average) have consumers signed?

What is the average level consumer credit indebtedness? What is the ratio of credit users in arrears? What is the ratio of defaulted consumer?

There is a need to measure some objective indicators to assess the quality of the consumer credit market. This information should then be made available at national and EU level: data collection could be implemented by the ECB via ad hoc annual reporting by credit providers, with data analysis by EBA on an annual basis.

If this information is properly monitored (collected annually, based on compulsory report), it should allow the regulator to make clear decisions over how to regulate the industry (as a whole): - this credit market should reduce its default ratio to 1% within the next 3 years. This would simplify the assessment the EU Commission is currently implementing in the future.

The Directive could indeed be simplified with the introduction of some basic requirements, such as the inclusion of usury rates or interest rates caps, which would clean up many national markets and get rid of predatory lending practices such as pay day lending. Although this is a very sensitive issue, the Directive could at least require all EU Member States to set an interest rate cap, within certain margins. It would also greatly reduce costs for society (over-indebtedness) and for financial service providers (if a consumer defaults on a predatory loan, chances are that several other regular loans will also be affected, even if the financial service providers issued the loan in good faith and under reasonable terms). In short, to have predatory lending allowed inside a domestic market has a cost for all players on the market.

Il faut assurer la prise en compte des outils numériques prévus par la DSP2 pour les *credit assessments* et les *creditworthiness*.

De même une standardisation obligatoire au niveau européen est nécessaire pour faciliter les échanges européens et transfrontaliers sur des critères harmonisés. Dans le cas contraire, les GAFAs et autres Fintech auront l'avantage concurrentiel ce qui risque de provoquer une perte de la souveraineté sur la structuration des données.

Questions on coherence

The evaluation of coherence involves looking at how well or not different actions work together. In the case of the CCD, there are a number of other EU legislations and policies in different fields (for example on mortgages, data protection, anti-money laundering and payments services), which, while they do not directly regulate consumer credit, may affect the consumer credit market.

Question 9. To what extent is the Directive coherent with other EU legislation? (from very much to not at all)

Mortgage Credit Directive (MCD)

There are some issues of coherence between CCD and MCD (see annex).

Unfair Commercial Practices Directive (UCPD)

Please see the point on unwanted solicitations from lender and intermediaries under question 2.

Payment Services Directive (PSD2)

Très incohérent.

General Data Protection Regulation (GDPR)

Très incohérent.

Pas suffisamment de contrôle.

Ex : FinFrog qui permet d'obtenir des crédits d'un montant allant de 200 à 600 € en 24h sans aucun justificatif à rembourser en 3 mois.

Unfair Contract Terms Directive (UCTD)

Distance Marketing of Financial Services Directive (DMFSD)

Legislation on debt restructuring and debt help for private households and or SMEs

Question 10. Are you aware of any contradictions/ overlaps/ inconsistencies/ missing links between the Directive and other national legislation in the Member States? If so, which ones?

Oui, des tentatives par le Sénat en France de revenir sur plusieurs éléments de la directive en prétextant une sur transposition ce qui marque un risque de recul important des mesures prévues.

Voir CADIC.

Questions on EU added value

In any policy initiative, the Commission must consider whether there is added value in EU intervention i.e. whether certain issues should be regulated at EU level or should be left for possible regulation at the Member State level.

Question 11. In your view, what is the added-value delivered by the CCD and its implementation, over and above what could reasonably have been

expected from national legislation in the Member States alone?

Better functioning of the internal market could be expected, but this will only be the case if supervision is equally effective in all Member States, also on cross-border transactions.

Question 12. Should the following different aspects remain regulated at EU level?

It would be important for all the options to remain regulated at EU level, with appropriate improvements made on the basis of the lessons learned from the current results of the review.

En effet avec l'arrivée des Fintech que les gouvernements ne peuvent pas contrôler, les institutions de l'Union Européenne sont les seules à pouvoir assurer leur encadrement.

Other questions

Question 13. Are there any other issues not falling within the remit of the above questions that might require action at EU level you wish to raise? What would be your preferred solution to the identified issue?

- a) The use of private credit registers such as “Schufa” in Germany or “Experian” in the UK are a serious issue. A solution would be to change the nature of CWA used;
- b) There is no provision in the CCD on usury (exorbitant interest rates) and if included this would increase borrower protection.
- c) A key issue related to the regulation of the consumer credit market is the patchwork of regulations and supervisory authorities for bank and NON-BANK credit providers.

This issue needs to be addressed as soon as possible to ensure that banking and non-banking consumer credit providers are supervised by the same competent authority. The EBA should receive an equivalent remit for supervision of the market as under the MCD. The ECB would be the appropriate authority to collect data on the consumer credit market data from all types of providers involved.

Regulation and licensing should be structured on what a firm does, not on the label of that firm.

There are significant challenges that arise from digitalization and loans available online. The progress of artificial intelligence and algorithms could enable the emergence of custom loans tailor-made to fit a customers' profile (by using the customers' online data), while still meeting the requirements of the Directive. The advertising and the information received by the client could be both standardized (as is required by the Directive) and personalized (for instance, by creating a template information sheet where key numbers and conditions are modified dynamically based on the customers' profile). This can not only make these offers impossible to compare, but also take advantage of a customers' unconscious biases. For instance, an algorithm could identify a customers' propensity for compulsive buying and tailor the offer to that bias in order to extract more money (sell credit with higher interest) from them. For instance, proposing a credit tied to a specific event, like financing a new TV ahead of the world cup, or financing a new washing machine by identifying urgent needs (a message/email or whatever online information which hints to a situation of distress; such as asking a friend for cash due to an unforeseen expenditure like a broken washing machine). The accountability of such algorithms will be very hard to manage, as they will most likely be configured to “maximize” sales, if certain conditions are met (credit risk assessment), and they will learn to optimize their sales “strategy” in a way which could be detrimental to consumers.

In Bulgaria there are two ways to create a paradoxical financial situation that are at odds with both common sense and common practices: easy and difficult. The first way is possible under a dictatorship; the latter applies when democratic procedures are preserved, although for some periods they are rather like a façade. The Bulgarian paradox is the result of a combination of these approaches. In fact, when you are in a regime of dictatorship you are obliged to pursue financial policy recommended unilaterally by the State, but with the establishment of a market economy, foreign firms and banks that have come to the Bulgarian market, instead of establish new, accurate, transparent, honest relations in the economic environment, they have begun to take advantage of the chaotic economic environment in the country. The offensive of the banks and international firms began a decade ago, when the legal order was still being respected by the institutions, the banks and the consumers. The corporation networks proceeded to set up their own lobbies in the Parliament and other State institutions. The action was crowned as a success.

Une meilleure réglementation concernant le fonctionnement des registres des crédits (privés et publics, en sachant que des bonnes pratiques, non commerciales et publiques existent d'ores et déjà : cas en Belgique, notamment) ainsi qu'un meilleur contrôle de leur fonctionnement et de leur efficacité afin d'assurer l'intérêt des consommateurs et l'inclusion financière. Cela permettra un encouragement et une obligation de neutralité.

Meilleur encadrement des moyens de paiements utilisés en tant que crédit déguisé.

Pay day Loan ou prêt à rembourser le jour où l'on reçoit son salaire. (FinFrog).